

October 28, 2021

Bousfields Inc.
1 Main Street East, Suite 200
Hamilton, ON L8N 1E7

Attention: Ashley Paton and David Falletta

City of Hamilton Planning Committee
John-Paul Danko, Chair
Hamilton City Hall
71 Main Street West, 2nd Floor
Hamilton, ON L8P 4Y5

Dear Sir/Madam,

**RE: UHOPA-20-012 and ZAC20-016
1107 Main Street West, Hamilton (Ward) 1
Early determination of issues in dispute on two contested matters arising from the
Planning Response letter of the Applicant**

I wish to thank Bousfields and IN8 Developments for updating the Applicant's website, but as a result of reading the additional material just recently posted on the website and in particular the Planning Response Letter dated December 20th 2020, I believe than an **early determination of two contested matters** that are set out in this response letter, would be beneficial to all the parties involved in the two applications, and especially the members of the Planning Committee who will eventually consider the merit of the applications at a latter formal hearing date.

This is because the contested matters relate to issues of perceived conflict of interest and/or lack of declarations of interest in respect of a private meeting held on November 26, 2019 and in relation to the "Letters of Support and a Petition" which were filed with the Planning Department. If the Applicant were not to rely upon or use the meeting and letters of support and petition as grounds or justification for the granting of the two applications, I would not be concerned with these matters. But due to the fact that the Planning Response Letter indicates that the Applicant is heavily relying on the same, it is my opinion that the contested issues should be dealt with in advance, thereby allowing the parties on both sides to concentrate on the planning issues that are at the core of both of the above captioned applications.

I therefore believe that it will be beneficial to have either an early determination by a designated staff member appointed as an arbitrator by the Planning Committee, or at an "in camera" delegation/hearing presented before members of the Planning Committee, as both options would

save the committee members' valuable time on the formal hearing date which has yet to be determined, and because it may afford the Planning Committee an opportunity to develop protocols respecting all Planning Applications that come before the committee with respect to an Applicant's reliance upon meetings with neighbourhood associations, letters of support and petitions.

I am briefly setting out a summary of the disputed issues, but before that I am firstly setting out a minor request to Bousfields regarding the up-dated website and which concerns the Transportation Impact Study.

Transportation Impact Study

It appears that there are in fact two Transportation Impact Studies, both of which are dated January 28, 2020. The original Transportation Impact Study was submitted by Bousfields to the City of Hamilton Planning Department in February 2020, however this original report is not on the website under the Heading "February 13th, 2020 Submission".

Rather a revised Transportation Impact Study with the same date of January 28, 2020, which may or may not have been subsequently submitted to the City of Hamilton, appears on your website. This second report should be clearly identified as the "Revised Report" and the original report should now be posted on the website.

The proper identification of the two Transportation Impact Studies is important as some of the objection letters refer to statements contained in the original report, but these very statements no longer appear in the revised report. Accordingly, to avoid this confusion I respectfully request that the original report now also be included in your list of posted submission documents,

Planning Response Letter of Dec. 20, 2020 page 10 and the November 26, 2019 private meeting with Neighbourhood Associations

The contested issue with the Neighbourhood Associations relates to a private meeting held on November 26, 2019, the characterization of which appears on page 10 of the Planning Response letter, which was recently posted, and which is attached. I have objections to the characterization in the response letter that it was the people in attendance at the gathering who embraced the 15-storey height of the building as being appropriate for this particular location and who made the financial bargain to add the extra height of two storeys to the building in consideration of a third level of underground parking, all on behalf of the two neighbourhood associations which are named in the response letter as being the Ainslie Wood Community Association (AWCA) and the Ainslie Wood-Westdale Community Association (AWWCA).

The brief summary of my objections are as follows:

- Invitees and attendees to the private meeting also consisted of members of Concerned Residents of Westdale (CROW) who were vociferously opposed to the McMaster Residence Development at the corner of Traymore and Dalewood Avenue, and who were particularly upset that only 46 underground parking spots had been provided for the entire development.
- Members of CROW were concerned about student parking issues on their own side streets which are lying to the north of Main Street West, while the subject site for the proposed development is to the south of Main Street West and which is situated in a totally separate neighbourhood than the McMaster project.
- The equation of a mutual setoff for economic feasibility between an increased height of 2-storeys in consideration of a third level of underground parking is unenforceable as the party who allegedly struck the bargain is unidentified and lacks authorization, and because height is a matter that lies under the UHOP amendment, while parking is a matter that lies under the Zoning By-Law amendment.
- The Board of the Ainslie Wood Community Association (AWCA) by its Chair, Mark Coakley sent a letter specifically opposing the proposed development.
- The Ainslie Wood-Westdale Community Association (AWWCA) to the best of my knowledge and belief has not submitted or filed any letter in support of the proposed development.
- A member of AWWCA attending the private meeting of November 26, 2019 may have had sufficient prior involvement with a member of the Applicant ownership and development group and that as such it may have constituted grounds for recusing the member from voicing any opinion of support of the proposed development, if in fact any opinion was rendered, at the November meeting.
- Another member of AWWCA who was in attendance at the private meeting of November 26, 2019 had been reprimanded by the Board of Directors of AWWCA for sending out a letter of support for the McMaster University proposed development at the corner of Traymore and Dalewood Avenue, at a time when the Board of AWWCA was officially opposed to the development. The offending Board member was told that the member could only express his opinion as “**an individual**” and not in any official capacity for AWWCA.
- The increase in height of the proposed building by two additional storeys should not be attributable back to Neighbourhood Associations as they either did not express the view that the height should be increased, or if any person in attendance did express such an opinion, then it was clearly without authorization and could not possibly be construed as the official position of the Neighbourhood Associations.

Letters in Support - Paragraph 4.1 (page 4) of the Planning Response Letter of Dec. 20, 2020

The Planning Response letter refers to Letters in Support (on page 4, Paragraph 4.1 which is attached) and cites that a total of 17 letters of support were received and that many submissions

stated 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**”. The response letter also references a petition in support signed by 20 neighbourhood households. My concerns with the letters of support and the petition are briefly set out as follows:

- There are seven (7) resident households which are in the closest immediate proximity to the proposed development, and which households are on record as being in **opposition to the proposed development**.
- If the three (3) houses which are associated or connected with the developers of the proposed development are discounted due to a perceived conflict of interest, then **100% of the arm’s length households** of the remaining first seven houses on Dow Avenue and the remaining first three houses on Cline Avenue South are opposed to the proposed development.
- The words “**most greatly impacted**” must be determined on an objective basis and be based on proximity, and not be based on an undefinable subjective viewpoint which can be completely misleading.
- The arm’s length independence of some of the petitioners in support of the proposed development is being questioned as to whether any of them are engaged in land development and acquisition in the neighbourhood or in respect of properties lying within 120 metres of the proposed development, or whether they are currently tenants or receiving, directly or indirectly, financial remuneration or employment income or rental subsidies from any party associated with or connected to the proposed development, or from a landowner intending a future intensification of lands within 120 metres of the proposed development.
- A letter was sent to members of the Adas Israel Synagogue stating that a “portion of the project’s profit will be donated” back and accordingly it is imperative to know if any of the writers of letters of support indicating that the proposed development will “enhance the quality of life” and “help preserve the neighbourhood character”, will receive monetary donations from the Applicant, or receive, directly or indirectly, financial remuneration or employment income, and rental subsidies arising from or paid out of the rental stream and profits to be generated by the proposed development.

Summary of Recommendations

The members of the Planning Committee must be in a position to focus on the important planning issues that arise whenever Applications are being heard or presented at its public meetings, and accordingly any issue that could be clarified or resolved in advance of the public meeting, and which is entirely between the Applicant and the residents who are objecting to the application, is extremely worthwhile.

Two issues which I believe have arisen at past committee meetings, and which are of concern to many of the residents participating in, or watching the meeting by online video broadcast, relate to the role of the Neighbourhood Association and Letters of Support/Petitions relied upon by the Applicant. It is therefore 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 the above circumstances, would be of immense benefit to not only Planning Staff, but to all Members of the Planning Committee and to the citizens of Hamilton.

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

- 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 petitioners who are signing a supportive petition, and/or participants and invitees at any public or private Neighbourhood Association meeting or event and is satisfied that there exists no conflicts of interest, or any circumstances which warrants a declaration of interest.
- 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.

It is my sincere belief that enacting the above measures may be of assistance in avoiding future disputes of this nature, thereby save the Planning Committee valuable time at the hearing. 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.

The measures, however, do not address the circumstances of the present two applications, or if an Applicant 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. In these circumstances I propose the following:

- 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.

- 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.
- 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.
- 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 apply to the Chair of the Planning Committee and request binding arbitration by a staff person 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.

If you require a more detailed letter or the delivery of any supporting documentation which I have at this time, please contact me as I would be pleased to provide the same to you. I am also willing to meet with Bousfields at any time to review the contents of this letter and to see if a resolution can be reached in this matter.

If however, you consider it more appropriate that the issues that I have raised, and the recommendations which I hope will be enacted by the Planning Committee, are more appropriate for being heard as an "in camera" Delegation at an upcoming meeting of the Planning Committee, I kindly ask that you please advise me and Bousfields, in order that a mutually satisfactory date can be obtained for both the presentation of my concerns, and for the response from Bousfields.

I thank you for your time and I look forward to your reply.

Yours very truly,

John Ross

cc. Maureen Wilson, Councillor Ward 1
cc. Daniel Barnett, City of Hamilton
Planning and Economic Development Department

Development Planning, Heritage and Design — Urban Team

71 Main Street West, 5th Floor

Hamilton, ON L8P 4Y5

cc. Lisa Kelsey

cc. Stephanie Hilson