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Our File No. 064423

VIA EMAIL

City of Hamilton
Audit, Finance and Administration Committee
71 Main Street West
Hamilton, Ontario L8P 4Y5

Attention: Angela McRae, Legislative Coordinator

Dear Ms. McRae:

Re: 2019 Development Charges and Background Study FCS19051 Items 10.3 & 10.4

We have now had the opportunity to review the above noted report.

As noted in the report, the regulations require that the Elfrida capital items be supported by an Official Plan, capital forecast or similar approved expression of Council. We are not of the view that Elfrida related capital projects can or should be said to meet these criteria at the present time.

Staff rely on GRIDS as support for Elfrida as a statement of intention to support the capital items. GRIDS was not an exercise that occurred within the parameters of the *Planning Act*. Furthermore, GRIDS (2006) was premised on a 2031 time horizon and an urban boundary expansion for that horizon. The City did not complete a 2031 municipal comprehensive review process and the time for doing so has since passed with the amendments to the Growth Plan that came into effect on July 1, 2017. GRIDS also did not establish increased needs for service for capital items but was in the nature of a much higher level growth management study.

To the extent that staff continue to rely on GRIDS as support for Elfrida, then staff should also be consistent and recognize that the Twenty Road West lands were also approved by Council in GRIDS which included as part of the 2031 preferred growth option:

- o Small expansion to round out existing neighbourhoods between the airport employment area and existing residential area (95 net hectares) south of Twenty Road and east of Glancaster Road in the Deferral 11 area of the Regional Official Plan;

Staff also rely on the UHOP as support for Council's statement of intention but in our submission, the UHOP is of no assistance in fulfillment of the statutory criteria under the DC Act. First, the Minister refused to approve any policy related to Elfrida so the Elfrida policies do not form part of the Official Plan and therefore the regulation criteria is not met in so far as the UHOP is concerned. Second, and in any event, the Elfrida policies in the UHOP which the Minister rejected establish study areas only subject to a municipal comprehensive review process and Council approved urban boundary expansion. The fact is that Elfrida, either in whole or in part, has never been approved by Council for greenfield development.

Staff also rely on the prior DC background studies as confirmation of intent. The inclusion of Elfrida items in prior DC background studies is irrelevant in so far as the legality of inclusion in the 2019 DC charge. Nothing in the prior DC by-laws fetters the discretion of Council as to what capital items are appropriate to include the DC by-law.

We would also note that there is no transportation or master servicing plan approved by Council for the Elfrida area and it is these services that are proposed to be included in the DC by-law. It is these specific growth related items that should be in an Official Plan or other plan approved by Council in accordance with the regulations. At present, there are no approved roads or servicing plans for Elfrida so that capital items have not been identified as required.

Based on the foregoing, we are of the view that the inclusion of the Elfrida projects in the DC by-law is not appropriate or in compliance with the DC Act.

Staff again refer staff of the AEGD Minutes of Settlement. Clause 14 of the MOS does not affect our clients' rights. Clause 14 contains no covenant or obligation on our client's part to do or not do anything. Clause 14 purports (only) to be a statement of the City's intention but we remind this Council that the Clause did not arise from any public planning process confirming the City's intention for growth. It amounted to a statement that a prior Council sought to make for the purposes of the AEGD settlement. The clause in the MOS certainly cannot now amount to an appropriate public policy or legal basis for inclusion of Elfrida capital projects in the 2019 DC By-law as an approved statement of this current Council's intention.

We should also note however, that pursuant to the Minutes of Settlement, which were signed in 2013, work on a 2041 municipal comprehensive review process to consider, among other growth options, the Twenty Road West lands was to commence immediately. Work did not commence until a number of years later and remains incomplete. Elfrida was apparently to be considered within a 2031 MCR process, but that did not occur and now in fact even the DC by-law recognizes that Elfrida (if approved) would not be available in substantial part to meet the 2031 growth projections.

We believe that it is critically important that the Committee and Council proceed on this point with caution and should not go down the path of considering action that could be viewed as establishing predetermined areas for future urban boundary expansion in the absence of the appropriate public consultation or technical planning support.

The treatment of the Elfrida projects in the DC by-law substantially undermines GRIDS2 and the MCR process to consider all growth options in the City on a fair and level playing field, and based on current Council and Provincial policy and direction. Excluding Elfrida from the 2019 DC by-law preserves the necessary and important objectivity in the growth management process. There is no prejudice to the City as the City can always update or amend its DC by-law in the event of inclusion of any new growth area in the urban fabric.

Apart from the legalities, the key question for the Committee and for Council is whether or not the Elfrida projects should be included at this time as a matter of the 2019 DC policy. Elfrida remains entirely without any planning status except as part of Hamilton's prime agricultural base. Serious questions and concerns are now being appropriately raised as to whether Elfrida promotes smart growth and the development of transit oriented compact complete communities. There are many other areas for growth and intensification, including the Twenty Road West land that is fully surrounded by the urban boundary and will deliver key infrastructure linking Hamilton's employment area, the airport and major transit and transportation corridors, that need to be considered as more appropriate and readily achievable growth areas to meet short term housing requirements and fulfill the City's planning objectives

Yours truly,

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*Services provided through a professional corporation

JDF/sz

cc: clients