

CPRM April 5, 2022

PL-35-22

Correspondence from Denise Baker

April 4, 2022

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File

Chair and Members of the Community Planning,
Regulation and Mobility Committee

The City of Burlington
426 Brant St,
Burlington, ON
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Attention: Office of the City Clerk

Dear Members of the Community Planning, Regulation and Mobility Committee:

**Re: Official Plan and Zoning By-law amendments for 1029-1033 Waterdown Road
Comments on Report Number PL-35-22
File Numbers 505-09/21 & 520-10/21**

We are the solicitors for Infinity Development Group Inc. with respect to their application for amendments to the City's in force Official Plan and Zoning By-law to permit a 29 storey, 295 residential building with commercial uses at grade ("the **Applications**"), for the property municipally know as 1029-1033 Waterdown Road (the "**Subject Lands**").

We have reviewed the staff report recommending refusal of the Applications and we do not support the recommendation and note that a great deal of information that has been provided with the submission of the Applications has been omitted from the staff report, including any reference to the numerous documents that were required to be submitted to the City prior to Council deeming the Applications complete. As such, it is difficult to understand how Committee and subsequently Council can make a fair, transparent and informed decision on the Applications in the absence of their knowledge of these reports and studies.

The Provincial Policy Statement and the Growth Plan

A detailed analysis of the Applications' consistency with the Provincial Policy Statement ("**PPS**") and the Growth Plan has been set out in the Planning Justification Report that was submitted with the Applications. The staff report makes no reference whatsoever to that analysis.

In support of staff's position they rely in part upon the oft cited policy regarding municipal official plans being the most important vehicle for implementation of the PPS. However, they have failed to inform Council that this policy goes on to state:

"In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan."

As you may be aware, the Applications that have been submitted to Council for decision are amendments to the in force Official Plan. The in force Official Plan states in Part 1, section 2.0 that: "The Plan will manage and direct the development and planning of land uses for a period extending to the year 2021." This is particularly meaningful as it then requires a fulsome and complete analysis of the Applications vis a vis the PPS and the Growth Plan entirely independently of the City's Official Plan policies. That analysis is missing from the staff report.

Moreover, section 5 of the Growth Plan requires that applications that pre-date the Municipal Comprehensive review process must still conform to the policies of the Growth Plan.

As a result of this, it is our submission that staff's analysis of the Applications against the PPS and the Growth Plan is incomplete in so far as it relies upon future work that the City is doing with respect to MTSA's. The staff report in many instances states that City is currently completing the Aldershot MTSA to establish a vision for a complete community and only then will they know what the appropriate scale of development for the Subject Lands is. It is submitted that the staff report was required to consider the Applications in the context of the PPS and the Growth Plan, absent any consideration of future work that the City is doing.

However, although staff is well aware of this, I note that they do not advise Council that the Applications that are before you for decision will not be subject to the policies that result from the MTSA studies, because those policies do not yet exist, nor did they exist at the time the Applications were filed and deemed complete.

The staff report then concludes, in the context of its PPS and Growth Plan analysis, that the application is premature pending the completion of the MTSA work. Respectfully, there are no policies in either the PPS or the Growth Plan that could possibly lead to that conclusion.

Moreover, to be fair to the applicant, staff have been working on the MTSA (which were previously referred to as Mobility Hubs) since before 2014. The City's Mobility Hubs Opportunities and

Constraints Study was released in May 2014, almost 8 years ago. As such, to suggest that this application is premature pending the completion of the City's Mobility Hub/MTSA work, is untenable.

As a result of the reliance on the prematurity argument and future MTSA policies, the staff report fails to complete an analysis under the PPS and the Growth Plan. We trust that each member of Council has read in detail the planning justification report that was filed with the Applications to ensure that it has that detailed analysis prior to making a decision on the Applications.

The Regional Official Plan

Under the Region's in force Official Plan (the "**ROP**"), the Subject Lands are designed as Urban Area and within a MTSA through ROPA 48. The staff report notes that the effect of ROPA 48 was to delineate the Aldershot MTSA boundary and to establish a density target and a general target proportion of residents and jobs.

However, the staff report then goes on to note that the Applications do not conform to policy 81.2 of the ROP. However, policy 81.2 of the ROP is a policy directed at the City and is not a policy directed at landowners. As such the proposed Applications could never conform to this policy. Moreover, in the context of some of the Region's policies, staff have disclosed that the review of the reports that were submitted with the Applications have not even been completed. It is difficult to understand how the Applications can be recommended for refusal when by staff's own admission, some of the reports remain under review.

Finally, there are many sections in the analysis under the ROP policies where staff have indicated that the analysis will be provided in "subsequent sections of this report", however such analysis in the context of the ROP policies is never subsequently provided.

City of Burlington Official Plan

The analysis in the staff report with respect to the Official Plan policies is for the most part grounded in the fact that staff have not completed their MTSA studies. It is our submission that such an analysis fails to provide Council with the requisite information it needs to provide a fair and informed decision.

Moreover, the staff report identifies concerns with the development and that it might preclude adjacent sites from developing "in a similar manner". This statement seems to be at odds with the overall conclusions in the report itself.

The staff report also raises concerns with respect to the need to provide access to sun light, sky view, privacy and daylighting, but no policy basis for these requirements or information with respect to these criteria is referenced and no analysis is provided in the staff report as to how they arrive at the conclusion that there will be any adverse impacts associated with the Applications.

In addition, like with the Region's OP policies, there are gaps in the analysis in so far as staff acknowledges that they have yet to determine if particular criteria have been met. An example of this is with respect to the Sustainable Building and Development Guidelines. It is clear that staff has not completed this work prior to bringing their recommendation report forward.

In addition, a number of other concerns raised in the staff report including the landowners other land holdings which are not the subject of the Applications, landscaping and planting species are outside the scope of the Applications and are more properly and specifically addressed through other processes.

Conclusion

The foregoing is intended to bring your attention a small sample of some of the concerns that we have with the nature of the information being provided to Council that will impact the ability for Committee and Council to make an informed decision on the Applications.

It is our submission that in conformity with sections 1.1 and 2 of the Planning Act, it would have been more appropriate for the City to provide for Council with a staff report that recognizes that ours is a "land use planning system led by provincial policy" and that it is one of the purposes of the Planning Act to "encourage co-operation and co-ordination among various interests" having regard for "the resolution of planning conflicts involving public and private interests".

To that end, while we fully recognize that Committee and subsequently Council will likely follow the recommendation of staff, we are committed to trying to work with the City to try to resolve outstanding concerns with the Applications.

Yours truly,
WeirFoulds LLP

A handwritten signature in black ink that reads "DBaker". The signature is written in a cursive, flowing style.

Denise Baker
Partner