

January 12, 2022

Our File No.: 211697

Via Email: clerk@hamilton.ca

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

Attention: Clerk

Dear Sirs/Mesdames:

**Re: 310 Frances Avenue, City of Hamilton
Municipal Comprehensive Review/Official Plan Review – Draft Urban Hamilton
Official Plan Amendment – Conformity Amendment and Draft Rural Hamilton
Official Plan Amendment – Firm Urban Boundary (PED21067(a))**

We are solicitors for NHDG (Waterfront) Inc., who is the owner of the property known municipally in the City of Hamilton (the “**City**”) as 310 Frances Avenue (the “**Property**”). We are writing on behalf of our client to provide comments regarding Report PED21067(a) (the “**Report**”). This report includes proposed official plan amendments relating to the City’s GRIDS2/MCR process and conformity of the City’s Urban Official Plan (“**UHOP**”) with provincial policies through a fixed urban boundary growth scenario.¹

Our client understands that the intention is not to have the Planning Committee or City Council approve the proposed amendments at this time. The Report recommends that the proposed amendments be submitted to the Minister of Municipal Affairs and Housing (copied on this letter) for review and comment, in accordance with the requirements of the *Planning Act*.

Appendix A to the Report outlines the proposed amendments to the UHOP. In particular, a new policy has been added as E.3.6.7 as follows:

For high density residential uses, the maximum height shall be 30 storeys. For high density residential uses below the Niagara Escarpment, building height shall not exceed the height of the top of the Niagara Escarpment. Applicants shall

¹ Note that the Report was listed as Item 10.1 on the agenda for the Planning Committee meeting scheduled for January 11, 2022. We understand that Item 10.1 was referred to be heard at the next Council meeting scheduled for January 19, 2022.

demonstrate that the proposed development shall not exceed the height of the Niagara Escarpment, to the satisfaction of the City.

(Current Policy E.3.6.7 has been proposed to be renumbered to E.3.6.8 and includes proposed modifications relating to design criteria.)

As background, the Property is currently zoned “MUC-4” (Site-Specific Mixed Use Commercial Zone in Zoning By-law No. 3692-92 of the former City of Stoney Creek (“**Zoning By-law 3692-92**”). The height regulation in Zoning By-law 3692-92 is: “Maximum Height – none”.

Zoning By-law 3692-92 was approved in 2010. While the UHOP was not in force and effect at that time (subsequently approved by the Ontario Municipal Board, coming into effect on August 16, 2012), our understanding is that the UHOP had been adopted by City Council on July 9, 2009 and in advance of approval of Zoning By-law 3692-92. The staff report at that time indicated that Zoning By-law 3692-92 “would conform to the ‘Neighbourhoods’ designation of the New Hamilton Urban Official Plan.”

The above-noted proposed policy addition to the UHOP is imposing a policy that conflicts with and is inconsistent with the current zoning for the Property. Our client has submitted and appealed a site plan application to permit the redevelopment of the Property in accordance with Zoning By-law 3692-92, subject to variances unrelated to height.² As such, it is clear that the Property should be exempted from the above-noted proposed policy to reflect the existing as-of-right permissions for the Property.

We would appreciate being included on the notice list for this matter. Please let us know if any additional information is required to implement this request for notice.

Yours truly,

Goodmans LLP



David Bronskill
DJB/

² As the City knows, subsection 41(6) of the *Planning Act* prohibits the City from limiting the height or density of proposed buildings through the site plan application process.

Cc: Minister of Municipal Affairs and Housing, Hon. Steve Clark steve.clark@pc.ola.org
Assistant Deputy Minister for the Ontario Growth Secretariat, Sandra Bickford
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Legislative Coordinator – General Issues Committee, Stephanie Paparella
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