

Memorandum

To	Jamie Tellier
From	Andrew Grunda and Tina Chitsinde
Date	December 22, 2021
Re:	Response from Building Industry and Land Development Association Regarding City of Burlington's Planning Fee Review

Fax ☐Courier ☐Mail ☐Email ☒

The City of Burlington (City) received a letter from Building Industry and Land Development Association (BILD) dated November 25, 2021. The letter provides their comments regarding the City's on-going Planning Fees Review (Study) and includes a memo from Altus with additional comments and questions. We have reviewed the letter and memo and provide the following in response to matters considered within the scope of the Planning Fee Review. Our responses to the questions in the letter are provided separately from the comments in the Altus memo.

1. Responses to BILD Letter

1. BILD suggests that more time should be provided for the City to engage further with the development industry.

The intent of the stakeholder engagement was to inform the development community of the fee recommendations that would be presented to Council. Stakeholder engagement is not required for under the *Planning Act* however it is typically undertaken as a best practice. As a result of the feedback received the City has moved the Council consideration of the fee recommendations from December 2021 to February 2022. In addition to the November 11th meeting, members of the development community are welcome to express their concerns through the City's Council and Committee process targeted for February 2022.

2. BILD requested a copy of the report "outlining the methodology used to assess the full costs of processing development applications, as well as the justification to why these proposed changes are necessary be provided."

A copy of the report will be provided to BILD in advance of the Council and Committee process. The report provides the legislative context, methodology, fee recommendations and impacts of the review. Specifically, Chapter 3 provides the utilization of City staff in processing planning applications, which directly informs the cost of applications to be from fees. Chapter 4 of the report presents the current and proposed level of cost recovery for the City's planning application fees.



3. BILD inquired if the Planning Fees Review considers cross-departmental inefficiencies.

Assessing the efficiency of application processing is beyond the scope of the Planning Fees Review. In determining planning application fees, the City's legislative authority is derived from Section 69 of the *Planning Act* which allows municipalities to impose fees, through by-law, for the purposes of processing planning applications. In determining the associated fees, the Act requires that:

"The council of a municipality, by by-law, and a planning board, by resolution, may establish a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the municipality or to a committee of adjustment or land division committee constituted by the council of the municipality or to the planning board in respect of the processing of each type of application provided for in the tariff."

The processes underlying the fee recommendations reflect the City's current practice.

4. BILD's letter also included questions relating to the applicability of variable fees for multiple applications and any considerations for concurrent applications.

Regarding concurrent applications, the City currently provides the following:

- 100% of the highest initial application fee and 70% of the lesser initial application fee, plus ZBA variable fee
- 100% of the highest initial application fee and 70% of the lesser initial application fee, plus Subdivision variable fee
- 100% of the highest initial application fee and 70% of the lesser initial application fees, plus Subdivision variable fee

In developing the recommended fee structure, the City also considered the total processing effort related to reviewing Official Plan Amendment, Zoning By-law Amendment and Subdivision applications received concurrently. Compared to when these types of applications are received independently, there are certain activities that only need to be undertaken once when received in combination (e.g. application intake and circulation). To recognize these processing efficiencies and the types of fee structures imposed in Halton Region area municipalities, the recommended fee structure includes reductions to the application fees that would be imposed on these applications if received separately. The fees would be applied for applications submitted concurrently as follows:

- Official Plan Amendment and Zoning By-law Amendment applications received concurrently – Full Official Plan Amendment application fee plus 75% of the Zoning By-law Amendment total application fee;



- Zoning By-law Amendment and Plan of Subdivision applications received concurrently – Full Subdivision application fee plus 75% of Zoning By-law application fee; and
 - Official Plan Amendment, Zoning By-law Amendment, and Subdivision applications received concurrently – Full Official Plan Amendment fee plus 75% of the Subdivision application fee plus 75% of the Zoning By-law application base fee.
5. BILD request information regarding cost recovery over 100% for certain application fees.

The *Planning Act* specifies that municipalities may impose fees through by-law and that the anticipated costs of such fees must be cost justified as defined in the tariff of fees (e.g. subdivision, zoning by-law amendment, etc.). In our review, if the current fee structure is recovering more than the anticipated costs of processing on average, the report recommends reductions to the fees to only achieve full cost recovery.

2. Responses to Altus Memo

The comments from the Altus Memo which was appended to the BILD letter are provided below, in italics, along with our response.

1. *The \$200,000 cap on variable zoning, subdivision and site plan need to be revisited, as under the current proposal, the caps are functionally irrelevant given that the number of units required within an individual application are so large as to render them nearly impossible to reach:*
 - *Zoning – would require development with 865 units to reach cap of \$200,000 under proposed base and variable rates (would take 541 units under current rates)*
 - *Subdivision – would require development with 1,181 units to reach cap of \$200,000 under proposed rates (would take 582 units under current rates)*
 - *Site Plan – would require development with 976 units to reach cap of \$200,000 under proposed rates (would take 1,601 units under current rates).*

Some municipalities utilize variable fees in addition to base charges to reflect the increase in processing effort as applications increase in size. The effort or cost however does not increase at a linear rate as application size increases. In recognition of this, some municipalities impose variable fees based on a declining block rate structure where the per unit fee decreases as the application size increases and, in some cases, maximum fees. The City fee structure which utilizes both a declining block rate structure and maximum fee (cap) reflects this general approach.



A review of historical data shows that a small number of ZBA (16%) and Subdivision (33%) applications have been large enough to reach the cap with no Site Plan applications reaching the cap. As noted in the Altus memo, the number of units required to reach the cap is now higher for Subdivision and ZBA applications than under the current fee structure. Although fee caps are not legislatively required under the *Planning Act*, they are still being proposed for the reasons outlined above. It is important to note that the change in historical development patterns i.e. shift towards increased high-density development and intensification has resulted in more complex applications which require increased staff effort.

Furthermore, through discussions with City staff, it was noted that application size is a greater driver of complexity, which resulted in the change in the proposed fee cap. For Subdivision and ZBA applications, the proposed caps are based on a consideration of the characteristics of historical applications. The City's current practice of providing the cap in dollars versus units is maintained. For Site Plan applications, although the historical applications did not reach the cap, based on development patterns in the City, it is expected that some of applications will be large in the future. Instead of removing the cap entirely, the proposal is to establish the cap based on the trends observed for Subdivision and ZBA applications. This suitability of this cap will need to be assessed as the City receives and processes larger Site Plan applications. While there is the possibility that the caps would not be reached in each case, the intent of these caps is to capture the additional effort as application size increases. recognize that the cap may not be reached in each case.

2. *By raising the OPA fee to \$114,592 per application (from \$22,300 currently) and keeping the ZBA fee to \$22,690 (from \$21,020 currently), the impact of the City's allowance for a 30% discount on the lesser of the two fees is diluted significantly. Under the current fee rates, the 30% discount would equate to an overall 15% discount on base OPA/ZBA fees. Under the proposed fee rates, the 30% discount would equate to a discount of just 5% on the combined base OPA/ZBA fees.*

The City currently charges "100% of the highest initial application fee and 70% of the lesser initial application fee, plus the zoning variable fee" for OPA and ZBA applications submitted concurrently. Given the application fee for ZBA consists of a base and variable component, comparison of the fees and discounts applied based on the base fees only would be inaccurate. Table 1 shows the fees for an application with 344 residential units, which is the average number of units based on the sample data from the City. After considering the variable fees, the 30% discount applied to the base charge only reflects approximately 4% of the total fees that would be charged for this development.



Table 1
Comparison of Current and Proposed Fees for Combined OPA/ZBA Applications

Description	OPA Application Fee	ZBA Application Fee		Total Combined Fee	Less: Discount	Discount as a % of Combined Fees
		Base	Variable			
Current	\$22,300	\$21,020	\$135,145	\$178,465	\$6,306	4%
Proposed	\$114,592	\$22,690	\$87,949	\$225,231	\$27,660	12%

The proposed discount on combined applications was informed by assessing the process steps that would either be duplicated or not required for concurrent applications. The intent of the discount is to ensure the applicant does not pay for the same activity more than once in addition to recognizing the other efficiency gains. Our assessment showed effort amounting to approximately 25% of the total ZBA staff effort would not be required for concurrent OPA/ZBA applications. As a result, we proposed changing the City's discount for combined OPA/ZBA applications from 30% of the base fee to 25% of the total (base plus variable) application fee as illustrated in Table 1. In the example the discount under the proposed fee structure would amount to 12% of the combined fees compared 4% under the current fee structure. The proposed discount, as a percentage of total fees, would be higher for any applications with 73 or more units, reflecting approximately 78% of the applications in the sample data.

3. *The current schedule of fees allows for only one variable fee rates for joint OPA/ZBA/Subdivision applications. Has the City contemplated a similar policy for applications with three application types but Site Plan instead of Subdivision?*

Our response to question 2 responds to the recommended discount policy for concurrent applications and how this was determined. There are not further policy adjustments being considered at this time.

4. *What was the rationale for lowering the per unit rates for ZBA and Subdivision, but raising the per unit fees for Site Plan?*

In compliance with the Planning Act, the costing assessment is undertaken by application type. To assess the sufficiency of the City's current fee schedule to recover these costs, the current fees were applied to the underlying charging characteristics of the applications (i.e. application size). Where the current fee schedule produced revenues in excess of costs, fee reductions were recommended. Where the current fee schedule produced revenues lower than costs, fee increases were recommended.

Table 4-1 of the Planning Fees Review Study shows the cost recovery of current fees by application type. As shown in the table, the City's existing fees are



recovering more than the full costs of service for Zoning By-law Amendment (Z.B.A.) and Subdivisions applications, and 60% of costs for Site Plan application type. To achieve full cost recovery, fee increases were required for Site Plan applications and reductions were required for Z.B.A. and Subdivision applications.

5. *What is the rationale for imposing per unit fees for site plan applications – at the point of site plan review, most, if not all development details will have been determined at the OPA/ZBL stage, with little to no changes to built form from subsequent site plan review.*

The City's fee structure is comprised of a base charge plus a variable component. This structure is employed in recognition that the level of staff effort required to process applications increases when developments are larger. Size of development serves as an indicator of complexity; larger applications tend to be more complex and require more staff processing time and consequently a higher fee would be imposed.

6. *One of the recommended policy changes is to “recommend annual indexing of the maximum fees” – what index is proposed to be used to index the maximum fees?*

Historically, the City has applied annual inflationary cost increases for planning application fees of approximately 2-3% as part of the annual budget process. The maximum fees would be indexed at the same rate annually recognizing the increase in cost of service.

7. *Is the proposal to revise the by-law to treat one building with a common podium but separate tower elements as separate buildings for the purposes of application fees suggested to apply to all application types, or only certain application types where the massing makes a difference in terms of the efficiency of staff review? Is the City aware of this approach having been used in other municipalities?*

The intent of this change is to address large developments that may comprise multiple parcels and/or multiple buildings or towers. This change would primarily effect Site Plan applications and reflects the underlying processing effort by application historically. The City of Mississauga planning application fees by-law utilizes a similar approach.

8. *Can the table in the presentation showing the total municipal development fees, which includes planning application fees, but also building permit fees and development charges, be revised to only include planning application fees? As those are the only component in the graph that is changing through this initiative, it does not make sense to include DCs and building permit fees. In particular, the inclusion of DCs dilutes the information meant to be presented.*

The intent of the tables/charts is to illustrate the impact of the proposed changes on the full costs of development. Our position is that considering planning fees in



isolation does not adequately contextualize the changes that are being proposed for Council's consideration. In our experience Council should be informed of the amount of processing costs being funded from the net levy (i.e. property taxes) due to current planning application fee pricing and the impact that moving to full cost recovery would have on the cost of development. Providing this impact for planning application fees only does not sufficiently provide this context.

9. *We have several questions with the slide (#18) showing “Annual Cost of Service and Current Revenues”:*

- a) Can additional detail be provided for how the “direct” and “indirect” costs included in the estimate of total annual costs were calculated?*
- b) How were the “Total Annual Revenues” determined – what year(s) is this data from?*
- c) To what extent are some of the annual costs (direct and indirect) costs fixed and other costs dependent on the amount of growth?*

Direct costs refer to the employee costs (salaries, wages and benefits), materials and supplies, services and rents that are typically consumed by directly involved departments or business units. Direct cost allocations were based on the City's 2021 Operating Budget and include human resource costs (e.g. salary, wages and benefits, mileage, conferences, etc.), operating/minor equipment costs (e.g. supplies, printing, minor equipment, etc.); and purchased services (e.g. services/contracted work, etc.). Based on the results of the staff capacity utilization analysis, the proportionate share of each individual's direct cost is allocated to the respective costing categories.

“Total Annual Revenues” were modelled by applying the City's current planning application fees to the average annual applications and application characteristics (i.e. size) for the years 2017-2020.

The costs are determined on a per application basis. The cost per application includes direct, indirect and capital costs. These costs are variable, as they are based on the number of application processed annually.

10. *The fee schedule does not include a “Minor Official Plan Amendment” category – why was this not included?*

This category was rarely used as all applications requiring an Official Plan Amendment are characterized as major applications. To ensure ease of administration of the planning application fees by-law, it was decided that this fee category should be removed.



11. *The base fee for ZBA Revisions, for both Major and Minor applications are greater than the base fee for the initial ZBA application. What is the rationale for this approach?*

The planning fees for Major and Minor Z.B.A. applications is comprised of a base charge plus a variable fee. The Z.B.A. Revisions fee is a flat per application fee. While the base fee for Major and Minor Z.B.A. applications is in fact lower than Z.B.A. Revisions, the total fees payable are generally be higher due to application size.

12. *The fees for Minor Changes to Subdivision and Development Agreement conditions not requiring Council Approval is \$7,439, up from \$105 currently. What is the rationale for this increase?*

The City's current fees for Changes to Subdivision and Development Agreement conditions do not reflect the full cost of service. For example, the costs for Major Changes to Subdivision and Development Agreement conditions (requiring Council Approval) are \$10,788 as compared to the current fee of \$445. Minor Changes to Subdivision and Development Agreement Conditions undergo the similar processing activities as those that go to Council for approval (i.e. Major Changes). The proposed Minor Changes fee recognizes that effort related to the Council process in the Major category would not apply, removing these costs result in Minor Changes costs of \$7,439.

13. *The fee schedule includes separate condominium application fees for common element, vacancy land, standard condo and condo conversion fees. What is the expected application of the other base Condominium fee of \$58,495 (up from \$3,920)?*

The \$58,495 fee would apply for the Regular Draft Plan of Condominium applications.

14. *What is the reason for a \$7,600 site plan review fee for school portables and sales centres?*

The full cost of Minor Site Plan applications, which include portables and sales centres, was calculated at \$17,549. The City currently differentiates fees within this category based on the level of effort expended, as well as other policy objectives. The fee for school portables and sales centre reflects these considerations.

15. *In many cases, the fees for minor applications is far too close to those for major applications. For example, a minor consent application fee would be \$8,083, while a major consent application would have a fee of \$10,404. Can the City explain the differences between major and minor applications for consent and other application types to help stakeholders understand the basis for the relative costs of minor and major applications to ensure that the minor application fees are not overstated?*



The City's fee structure currently differentiates fees for major and minor applications based on a set of criteria that influences the level of processing effort expended, as well as other policy objectives. The City's planning application fee by-law set out the definition of these characteristics.

16. Can the rationale for site plan pre-consultation fees be provided – typically these applications have already been through other planning approval processes and the details of the developments are known.

The City's 2021 Fee Schedule provides the following in this regard:

Pre-consultation fees will be credited to a future application within one year of the pre-consultation meeting date. If the application is deemed to be substantially different from the pre-consultation proposal, a new pre-consultation, including fee, may be required at the discretion of the Director of Community Planning. Additional pre-consultation meetings beyond the first are also subject to the above fee and will not be credited to a future application.

The pre-consultation fees in the recommended fee schedule would continue to be applied based on this policy.

Memorandum

To	Jamie Tellier
From	Andrew Grunda and Tina Chitsinde
Date	December 22, 2021
Re:	Response from West End Home Builders' Association Regarding City of Burlington's Planning Fees Review

Fax ☐

Courier ☐

Mail ☐

Email ☒

The City of Burlington (City) received a letter from West End Home Builders' Association (WE HBA) dated November 25, 2021. The letter provides their comments regarding the City's on-going Planning Fees Review (Study). We have reviewed the letter and provide the following in response as it relates to the scope of the Study.

1. WE HBA suggests that more time should be provided for the City, Consultants, and WE HBA to discuss the proposed increases and impacts on members. WE HBA further requests that they are provided notice of fee increases in advance of stakeholder engagement meeting to allow them to prepare for the engagement.

The intent of the stakeholder engagement was to inform the development community of the fee recommendations that would be presented to Council. Stakeholder engagement is not required under the *Planning Act*, however it is typically undertaken as a best practice. As a result of the feedback received, the City has moved the Council consideration of the fee recommendations from December 2021 to February 2022. In addition to the November 11th meeting, members of the development community are welcome to express their concerns through the City's Council and Committee process targeted for February 2022.

2. WE HBA notes that the increases presented at the November 11, 2021 meeting are higher than the annual inflationary increases that the members anticipate. Furthermore, the letter notes WE HBA members' concern regarding the overall increases to the fees in the City's tariff of fees and that the proposed fees would be higher than those in other municipalities.

Municipalities periodically undertake comprehensive fee reviews in order to ensure that the user fees are reflect the cost of service provided to applicants and that these costs are not being funded by taxpayers. Prior to this current study, The City's last comprehensive fee review was undertaken in 2012. The fees have only been indexed for underlying cost increases this that time. Furthermore, during that time the development patterns within the City have changed, the processes and level of staff effort underlying the fees have also changed. These changes are not



addressed with indexing for fees, thus requiring this fee review to inform more substantive fee changes. After implementing the recommended fees, annual inflationary indexing would apply until the next comprehensive review is undertaken.

The fees imposed by a municipality are based on a combination of factors, such as the level of service, development patterns, cost structures and desired cost recovery level. Fee structures also differ across municipalities which complicates the direct comparison of the fees. For example, the City of Hamilton's condominium fee consists of a base charge (flat fee) and a variable fee (per unit) while the Town of Oakville separates the base application fee from the final approval fee. These fee structure decisions are generally made in response to the characteristics of development process and development applicants in each municipality. Furthermore, the frequency at which municipalities undertake comprehensive fee reviews differs across the municipalities further complicating the accurate comparison of planning fees. To account for the different fee structures, Chapter 5 of the Planning Fees Review Study provides the development impact analysis which not only compares the planning application fees in surveyed municipalities but puts the planning application fees in the appropriate context of the municipal costs of development.

3. WE HBA requested clarification regarding Concurrent applications

The City will maintain its practice of reducing fees for applications submitted concurrently in recognition that there are efficiencies that result from combined applications. In developing the recommended fee structure, the City considered the total processing effort related to reviewing Official Plan Amendment, Zoning By-law Amendment, and Subdivision applications received concurrently. Compared to when these types of applications are received independently, there are certain activities that only need to be undertaken once when received in combination (e.g. application intake and circulation). To recognize these processing efficiencies and the types of fee structures imposed in Halton Region area municipalities, the recommended fee structure includes reductions to the application fees that would be imposed on these applications if received separately. The fees would be applied for applications submitted concurrently as follows:

- Official Plan Amendment and Zoning By-law Amendment applications received concurrently – Full Official Plan Amendment application fee plus, 75% of the Zoning By-law Amendment total application fee;
- Zoning By-law Amendment and Plan of Subdivision applications received concurrently – Full Subdivision application fee plus 75% of the Zoning By-law application fee; and
- Official Plan Amendment, Zoning By-law Amendment, and Subdivision applications received concurrently – Full Official Plan Amendment fee plus 75% of the Subdivision application fee plus 75% of Zoning By-law application fee.



4. WE HBA believes it would be the City's intention to fund corresponding improvements in service delivery including increased efficiencies and tighter timelines within. Furthermore, they note that they "could be supportive of potential fee increases where they are directly tied to system improvements specifying that all development applications are processed within provincially mandated timelines".

Planning application fees principally fund the staff resources required to process applications within legislated requirements. Through the Fee Review, the City identified additional staff resources required in budget requests to meet applicant demands and to maintain service levels. These additional staff resources were incorporated into the staff capacity utilization assessment and recommended fees to ensure funding for these positions and to remove the need for funding from the net levy (i.e. property taxes). This shows a commitment for the City to provide the necessary resourcing to meet applicant demands. Moreover, it is our understanding that the City is also working on additional ways of improving their processes through the Red Tape Red Carpet Taskforce, which will further improve the efficiency of the processes and service level to the development industry. We would suggest that the development industry be aware not to inappropriately correlate planning application fees and processing efficiency (i.e. application turnaround times), as in our experience, municipalities may incur higher costs of processing to achieve quicker turnaround times.