

PENADY (STONEY CREEK) INC.

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~ DELIVERED BY COURIER ~

March 12th, 2015

Mr. Alvin Chan, MCIP, RPP

Planner I

Planning and Economic Development Department

Development Planning, Heritage and Design

City of Hamilton

71 Main Street West, 5th Floor

Hamilton, Ontario

L8P 4Y5

Dear Mr. Chan:

**RE: ZONING BY-LAW AMENDMENT
MOVENGO DEVELOPMENT INC.
1290 SOUTH SERVICE ROAD, STONEY CREEK
YOUR FILE ZAC-14-040**

Penady (Stoney Creek) Ltd. ("Penady") is the owner of lands municipally addressed as 1310 South Service Road, 400 Winona Road, and 395 Fifty Road ("Penady Lands").

We are in receipt of the Notice of Complete Application issued for the Zoning By-law Amendment application filed for Movengo Development Inc. for the property municipally addressed as 1290 South Service Road ("Movengo Lands"). The Movengo Lands are located immediately to the northwest of the Penady Lands.

We have reviewed the materials provided to the City by Movengo in support of their Zoning By-law Amendment application and have serious concerns with the application as well as the issuance of a Notice of Complete Application by the City. Our concerns are summarized as follows:

1. While the Movengo Lands are designated District Commercial by the Urban Hamilton Official Plan, they are subject to Area Specific Policy USC-3. Area Specific Policy USC-3 identifies the Movengo Lands as "Parcel 2-B" and specifically states:

"The lands identified as Parcel B-2 on Map SC-2 shall be designated as Neighbourhoods on Schedule E-1 – Urban Land Use Designations. No

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development shall occur, with the exception of a storm water management pond or infrastructure for a multi modal transportation hub, until such time as an appropriate designation has been determined as part of the secondary plan process."

The Movengo Lands therefore cannot be developed for anything other than a storm water management pond or infrastructure for a multi modal transportation hub. This restriction on the land use is in place until a designation has been determined as part of the secondary plan process.

2. While the Fruitland-Winona Secondary Plan ("FWSP") has been adopted by Council and has applied a District Commercial designation to the Movengo Lands, the FWSP has been appealed to the Ontario Municipal Board ("OMB"). Until the FWSP has been approved by the OMB, the USC-3 restriction continues to apply for the Movengo Lands.
3. Based on the above status of the Movengo Lands, for the City to process the Movengo application, an Official Plan Amendment will be required. It is our understanding that an Official Plan Amendment application has not been filed by Movengo. Until such time as an Official Plan Amendment application has been filed, or the FWSP has been approved by the Ontario Municipal Board, the Zoning By-law Amendment application is premature. In our respectful opinion, it was inappropriate for the City to deem the Movengo Zoning By-law Amendment application complete at this time.
4. Based on the need for an Official Plan Amendment application, and that the proposed commercial development is greater than 5,000 sq m in size, Policy E.4.2.11 which requires the submission and review of a Commercial Needs and Impact Assessment is triggered. To our knowledge Movengo has not filed a Commercial Needs and Impact Assessment in support of its application. The Zoning By-law Amendment application is therefore incomplete in our opinion.

As the City is well aware, extensive market analysis was undertaken initially by Penady for its Official Plan Amendment application for the proposed development on the Penady Lands. Further, in support of a Zoning By-law Amendment application in 2013 to allow a Costco to locate on the Penady Lands, the City required Penady to undertake further market analysis to justify the proposed Costco use. We therefore question why the City has not required Movengo to undertake a Commercial Needs and Impact Assessment in support of its application, which the City is fully within its power to request. Without this further analysis, it is our opinion that the Movengo application is premature and incomplete.

5. We have reviewed the proposed Zoning By-law Amendment submitted with the Movengo application. We find it highly inappropriate for the Movengo Lands to enjoy the same zoning permissions which were granted to the Penady Lands. This is being

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accomplished through the use of the 'Community Shopping Centre' (SC2-4(H)) Zone established for the Penady Lands being applied to the Movengo Lands. We question this proposed zoning as it would permit the same permissions that were established through an extensive planning and review process, without the same process, including market analysis and peer review thereto, being applied to the Movengo Lands. In our submission, it is highly prejudicial to Penady to simply permit Department Store and Warehouse Membership Club use on the Movengo Lands, despite the lack of market analysis undertaken by Movengo to justify this additional permission on their lands (above and beyond those to be located on the Penady Lands).

We further question the requested reductions to setbacks and landscape buffers being requested by Movengo. In our opinion it would be fair and equitable to have the same setbacks and landscape buffers applied to the Penady Lands applied to the Movengo Lands.

Similarly, we question the requested reduction in parking stall size. Movengo should provide the same size of parking stalls as Penady was required to provide. This in effect, will result in a loss of parking on the Movengo Lands resulting in them being deficient in meeting the parking requirements of the By-law. This will also result in a potential impacts where an overflow parking scenario would spill over into available parking on the Penady Lands.

6. As the City is well aware, Penady has undertaken extensive analysis relative to the servicing of its lands from both a civil and traffic perspective. Extensive upgrades to area services and the transportation network are required. Based on our initial review of the Traffic Impact Study submitted for the Movengo applications, it appears that the development of the Movengo Lands anticipates and requires the Penady upgrades to occur in order for their development to function appropriately. Similarly, the Functional Servicing Report speaks to the extension of services including water, sanitary (wastewater), being required to be installed along South Service Road from Fifty Road. However, it fails to indicate whose responsibility this work will be. Although the document does reference the SCUBE analysis and requirements, there is no mention or reference to the Penady Lands and findings throughout. In our respectful opinion, it is appropriate and in the public interest for Movengo to share in the costs for construction of these upgrades. We therefore request that the City impose as a requirement to the passing of the Movengo Zoning By-law Amendment a requirement for cost sharing with Penady for these infrastructure upgrades. As the City is well aware, the OMB has confirmed that cost sharing amongst landowners is an appropriate planning matter to be addressed through the review of development applications.

It is also appropriate, in our opinion, that the Movengo Zoning By-law Amendment include Holding (H) Provisions requiring these upgrades to be undertaken and / or

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secured through appropriate development agreements prior to development occurring on the Movengo Lands.

Based on the above comments, in our opinion there are numerous outstanding questions regarding the processing of the Movengo application from both a planning perspective as well as from a process perspective. In our respectful judgement, the Movengo application is premature and should not be processed further by the City until the substantive matters raised in this letter are fully addressed.

In conclusion, we request further notice from the City for any and all public meetings, hearings or deliberations on the Movengo applications.

We would be pleased to meet with staff or the applicant to discuss our concerns in detail.

Thank you.

Yours truly,
PENADY (STONEY CREEK) LTD.



David Johnston
Director & Secretary

Cc. Tami Kitay – City of Hamilton

Barristers & Solicitors

WeirFoulds LLP

March 13, 2015

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VIA E-MAIL

File No. 16149.00001

City of Hamilton
Planning and Economic Development Department
Development Planning, Heritage and Design - Suburban Team
71 Main St. W., 1st Floor
Hamilton, ON L8P 4Y5

Attention: Alvin Chan, Planner

Dear Mr. Chan:

RE: REQUEST FOR NOTICE
1290 South Service Road, Stoney Creek
Zoning By-law Amendment File No. ZAC-14-040

We represent Penady (Stoney Creek) Ltd. We are writing to request notice of any public meeting, or Committee or Council consideration in relation to Zoning By-law Amendment File No. ZAC-14-040.

Should you have any questions or concerns with respect to this request, please do not hesitate to contact the undersigned. Otherwise, your confirmation of receipt of this request would be greatly appreciated.

Yours truly,

WeirFoulds LLP



Per: Jennifer Meader

JM/mce
c: J. Lumsden

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