

November 15, 2021

To: The members of the Planning Committee of the City of Hamilton

Re: Delegation of John Ross for November 16, 2021

The City of Hamilton has made it a mandatory requirement in its Formal Consultation Document that the developer/applicant has to provide a Public Consultation Strategy and to meet with the Neighbourhood Association. Unfortunately, this condition may become controversial as an Applicant or Planning Consultant could have a private meeting to present its preliminary development proposal and then subsequently submit revised plans and drawing which attribute the increases in height and density of the development to the Neighbourhood Association.

It is my respectful opinion that the requirements of the Formal Consultation Document and Public Consultation Strategy **should not**:

- a) Become an opportunity for the developer to attempt to get the Neighbourhood Association to endorse, accept or negotiate with the developer before the actual Application for an UHOP Amendment or Zoning Amendment is filed, and before all the plans have been thoroughly reviewed;
- b) Require the attending representatives of the Neighbourhood Association to recommend to the developer, on their own and without proper authorization, that changes should be made to any proposed development, such as an increase in height or density, as a result of any presentation by the developer or planning consultant at their preliminary private meeting;
- c) Allow private comments made at a Neighbourhood Association to be utilized by the Applicant or the Applicant's Planning Consultant as it may convey misleading or inaccurate information to Planning Department Staff, members of the Planning Committee, and members of Council.

It is also my belief that many of the contentious issues arising between the Neighbourhood Associations and the Developer/Applicant can simply be avoided or minimized prior to the time the Application is heard at any Planning Committee meeting, if the Planning Committee implements a protocol to follow whenever a private meeting between a developer/planning consultant and Neighbourhood Association has been arranged. To this extent I offer some of the following suggestions:

- d) Developer to provide in advance of the meeting, list of the invitees and attendees, a written justification setting out why it seeks to obtain a Official Plan amendments and zoning by-law variances requesting relief from setbacks (front, side and rear yard)

landscaping requirements, height, density, amenity space, etc. from those set out in the current zoning by-laws and UHOP;

- e) Developer to set out in writing the intended purpose of the project, be it rental, condominium investor rental, condominium homeowner, etc., and to set out to whom the project will be marketed to;
- f) Developer to provide in advance of the meeting sufficient and detailed plans and drawings setting out unit dimensions, street setbacks, underground parking ramp location, etc. and all other alterations or variances seeking the zoning amendments that it will need for the project;
- g) Developer to sign prior to the meeting a written commitment to provide to the Neighbourhood Association in a timely manner all drawings, renderings, site plans, landscaping plans, height elevations, etc. and all other amendments and any resubmissions filed with the Planning Department;
- h) Developer to sign prior to the meeting a non-disclosure agreement not to quote, paraphrase or utilize in any report, update or correspondence to any other party, conversations or comments made by any member or representative of the Neighbourhood Association as evidence that the Neighbourhood Association has in any manner endorsed or supported the project or recommended changes or alterations to the project, until such time as the Board of Directors of the Neighbourhood Association has given formal written permission to the developer;
- i) Each Neighbourhood Association to hold its own duly authorized meeting to review the submitted plans and drawings, and applicable UHOP and zoning issues and to have a formal recorded vote as to whether it approves or rejects the developer's project, or whether it is requesting additional revisions and amendments;
- j) The representatives of the Neighbourhood Association, as well as the developer, builder, agents and investors who were present at the meeting to declare and observe all Conflict of Interest disclosure and recusal requirements, as adopted by the City of Hamilton, in order to prevent any perceived conflict of interest or improper influence.

Another issue which I believe has arisen at Planning Committee hearings on other Applications for UHOP and/or Zoning amendments for a development, relates to the Letters of Support/Petitions relied upon by the Applicant, and which documents are specifically referenced by the Applicant's Planning Consultant in the consultant's correspondence to the Planning Department. This is due to the fact that these Letters of Support and Petitions are heavily redacted by the Planning Department, with the names and addresses being blacked out, in addition to the difficulty for anyone else, other than the Applicant, in obtaining access to correspondence in the public record. The concern is that these letters and petitions should not be protected by a perceived

right of privacy because the writers of submitted letters in support and signatories to a petition may firstly, be in a conflict of interest, and secondly, have no expectation of privacy themselves.

If a conflict of interest can be determined to exist, then the offending documents to which the Planning Consultant has referenced, should be either ineligible or invalid for consideration by Planning Department staff, members of the Planning Committee and members of Council. This is because these documents are capable of severely misleading the Planning Department and because these documents have the potential to overshadow and minimize the arm's length letters and petitions which may be submitted against a proposed development.

The type of letter which is most detrimental, and which does not deserve the protection of a right of privacy whereby the Planning Department redacts the name and address of the writer, is the letter in which the writer(s) has a conflict of interest, either by a financial interest (ownership, guarantor, co-tenancy, landlord/tenant, etc.) or by receiving a share in the profits of the development, or by family or employment relationship, or by landholdings for future development in the neighbourhood, and which letter is couched in language which states that the proposed development will "help preserve the neighbourhood character" or that "as residents that will be most greatly impacted by the development, we feel that this will enhance the quality of living in our area".

Fortunately, it is my firm belief that any measures that can be enacted by the Planning Committee to more quickly and expeditiously resolve these types of disputed facts as set out in both of the above circumstances, would be of immense benefit to not only Planning Staff, but to all Members of the Planning Committee and City Council, as well as the citizens of Hamilton. These initiatives relate to a review of the directive concerning "redaction and the expectation of privacy, with the exception of telephone number and email address)", and by the self-vetting of documentation and letters in support by the Applicant and by the Planning Consultant who references such letters and petitions.

Accordingly, I am making the following suggestions for your consideration:

- k) All Applicants shall be required to provide a written confirmation to the Planning Department at the time the Applicant submits any documentation concerning or referring to Letters of Support/Petitions, that the Applicant has vetted all letter writers in support of the application and supporting petitioners, and is fully satisfied that there exists no conflicts of interest, or any circumstances or relationship between the letter writer and the Applicant which warrants a declaration of interest.
- l) All Applicants shall be required to file an Undertaking and Acknowledgement in writing that at any private meetings hosted by the Applicant with invited representatives from Neighbourhood Associations, that comments or private viewpoints made by or attributed to any representative at such meeting, shall not be tendered or referred to as evidence or be

used as grounds for support of any application by the Applicant or in a submission by the Applicant's Planning Consultant, or that any such expressed private viewpoint or comment is the official position of the Neighbourhood Association.

If the Applicant or Planning Consultant fails to properly conduct a full vetting of writers in support or the petitioners in support, or if the Applicant is in breach of the Undertaking and Acknowledgment, I then propose the following:

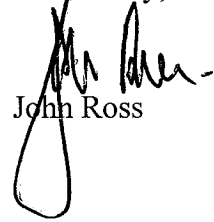
- m) The Applicant and the Applicant's Planning Consultant shall meet in person or by video conference with the Objector(s) who is/are challenging the submissions of the Planning Consultant, and at such meeting the Objecting party shall be able to obtain and review all records, minutes, names of attendees pertaining to any private meeting with Neighbourhood Association representatives, and the Applicant shall further provide to the Objecting party the unredacted Letters of Support and Petition with all the names and addresses of the signatories, together with the names and interests of all parties connected or involved with, or sharing in the profits of the development of the property.
- n) The Objecting party shall have 5 business days to review the challenged documents and material and to then provide to the Applicant and the Applicant's Planning Consultant the documentary evidence which the Objecting party considers to be supportive of a prima facie finding of a potential conflict of interest or a circumstance which warrants a Declaration of Interest.
- o) The Applicant and the Applicant's Planning Consultant and the Objecting party shall meet as soon as practical after 5 business days to resolve and remedy the dispute that may exist between the parties, and for the Applicant or Applicant's Planning Consultant to either rescind, revise or modify the comments set out in any submission filed by the Applicant and which pertains to the involvement of any Neighbourhood Association or which relates to any Letter of Support or signatory to any petition.
- p) In the event the parties cannot resolve their dispute, or if the Applicant does not believe that any conflict of interest exists, or if the Objecting party is not satisfied with the proposed remediation to be taken by the Applicant, then either party shall be able to apply to the Chair of the Planning Committee and request binding arbitration by a staff person or by the executive assistance of any member of the Planning Committee, to be appointed by the Chair. The arbitration shall be based and referenced on the material filed by the parties at the prior meetings, and the arbitrator's decision shall be released prior to the delivery of the final Planning Department Staff Recommendation Report.

It is my sincere belief that enacting the above measures may be of assistance in avoiding future disputes of this nature, thereby saving the Planning Committee valuable time at the actual hearing of any application. Most importantly it will also afford the public some assurance of impartiality

whenever letters of support and petitions are being considered by members of the Planning Committee.

I thank you for your time and consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "John Ross", with a large, stylized loop at the bottom.

John Ross