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Charles P. Criminisi, LL.B.
Direct Line: (905) 527-6877, ext. 413
Direct Fax: (905) 527-6169
Email: cpc@agrozaffiro.com

April 11, 2017



VIA REGISTERED MAIL and EMAIL: Ida.Bedioui@hamilton.ca

- Francis A. DeSantis*C.S.
- Ian P. Newcombe
- Vanda A. Santini*
- David A. Elliot*†
- Z.S. Pete Volaric
- Kathryn A. McKague
- Jeffrey E. Naganobu*
- Julian R.G. Thomas
- Nina L. Di Pietro
- M. Edward Key
- Jennifer L. Somerville
- Sabatina N. Vassalli
- Andrea S. Griese
- David J. Henderson*
- Andrew L. Keesmaat
- Christopher P. Klinowski
- Paul H. Philp
- Dwain C. Burns
- Devon M. Ryerse
- Louis A. Grilli
- Jeffrey R. Goit
- Bradley M. Remigis
- Richard K. MacGregor
- Phillip R. Cumbo
- Aaron T. Lewicki

Legislative Coordinator of the Planning Committee
City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton, Ontario
L8P 4Y5

Attention: Ms. Ida Bedioui, Legislative Coordinator

Dear Madam:

**Re: Request for Appeal for Refusal to Issue Tree Cutting Permit
Issued March 30, 2017
Our File No. 21932**

We are counsel for Valery (Chedoke Browlands) Developments Inc. and write this letter as notice of our client's intention to appeal the Notice of Refusal of Permit issued March 29, 2017, by the Municipal Law Enforcement department.

We have reviewed the Notice of Refusal of Permit and the grounds for the refusal outlined within. Respectfully, the grounds for refusal are objectively inconsistent with the materials and supporting expert reports that were submitted within our client's application for the Permit in January, 2017, and in its supplemental form in February, 2017.

Firstly, we note that the Notice of Refusal of Permit does not reference the report by Peter Kuntz dated January, 2017, that was submitted by our client in support of the application for the Permit. The Notice of Refusal of Permit suggests that the report and its contents were not reviewed and/or considered. This report, together with the other reports and submissions clearly and unequivocally support our client's entitlement to the requested permit.

With regards to the ground for refusal that the subject area is a 'Woodland' that is a 'Sensitive Natural Area':

The "core areas", "significant woodland areas", and/or the "Environmentally Significant Areas" referenced by the maps attached to the Notice of Refusal

COUNSEL
Charles P. Criminisi*

* Denotes Professional Corporation
† Trade-Mark Agent

Lawyers



identify areas of *vast proximity* from the edge of Stoney Creek to Dundas and which extend well beyond the scope of this isolated project. Although the proposed area for cutting falls somewhere within these vast areas, the amount of proposed tree cutting is greatly overshadowed by their overall size.

The proposed cutting will not remove every tree in the area and is therefore not "clear cutting" as alleged in the Notice of Refusal of Permit. Our client's proposal to remove the invasive species also accounts for replacing the trees with native species at a 3 to 1 ratio.

With regards to the grounds that the proposed tree removal is not in accordance with "good forestry practices":

The proposed tree cutting in the subject area meets the definition of 'good forestry practices'. Predominantly invasive species will be removed and the replacement of native species will be three times that amount.

The three expert reports provided in support of the application constitute a "Forest Management Prescription" under the By-Law. Messrs. Kuntz and Williams are Registered Professional Foresters. Extensive surveys and research were put into all three reports which were provided.

The By-Law also does not limit the way the management is implemented, and does not prohibit recommendations to replant trees in a slightly different location within the same general vicinity.

Moreover, the Notice of Refusal of Permit does not consider that the Director may issue a permit if the trees have been damaged by "*other natural causes*."

With regards to the ground in the Notice of Refusal of Permit that the trees do not meet the criteria found in section 12 of the By-Law:

- 1) the trees are *not* healthy. The area cannot self-regenerate and is showing signs of *Diplodia* which may spread to native species.
- 2) A complete inventory of the trees has been provided in the three reports collectively. None of those surveys identified any endangered species.
- 3) The proposed removal of the trees will not be undertaken by way of 'clear cutting' and will not reduce the total vicinity to be below the minimum number of trees necessary to constitute a 'Woodland'.

With regards to the ground that the area is not a 'plantation':

Respectfully, no authority and/or scientific data was relied upon to come to the finding in the Notice of Refusal of Permit that this area is *not* a plantation. On the contrary, the application materials consisted of three expert reports which identify the area as a "plantation".



Closing Remarks:

We note that our client was advised in January 6, 2017, meeting by Richard Canfor that the application for this Permit would only take one business day to return. Our client relied on that representation. However, the Notice of Refusal was submitted in January, 2017 and the Notice of Refusal of Permit was not issued until March 29, 2017.

The delays resulting from the City of Hamilton's consideration of our client's application has caused hardship as our client would not be able to commence cutting one the Spring bird migrations begin. The removal of trees during this migration is prohibited by law, and, more importantly, may put wildlife at a higher risk of injury. As such, our client reserves all rights and remedies with regards to the City of Hamilton's delay in processing the application.

In this regard our client relies upon section 23(c) of the By-Law

Our client therefore appeals the entirety of the Notice of Refusal of Permit to the Planning Committee of the City of Hamilton and seeks approval of the proposed tree removal and replacement plan as set out in the initial application materials and attached expert reports. We reserve the right to make such further and other submissions as are deemed advisable.

Our client appoints the following individuals with delegated authority to present this appeal: Sergio Manchia of UrbanSolutions and Charles P. Criminisi of AgroZaffiro LLP. Messrs. Kuntz, Williams and Glasbergen will also be in attendance.

Yours very truly,


Charles P. Criminisi
CPC:RKM:tg


Richard K. MacGregor

CC: Councillor Maria Pearson – Chair of Planning Committee
Mr. Ken Leedertse – Municipal Law Enforcement