

March 18, 2019

Our File No.: 137843

**BY EMAIL**

Councillor Maria Pearson  
Chair, Planning Committee

and

Ms. Lisa Chamberlain  
Legislative Coordinator, Planning Committee

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

Dear Madam Chair and Members of the Planning Committee:

**Re: Local Planning Appeal Tribunal Appeal No. PL170981  
3033, 3047, 3055, 3063 Binbrook Road (PED19031/LS19003) (Glanbrook)  
(Ward 11)**

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Aird & Berlis LLP represents Binbrook Heritage Developments (the “Applicant”), registered owner of the property municipally known as 3033, 3047, 3055 and 3063 Binbrook Road, in the former Township of Glanbrook (City of Hamilton) (the “Subject Lands”).

We were surprised to see that our client’s appeal of its Official Plan Amendment application and Zoning By-law Amendment application (the “Applications”) are scheduled to be discussed by the Planning Committee (“Committee”) in closed session on March 19, 2019. Having recently provided City staff and its outside counsel with a resubmission of the Applications in an effort to resolve this matter without the need for a contested hearing, we were hopeful that our dialogue would continue before the Committee and Council were asked to take a position and provide instructions with respect to the LPAT hearing, currently scheduled for August, 2019. Accordingly, we write to provide the Committee with important background to inform its discussion, and to make submissions in favour of the continued negotiation of a mutually beneficial resolution that would avoid the need for a costly hearing.

**Background**

More than two and a half years ago, on July 29, 2016, our client submitted an application for an Urban Hamilton Official Plan Amendment (“UHOPA”) and Zoning By-law amendment (“ZBA”) to permit the construction of a 10-storey mixed use building on the Subject Lands.

In support of its application, our client provided technical reports and a planning justification highlighting that this carefully designed mixed-use project would: (i) provide the opportunity for residential intensification and the provision of rental housing alternatives within the Binbrook community; (ii) increase the supply of both professional and service commercial jobs in the

community; (iii) promote the efficient use of land and infrastructure, and support active transportation; and (iv) retain and repurpose identifiable heritage sites important to the area.

Importantly, the proposed development provides an opportunity for an aging in place facility for seniors who wish to remain in the Binbrook-Glanbrook area, as well as providing rental housing opportunities for all ages in the community.

More than a year later, in August of 2017, we appealed the Applications to the Ontario Municipal Board (now the Local Planning Appeal Tribunal (“LPAT”)) on behalf of our client for Council’s failure to make a decision. Since that time, two pre-hearing conferences have been held, and a hearing before LPAT has been scheduled for the second week of August, 2019.

In the time since the appeal was filed, our client and City staff have been actively engaged in discussions with respect to the Applications. This has included numerous meetings between our client and planning staff, and discussions between legal counsel, both in-house and with the City’s outside counsel. During these conversations, staff identified concerns with the proposed development, in particular the planned density and 10-storey height. These concerns have also been vocalized by the local community, many of whom have attended the pre-hearing conferences at LPAT.

In response to this feedback from the City and the local residents of Binbrook, our client made significant changes to the proposed development. On January 18, 2019, we provided the City’s outside legal counsel with a *with prejudice* resubmission of the plans for the proposed development that, among other things, reduced the proposed height to 6 residential floors atop a first floor commercial base.

Our client has been awaiting comments from City staff and its legal counsel since its resubmission two months ago. It was our understanding that, following review of the revised plans, the City would be seeking instructions from this Committee and Council in April, 2019 on a potential settlement of the appeals or, at the very least, seeking a scoped issues list to address those concerns that remain unresolved at the upcoming LPAT hearing. Further, it was our hope that, in advance of seeking instructions from this Committee, the City would provide our client with comments on the revised plans, and to provide an opportunity to continue dialogue between the parties in order to facilitate a resolution. From our review of the Committee’s agenda for March 19, 2019, it appears that this is not the case.

### **The LPAT Hearing**

LPAT has scheduled a hearing for 5 days beginning on August 12, 2019. Although the City has yet to provide its issues list for the hearing, it is anticipated that multiple expert witnesses, including experts in land use planning, urban design, and transportation, will be required to provide testimony. Such a contested hearing will undoubtedly cost both parties tens of thousands of dollars, and will require countless hours of staff time and resources to prepare. It is in nobody’s interest to litigate this matter if the option of settlement remains a possibility. If a negotiated settlement were reached, the five-day hearing could easily be converted to a one day settlement hearing requiring testimony only from the Applicant’s witnesses.

This Committee is likely aware of two recent LPAT decisions in Hamilton approving mid-rise development applications representing significant intensification. The first decision, *Lawson v. Hamilton (City)* was issued in January, 2019 approving a nine-storey apartment building in Dundas. A more recent decision, *Sonoma Homes v. Hamilton (City)*, issued in February, 2019, approved a nine-storey condominium in Ancaster. In that decision, the LPAT member stated:

*“... I find that the City has not fully come to grips with the policies contained in this policy document [Growth Plan] and how these policies affect the application of the policy contained in the UHOP and the Secondary Plan.” (emphasis added)*

These decisions seem to signal increasing support from LPAT for mid-rise intensification in the boroughs of Hamilton, and reflect a recognition that the in-force secondary-plan policies in the communities surrounding the City centre are no longer consistent with the provincial objectives of growth and intensification mandated by the Provincial Policy Statement, 2014 and the Growth Plan for the Greater Golden Horseshoe, 2017. Both of these decisions are appended to this letter for the Committee’s review.

Our client is confident that its proposed development in Binbrook (either as originally proposed, or as revised in its recent resubmission) would similarly be found by LPAT to represent good planning in the public interest. However, and as previously stated, it has no interest in proceeding to a contested hearing if a resolution remains available through a negotiated settlement.

### **Recommendation**

In light of the above, and in recognition of the ongoing efforts by both our client and City staff to reach a resolution, we recommend that this Committee direct the City’s outside legal counsel to provide us with City staff comments on the recent resubmission and to convene a meeting between the parties to facilitate a settlement. Should it be apparent following these discussions that a negotiated resolution supported by staff is not possible, then the City’s outside counsel should return to the next meeting of this Committee on April 2, 2019 to seek instructions on the hearing scheduled for August.

We thank you for your time and consideration of our submissions on this issue. Despite our surprise and disappointment that this matter has come before this Committee without any notice to us or our client, we remain optimistic that the parties can still find a mutually beneficial solution without the need for a contested hearing later this summer.

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Should you have any questions, please contact the undersigned or David Neligan (416-697-8923; [dneligan@airdberlis.com](mailto:dneligan@airdberlis.com)).

Yours truly,

AIRD & BERLIS LLP



Steven A. Zakem  
SAZ/DPN  
Encl.

- c. Mayor Fred Eisenberger and Members of the Planning Committee  
Steve Robichaud, MCIP RPP, Director of Planning and Chief Planner, City of Hamilton  
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