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March 31, 2022

VIA E-MAIL & COURIER

Our File No. 162409

City of Hamilton
71 Main St. W, 1st Floor
Hamilton, ON L8P 4Y5

Attention: Chair and Members of Planning Committee
Via email Hamilton City Clerk: clerk@hamilton.ca

Dear Sir/Madam,

Re:	Request:	Planning Act Applications for OPA & ZBA
Property Address:	Municipality:	392, 398, 400, 402, 406 and 412 Wilson Street East & 15 Lorne Avenue
Requestor:	Requestor:	City of Hamilton
City File Nos.:	Requestor:	Wilson St Ancaster Inc.
Subject:	City File Nos.:	UHOPA-22-004/ZAC-22-011
	Subject:	Submission to Planning Committee re: Item 9.5

Aird & Berlis LLP is counsel to Wilson St Ancaster Inc. Our client filed applications for official plan and zoning by-law amendments on December 17, 2021. On January 20, 2022, the City of Hamilton issued a Notice of Complete Application respecting both *Planning Act* applications.

On February 14, 2022, our office wrote a letter to the City's Director of Planning (Mr. Steve Robichaud). In this letter, we requested an opportunity to have our client's consulting team receive and review circulation and feedback comments provided by the City in response to our client's applications. Our client's goal is to provide a full response (and potential revisions) to address various concerns raised with the proposed development. As the Planning Committee is aware, this is a normal and expected part of the *Planning Act* application and approvals process.

Since the date of our letter, the following has occurred:

- One meeting was held between a representative of our client and Mr. Robichaud on Feb. 28.
- Partial circulation comments were forwarded to our client's consultants on March 9.
- Notice of the Statutory Public Meeting for our client's applications was published on March 18
- A staff report recommending refusal of the applications was provided to our client on March 24.

In short, notwithstanding our previous request for an opportunity to meet with staff, review circulation comments and provide a full response prior to consideration by Council, the City has advanced our client's applications from Notice of Compete Application to Refusal Report in approximately 60 days – with only one informal meeting in-between and no meaningful opportunity to respond to circulation comments.

In our February 14 letter to Mr. Robichaud, we indicated as follows:

...There has been no opportunity provided to our client's various consultants to address any staff concerns respecting the requested amendments or the project's associated design. Instead, we submit that what is proposed is a "rush to judgment" with an intention to judge negatively regardless of the merits.

Moreover, the requirement for the Ontario Land Tribunal to "have regard for" a decision of Council is not without qualification. Section 2.1 of the Planning Act requires the Tribunal to consider the information and materials that Council had before it when it rendered its decision. In the circumstances of the subject applications, our client was directed to undertake a myriad of assessments, studies and reports to facilitate the City's processing of the requested amendments. The above-noted process would seem to confirm an intention to not have appropriate information and materials (in the form of staff's feedback comments on the applicant's responses to same) available to Council when Council is requested to render its decision.

Unfortunately, the City is continuing to follow a "rush to judgment" approach by having a refusal report presented to Planning Committee at the statutory public meeting - before any response can be prepared and submitted by the applicant's consultants. If this leads to a refusal recommendation adopted by Council, our client will be forced to appeal this refusal to the Ontario Land Tribunal, wherein the City's ability to have input on this project will be restricted to the laws of evidence and administrative procedure.

Given the public interest in this project, and our client's commitment to bringing forward a positive development that contributes to an intensified complete community on Wilson Street, an appeal is not our client's preferred option. Our client prefers to work collaboratively with staff and area representatives (as it has on many projects) towards an appropriate approval. However, our client certainly cannot accept the process accorded to the subject applications to-date.

We note that the following are the first two "Alternatives for Consideration" offered in the refusal report prepared by Mr. Robichaud:

1) Should the Applications be approved, that staff be directed to prepare the Official Plan Amendment and amending Zoning By-law consistent with the concept plans proposed, with the inclusion of Holding Provision(s) to address matters, including but not limited to, filing of a Record of Site Condition, and addressing archaeological and built heritage impacts, noise impacts, sanitary sewer system capacity constraints, transportation impacts, right-of-way dedication requirements, visual impacts, and any other necessary agreements to implement Council's direction.

2) Council could direct staff to negotiate revisions to the proposal with the Applicant in response to the issues and concerns identified in this Report and report back to Council on the results of the discussion.

Our request is that the Planning Committee endorse (2) in order to provide an opportunity to our client and staff to return to Planning Committee with appropriate amendments as contemplated by (1). As noted above, there is nothing gained by rushing these applications to a refusal, which would simply sideline Council to the role of a party to a full Tribunal hearing. Appropriate progress can and should be made at the municipal/local level before an impasse is declared and appeals are filed. We simply ask that our client be given a fair opportunity to review and respond to the City's concerns.

The undersigned has registered as a speaker for the April 5 Committee Meeting. We look forward to addressing Committee and answering any questions you may have at that time.

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Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink that reads "Patrick J. Harrington". The signature is written in a cursive, flowing style.

Patrick J. Harrington
PJH/np

- c. Councillor Lloyd Ferguson, via email & delivered
Mayor Fred Eisenberger, via email & delivered
Wilson Street Inc. (c/o Messrs. F. Spallacci and S. Manchia)