



City of Hamilton

CITY COUNCIL ADDENDUM

22-004

Wednesday, February 23, 2022, 9:30 A.M.

Due to the COVID-19 and the Closure of City Hall (CC)

All electronic meetings can be viewed at:

City's Website: <https://www.hamilton.ca/council-committee/council-committee-meetings/meetings-and-agendas>

City's YouTube Channel: <https://www.youtube.com/user/InsideCityofHamilton> or Cable 14

4. COMMUNICATIONS

4.11. Correspondence respecting Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide):

- *i. Bettina Schormann, Pastry Chef/Proprietor, Earth to Table: Bread Bar
- *j. Mark A. McNeil
- *k. Cristina Geissler, Executive Director, Concession BIA
- *l. Pat Cameron
- *m. Aznive Mallett
- *n. Paula Kilburn
- *o. Locke Street BIA

*p. Stoney Creek BIA

*q. Westdale Village BIA

Recommendation: Be received and referred to the consideration of Item 6 of Planning Committee Report 22-003.

*4.13. Correspondence from Aaron Waxman, IronPoint, formally requesting a deferral of the Planning Committee decision respecting 442-462 Wilson St. E. Ancaster, UHOPA 21-023 and ZAC 21-049 (Ward 12) (PED22037)

Recommendation: Be received and referred to the consideration of Item 5 of Planning Committee Report 22-003.

*4.14. Correspondence from Pitman Patterson, Borden Ladner Gervais respecting Official Plan Amendment UHOPA-22-001, Zoning By-law Amendment ZAC 22-003, 65 Guise Street East (Pier 8, Block 16), Hamilton.

Recommendation: Be received and referred to the consideration of Item 4 of Planning Committee Report 22-003.

11. BY-LAWS AND CONFIRMING BY-LAW

*11.15. 042

Respecting Removal of Part Lot Control, Part of Block 1, Registered Plan No. 62M-1281, municipally known as 3311 Homestead Drive, Glanbrook

PLC-22-005

Ward: 11

Pilon, Janet

Subject: Outdoor Patio Program

From: Bettina Schormann

Sent: Friday, February 18, 2022 12:14 PM

To: clerk@hamilton.ca; Davis, Julia <Julia.Davis@hamilton.ca>; Kerry Jarvi <kerry@downtownhamilton.org>; Locke Street BIA <lockestreetshopsbia@gmail.com>; Holly Gibb; Mike Spitzig

Subject: Outdoor Patio Program

Hello,

With regard to the outdoor dining program both Bread Bar Locke and Bread Bar James have benefited from having patios over the last two years. Both locations had revenue of approximately \$100,000 from the patio between June to October (we were locked down last spring April/May but would like to be open starting April). We were also able to employ 2 additional staff.

The presence of the patio also brings a summer vibe to the street increasing the perception of value to the customer.

We are in huge support of a permanent Out Door Dining program.

Warm Regards,

Bettina Schormann

Pastry Chef/Proprietor, Earth to Table: Bread Bar

Earth to Table: Bread Bar

258 Locke Street South | Hamilton, ON | L8P 4B9

14 James Street North | Hamilton, ON | L8R 2J9

105 Gordon Street | Guelph, ON | N1H 4H7

breadbar.ca



4.11 (j)

Mark A McNeil
Ancaster, ON

February 18, 2022

Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Re: Temporary Outdoor Dining Program

Dear Councillors:

I write as an individual, a citizen of Hamilton, although I am a member of the Accessibility Committee for Persons with Disabilities, with respect to the Planning Committee endorsement of the staff report PED22051 regarding the Outdoor Dining Program. Specifically, the recommendation to make the Temporary Outdoor Dining Program permanent.

To ensure that the Outdoor Dining Program is fully accessible and does not present any barriers to travel for persons with disabilities, James Kemp and Tim Nolan from the ACPD presented to the Planning Committee on February 15. They requested that staff and their staff report, both, be referred to the ACPD working group on accessible outdoor spaces and parklands before proceeding to make this program permanent.

The Committee instead voted 6 – 0 to accept the staff report to make the program permanent now, ignoring any need for accessibility. I believe this is a mistake on the part of the Planning Committee, placing the City at risk of non-compliance with the AODA, the Ontario Human Rights Code and its own standards for safe and barrier – free pedestrian pathways in the City.

I am not opposed to outdoor dining or making this program permanent. Weather permitting, I prefer to dine outdoors.

I ask only that this program be accessible and ensure accessibility for persons with disabilities in this City. I request that the staff report and staff be referred to the ACPD working group to secure full accessibility with respect to all matters associated with outdoor dining before proceeding at this time.

This matter is important for the City and all its citizens, including those with disabilities. We have a duty to be thoughtful and considerate in this process, and I implore you to do so now.

With appreciation,

Mark A. McNeil
Citizen of Hamilton

Pilon, Janet

Subject: Support of permanent outdoor patio program

Importance: High

From: concessionbia@gmail.com <concessionbia@gmail.com>

Sent: Friday, February 18, 2022 12:59 PM

To: clerk@hamilton.ca

Cc: Davis, Julia <Julia.Davis@hamilton.ca>; Lam, Judy <Judy.Lam@hamilton.ca>

Subject: Support of permanent outdoor patio program

Importance: High

The Concession Street BIA is in full support of expanding the outdoor patio program to make it a permanent year-round fixture. Outdoor patios allow small businesses to expand their seating capacity in a time when their economic recovery, scaling their sales and enticing people back to their establishments is critical. As Canadians we have seen that patios are not just a summer thing. Warm sunny winter days, late autumn sunshine, early Spring-like weather and beautiful evenings any time of year are good reason to visit your local patio. Year round patios will give restaurants to get really creative in how they adapt these spaces to the season.

An added bonus is that these spaces animate our BIA and make it a more inviting place for visitors, so other small businesses can also benefit from that foot traffic. This commercial corridor vibrancy in turn then adds to the appeal and allure for new businesses to also join our BIA and invest in our street. For these reasons, the Board of Management is in full support of this motion.

Sincerely,

Cristina Geissler, Executive Director, Concession BIA

Pilon, Janet

Subject: Outdoor dining program

From: Pat Cameron

Sent: Sunday, February 20, 2022 6:18 PM

To: clerk@hamilton.ca

Subject: Outdoor dining program

Dear Councillors

I write with respect to the Planning Committee endorsement of a staff report / recommendation to make the temporary temporary outdoor dining program permanent.

in an effort to ensure that the outdoor dining program is fully accessible and does not present any barriers to travel and safe travel for persons with disabilities James Kemp and Tim Nolan from the ACPD presented to the Planning Committee on February 15. They requested that staff and their staff report, both, be referred to the ACPD working group on accessible outdoor spaces and parklands before proceeding to make this program permanent.

The Committee instead voted 6 – 0 to accept the staff report to make the program permanent now ignoring any need for accessibility.

I believe this is a clear mistake on the part of the Planning Committee placing the City at clear risk of non compliance with the AODA, the Ontario Human Rights Code and its own standards for safe and barrier – free pedestrian pathways in the City.

I am not at all opposed to outdoor dining or making this program permanent. I ask only that this program be accessible and ensure accessibility for persons with disabilities in this City. To do so only requires the staff report and staff be referred to the ACPD working group to secure full accessibility with respect to all matters associated with outdoor dining before proceeding at this time.

And, that Council allow the program to proceed as temporarily temporary for now. This matter is important for the City and all its citizens with disabilities. We have a duty to be thoughtful and considerate in this process, and I implore you to do so now.

With appreciation

Patty Cameron
Stoney Creek

Pilon, Janet

Subject: My letter to Council

From: Aznive Mallett

Sent: Tuesday, February 22, 2022 10:10 AM

To: clerk@hamilton.ca

Subject: My letter to Council

Please forward the following letter to on my behalf.
Aznive Mallett

Dear City Council,

This Letter to Council on behalf of myself, as a citizen who is a member of the City's Advisory Committee for Persons with Disabilities. The reason I am reaching out to Council is because the matter before you are significant. My goal is for the Council to understand collectively and simultaneously my concern.

This correspondence refers to the staff report PED22051 regarding the Outdoor Dining Program, and the plan to make the temporary program permanent.

Please know I am not at all opposed to an outdoor dining program becoming permanent. I have enjoyed the opportunity to dine outdoors on many occasions. There is no need to scrap the program. I merely ask Council to not rush.

The staff report does not capture the concerns of ACPD that barriers will be generated for persons with disabilities in Hamilton. I request Council not adopt the change to this program without reasonable and obligatory consideration for full accessibility. ACPD needs Council to consult ACPD meaningfully on matters affecting accessibility. To be explicit, our concern is not only for accessibility of patrons within the dining area but rather the barriers created around these patios.

I respectfully request that Council rethink the support of the City's Planning Committee as follows:

1. Leave the temporary Outdoor Dining Program as is, until such time the program can be properly and fully integrated with full accessibility; and,

2. Refer staff and their report PED 22051 to the ACPD working group on Accessible Outdoor Spaces and Parklands so that a meaningful and effective collaboration on accessibility can be achieved; and,
3. Once City staff and ACPD can reach consensus on full accessibility for all outdoor dining then have staff report back on making outdoor dining and the absorbed property fully accessible.

Based upon the staff report, staff and other delegate feedback during the February 15, 2022, Planning Committee meeting I would like to negate some of what was presented by staff.

- A university student cannot in any way be construed as an expert on accessibility and accessible design.
- Program staff did consult ACPD, but that consultation focused primarily on the procedure for application and barely at all on how to make outdoor patios accessible. Our significant concern will greatly benefit the city because it will prevent barriers to pedestrians with disabilities particularly where dining will occupy pedestrian space.
- Sadly, no BIA in this City has ever approached ACPD to gain information on how to make outdoor dining accessible. sidewalks and pathways.
- ACPD asked staff to find ways to not impede travel and ensure safe travel for persons with disabilities on City sidewalks. The staff report does not provide for design or mechanisms to do so.
- The staff report provides a statement about compliance with the AODA, yet the AODA has no such regulations respecting outdoor dining.

The staff report deems legal implications of this program not applicable. I would respectfully bring to Council's attention that while there may be no individual regulations arising from the AODA specific to accessible outdoor dining, the Act itself requiring full accessibility and prevention of barriers to access is in scope. This program, in my opinion, should it proceed, is in contravention of the AODA in fact, and in spirit. Additionally, a Council decision to proceed in defiance of accessibility, particularly given advice by ACPD of this fact, could make Council more liable should any complaint arise under the Ontario Human Rights Code. On this point alone, Council needs to refer this program to ACPD.

Additionally, the text or talking points guiding the ACPD presentation to the Planning Committee are provided below in support of this request to refer this program matter to the ACPD working group before proceeding to make this program permanent.

James Kemp and Tim Nolan on behalf of the ACPD.

I am here representing the Advisory Committee for Persons with Disabilities regarding the outdoor patio program being made permanent in the report (PED22051).

The ACPD respectfully requests that the Planning Committee and Council do not make the Outdoor Dining Districts Program permanent until our very reasonable accessibility issues have been addressed. Our concerns are as follows:

1. There is no accessibility trained person on the SEAT team that makes the decisions on whether these permits are approved. When accessible parking spaces are being relocated or encroached upon, or when access to sidewalks, curb cuts and ramps are going to be blocked, there needs to be someone on the team to represent those with disabilities and ensure that convenience isn't taking a priority to accessibility. This person could possibly report any issues to our committee on an annual basis.

2. We have serious issues regarding the sidewalk bypasses. Blocking the sidewalk creates a clear barrier to persons with disabilities in contradiction of the Ontarian's with Disabilities Act (ODA) which was put in place to ensure that we could participate fully in society. Of particular note:

1. Urban Braille, designed to help those with visual impairments navigate the world safely, are directing pedestrians directly into the barricade.

2. The barricades have no high contrast markings or signage warning those with visual impairments of the danger ahead. We were told that there would be a sign, but first, they would need to know the sign was there and two, they would have to be able to read it.

3. The wooden planking makes it painful and difficult to travel on for those using: walkers, white canes, canes, crutches, wheelchairs or power chairs.

4. There is often a lip where the planking transitions from the sidewalk. This can possibly puncture the pneumatic tires of mobility scooters, cause a tripping hazard or hook up a white cane.

5. Narrowing the flow of traffic prevents two wheelchairs or walkers, etc.... from passing safely or to prevent being jostled by passersby in the tight

space.

6. Blocking the sidewalk and making us travel further distances signals to those with disabilities that we aren't really included or equal. Persons with disabilities begin avoiding the areas due to the difficulty and frustration of traversing them. Therefore, a barrier.

The ACPD met with staff on three occasions over the past year regarding this issue and we informed them of our concerns each time, yet none of those concerns made it into this report.

We also had two delegations from Susan Creer from Accessible Hamilton regarding her group's concerns about the Patio Program.

We have tried to learn if we were consulted before this program began in accordance with the AODA, but have found no evidence of it.

Planning Committee members I would like to speak to the points as outlined here and appreciate the opportunity to do so:

there are a good many obstacles on sidewalks these days which impede travel and safe travel for people with disabilities e.g. light posts, flower planters and flower planter posts, street sign posts, fire hydrants, mail boxes, bus shelters and bus sign posts, garbage cans and utility vault covers, and bike racks among so many others. Now people with disabilities must deal with dangerous e-scooters and restaurant patios. Where are we supposed to walk? Add to the issue the atrocious snow clearing in the winter and people with disabilities either travel only on the road or never get out. Is this the City that members of City Council envision for the future?

Furthermore, the City developed and adopted many years ago barrier – free pedestrian pathway guidelines to support persons with disabilities with unimpeded pathways of travel particularly in BIA districts. Any restaurant patios which encroach sidewalks are in contravention of previous City Council decisions and must not go forward, otherwise City Council will be in contravention of its own regulations.

The staff report before you respecting making temporary patio and sidewalk restaurants permanent peripherally mentions consultation with ACPD and compliance with AODA regulations, but the consultation with ACPD was primarily a presentation with little input to site design and the negative impact upon persons with disabilities should it go ahead. Additionally, AODA regulations respecting outdoor spaces has very little, if any, regulations respecting outdoor dining. In an effort to properly address this matter Council may wish to refer this report to the newly formed City staff and ACPD Working Group on Accessible Open Spaces and Park Lands through the ACPD where a resolution can be reached in full and complete discussion with persons with disabilities before proceeding further. ACPD was unable to affect outdoor dining when previously approved in 2016; we should not

miss that opportunity now at the peril of creating a situation where we cannot make a change in the future due to unforeseen barriers and need for compliance with the spirit of the AODA.

Pilon, Janet

Subject: Side walk patio's

From: Paula Kilburn

Date: February 20, 2022 at 1:03:16 PM EST

To: "Merulla, Sam" <Sam.Merulla@hamilton.ca>

Subject: Side walk patio's

Hello Councillor Merulla

I am writing to respectfully bring forth my concerns about the lack of accessibility with the side walk patio's.

as a person with vision loss I find them dangerous and not accessible.

I am not against side walk patio's as I have often used them myself but they take away clear passage and not being able to follow Urban Braille. It is also hard to follow the fence around the patio and hard to find and navigate the bye pass, ,finding the opening to enter the restaurant is also a concern. There is no color contrast on the fence and having a sign doesn't help if you are not able to see it.

I know that ACPD presented to the Planning committee last week and that staff came and presented but they didn't seem to take any of the suggestions made into consideration.

I ask that you do not make the side walk patio's permanent until there has been mor consultation with ACPD.

Respectfully yours, Paula Kilburn.

4.11 (o)



LOCKE STREET BIA

**258 Locke Street South
Hamilton, ON L8P 4B9
lockestreetshopsbia@gmail.com**

City of Hamilton

02.22.2022

City Clerk Department
clerk@hamilton.ca

Dear Mayor and Councillors,

Please take this as a letter of support for the report to Council recommending making Temporary Outdoor Patio Program permanent in the City of Hamilton.

Patios provide a much-needed economic boost to the Locke Street restaurant industry which had already been recovering from the loss of business during the recent street rehabilitation. The new street design works well with the street patios to create economic activity and a lively streetscape. Patios are one “positive” of the pandemic which should be continued as they greatly benefit the community, including residents and visitors. The patios have allowed for safe outdoor activity, which continues to enliven and enrich our community.

Thank you for your continued support of local small business.

Best regards.

Tracy MacKinnon
Executive Director
Locke Street BIA
lockestreetshopsbia@gmail.com
289.965.9212

Thank you



Stoney Creek BIA
38 King Street E #66545
Stoney Creek, ON L8G 1K1
biastoneycreek@gmail.com

City of Hamilton

02.22.2022

City Clerk Department
clerk@hamilton.ca

Dear Mayor and Councillors,

Please take this as a letter of support for the report to Council recommending making Temporary Outdoor Patio Program permanent in the City of Hamilton.

Patios are used to support the viability of our restaurants and the local employment they create. The Stoney Creek BIA uses patios to support the local Veterans' Legion. This new partnership with the Legion provides new, long term economic support for this, vital, local, accessible, community, hub. The Stoney Creek BIA already has a new restaurant opening which will use a patio to support its business and the new jobs created. We have received numerous positive comments from residents as they value and appreciate the creation of safe outdoor space for residents and visitors to enjoy.

Thank you for your continued support of local small business.

Best regards.

Tracy MacKinnon
Executive Director
Stoney Creek BIA
biastoneycreek@gmail.com
289.965.9049

Thank you

4.11 (q)



WESTDALE VILLAGE BIA
950 KING STREET WEST
HAMILTON, ON L8S 1K8
INFO@WESTDALEVILLAGE.CA

City of Hamilton

02.22.2022

City Clerk Department
clerk@hamilton.ca

Dear Mayor and Councillors,

Please take this as a letter of support for the report to Council recommending making Temporary Outdoor Patio Program permanent in the City of Hamilton.

Westdale Village patios have been crucial in keeping our restaurants alive and open; creating safe outdoor space for residents and visitors; and in helping our Westdale Theatre through the pandemic. This, in turn, has sustained hundreds of local jobs, supporting families through the pandemic. Westdale Village's patios are safe, street-level, barrier free, accessible, and are in spaces which utilized existed parking and do not utilize any accessible parking spaces.

Thank you for your continued support of local small business.

Best regards.

Tracy MacKinnon
Executive Director
Westdale Village BIA
info@westdalevillage.ca
905.526.6134

Thank you



February 21, 2022

Mayor Fred Eisenberger and Members of Council
c/o Office of The City Clerk
71 Main Street West
Hamilton, Ontario
L9P 4Y5

RE: 442-462 Wilson ST. E, ANCASTER Reconsideration of Deferral REQUEST UHOPA-21-023 and ZAC-21-049 (ward 12) (PED22037)

We would like to first thank City Councillors, staff, and residents for their ongoing discussions and efforts to come to a resolution on this matter. As locals ourselves, we want to ensure this project complements the unique fabric of Ancaster and provides our community with much needed housing.

Due to the productive nature of these discussions, we would like to formally request a deferral of the City Council vote on this initiative to provide additional time for engagement. In the interim, we agree not to bring forth an appeal to the Ontario Land Tribunal (OLT) for non-decision. We request a two-month deferral and for this matter to be brought back to Council at the end of April.

We want this to be a project the City is proud of. We have considered initial feedback, such as reducing the building height to 4-5 stories from 7 stories, adding privately owned public spaces (POPS), and ensuring the design and character encourage community life. We believe that our progress on the building's design and characteristics merit further discussion with staff and engagement with the community.

Deferring a Council vote by two months would provide us with substantial time to reach a resolution that is acceptable to all stakeholders without appealing to the OLT. We believe this development is aligned with the residents' values of accommodating growth within the existing boundary, as well as provincial and municipal growth strategies. Therefore, we believe it is in the best interest of all parties to come to a resolution together.

Please reach out to us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Waxman", written over a horizontal line.

Aaron Waxman

J. Pitman Patterson
T 416.367.6109
PPatterson@blg.com

Katie Butler
T 416.367.6353
KButtler@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



4.14

February 22, 2022

Delivered by Email (clerk@hamilton.ca) (mayor@hamilton.ca)

Mayor Eisenberger and Council
City of Hamilton
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

Dear Mayor Eisenberger and Members of Council:

Re: File: Official Plan Amendment UHOPA-22-001
File: Zoning By-law Amendment ZAC-22-003
Folder: 2022 100024 00 PLAN (1087541)
Subject Property: 65 Guise Street East (Pier 8, Block 16), Hamilton
Item 5.3 Planning Committee Report 22-003 - February 15, 2022

BLG has been retained as land use planning counsel by Parrish & Heimbecker Limited (“**P&H**”) the operator of a grain handling terminal and flour mill on Pier 10 in Hamilton. We write regarding our client’s concerns in respect of the proposed Official Plan Amendment and Zoning By-law Amendment (the “**Proposed Amendments**”) at the property municipally known as 65 Guise Street East, Hamilton (Pier 8, Block 16) (the “**Subject Property**”) and the associated introduction of new sensitive land uses in a 45-storey tower.

Our client is the owner and operator of a large grain handling terminal and state of the art flour mill on Pier 10, including the dockwalls and finger pier extending toward Pier 8 which is used for the loading and unloading of ships (the “**P&H Facility**”). The P&H Facility which is approximately 270 meters from the east side of Pier 8, and ships dock on the finger pier as close as approximately 150 metres. In 2017, P&H completed a \$45 million investment in a new flour mill on Pier 10 which was supported by the City of Hamilton and all other levels of government. The new mill is the first greenfield site flour mill built in Ontario in 75 years.

P&H has made a substantial economic investment on Pier 10, and a significant contribution to the establishment of a successful agri-food hub in the port. These efforts have been supported by all levels of government and the Hamilton-Oshawa Port Authority. The Port of Hamilton and the industries it hosts play a major role in the City’s economy. Given this role, the City has recognized the need to work in consultation with the Hamilton-Oshawa Port Authority to harmonize planning initiatives. The City’s Official Plan recognizes the need to protect existing industrial areas in the Port and to establish appropriate separation and mitigation measures.

This is not the first time the proposed introduction of sensitive uses on Pier 8 has raised serious issues of land use compatibility with existing industry on and around Pier 10. In 2017, P&H and others appealed to the Ontario Land Tribunal (“**OLT**”) objecting to the City’s approval of Zoning By-law No. 17-095 and draft Plan of Subdivision 25T-201605 (Case No PL170742). P&H’s appeals (the Phase II appeals) raised concerns about the proposed use of the Pier 8 lands on numerous grounds, including that the proposed sensitive land uses were incompatible with the use and operation of the P&H Facility, which could expose P&H to potential action for damages or injunctions or both, enforcement action, and environmental compliance approval issues. As described in the Staff Report (PED22031), on September 16, 2019, the City agreed with the WSC, Harbour West Neighbours Inc. and Herman Turkstra to resolve some of the appeals (the Phase I appeals). On August 14, 2020, the City, Waterfront Shores Corporation (“**WSC**”) and P&H entered into a settlement agreement setting out measures to address the incompatibility issues raised in the P&H appeals (“**Settlement Agreement**”). P&H, the City and WSC also entered into an agreement pursuant to the *Industrial and Mining Lands Compensation Act*, RSO 1990, c. I.5, which was registered on title to the Pier 8 lands on or around August 25, 2021 (the “**IMLCA Agreement**”). The IMLCA describes, among other things, the proposed sensitive uses of the Pier 8 lands and the incompatibility of sensitive uses proximate to the use and operation of the P&H Facility.

The Settlement Agreement and IMLCA Agreement facilitated settlement of the P&H appeals, and the OLT issued its order on September 22, 2020 approving Zoning By-law 17-095. The Settlement Agreement and IMLCA Agreement were carefully negotiated on the basis of the arrangement of development blocks, built form and uses contemplated in Zoning By-law 17-095. A 45 storey multi-residential building was not contemplated on Block 16, nor was such use or built form approved in Zoning By-law 17-095.

Our client is concerned that the P&H Facility once again will be threatened by the proposed introduction of sensitive land uses on the Subject Property, and that there has been inadequate consultation with existing industries, contrary to the approach directed by the Ministry of Environment and Climate Change under the NPC-300 publication, which states:

Where a site in proximity to a stationary source is in the process of being developed or re-developed for noise sensitive uses (such as residential), it is considered the responsibility of the proponent/developer of the noise sensitive land use to ensure compliance with the applicable sound level limits and for this responsibility to be reflected in the land use planning decisions.

NPC-300 goes on to state that the involvement of owners of stationary sources in the land use planning process “is highly recommended” when an adjacent new noise-sensitive land use is proposed, and that a “cooperative effort” between the proponent and the stationary source owners is desirable. Pursuant to NPC-300, it is the responsibility of the proponent of the new noise sensitive land use to ensure compliance with applicable sound level limits.

We have reviewed the planning application materials available online, including the proponent’s Planning Justification Report and the Noise Feasibility Study dated October 25, 2021 (the “**Noise Study**”). In respect of the Noise Study, P&H’s acoustical engineers are currently reviewing that study to evaluate the characterization of noise sources, the impact on the proposed Block 16 tower, and the sufficiency of the mitigation measures noted in the Noise Study. As matters currently stand, there is no comfort to P&H that appropriate mitigation measures will be implemented, or more generally, that

the proposed use and built form are appropriate. The Planning Justification Report refers to “*potential* mitigation measures that *could* be implemented”. The Staff Report (PED22031) is remarkably entirely silent on the history and process of resolving compatibility issues with P&H for Pier 8 development, and says nothing about the Settlement Agreement or the noise issue at all. There is no discussion of, or commitment to, implementation of mitigation measures to ensure compatibility, surely a threshold issue when approving new uses and built form in a zoning by-law amendment.

Given the close proximity to stationary and other noise sources and industry such as the P&H Facility, ensuring compatibility and compliance with Provincial guidelines should be a fundamental driver when evaluating the Proposed Amendments and the introduction and distribution of new uses in the area and at the Subject Property.

We submit this letter in advance of the statutory public meetings being held for the Official Plan and Zoning By-law Amendments where this item will be considered by the Planning Committee and subsequently City Council. Our client seeks an outcome which protects industry in conformity with the Official Plan and Provincial guidelines.

Our client requests copies of subsequent communications in this matter, and notice of all meetings and decisions in respect of the Proposed Amendments.

Yours very truly,
BORDEN LADNER GERVAIS, LLP



Pitman Patterson

CC : Stephen Robichaud, Director, Planning and Chief Planner

Lisa Kelsey, Legislative Coordinator, Planning Committee

Client

Authority: Item 12, Committee of the Whole
Report 01-033 (PD01184)
CM: October 16, 2001
Ward: 11

Bill No. 043

CITY OF HAMILTON

BY-LAW NO. 22-

Respecting Removal of Part Lot Control

Part of Block 1, Registered Plan No. 62M-1281, municipally known as 3311 Homestead Drive, Glanbrook

WHEREAS the sub-section 50(5) of the *Planning Act*, (R.S.O. 1990, Chapter P.13, as amended, establishes part-lot control on land within registered plans of subdivision;

AND WHEREAS sub-section 50(7) of the *Planning Act*, provides as follows:

“(7) **Designation of lands not subject to part lot control.** -- Despite subsection (5), the council of a local municipality may by by-law provide that subsection (5) does not apply to land that is within such registered plan or plans of subdivision or parts of them as are designated in the by-law.”

AND WHEREAS the Council of the City of Hamilton is desirous of enacting such a by-law with respect to the lands hereinafter described;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Sub-section 5 of Section 50 of the *Planning Act*, for the purpose of creating 67 Parcels of Tied Land for street townhouse dwellings (Parts 1 to 67), 78 access and maintenance easements (Parts 69 to 147), and land comprised of a private road network, visitor parking, sidewalks, amenities, amenity area and storm water management pond for a Common Element Condominium (Parts 68 and 148-158) on deposited Reference Plan 62R-21840, shall not apply to the portion of the registered plan of subdivision that is designated as follows, namely:

Part of Block 1, Registered Plan No. 62M-1281, in the City of Hamilton

2. This by-law shall be registered on title to the said designated land and shall come into force and effect on the date of such registration.
3. This by-law shall expire and cease to be of any force or effect on the 23rd day of February 2024.

PASSED this 23rd day of February, 2022.

F. Eisenberger
Mayor

A. Holland
City Clerk

PLC-22-005