

July 4, 2022

By E-Mail

Lisa Kelsey
Legislative Coordinator, Planning Committee
City of Hamilton
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

Dear Ms. Kelsey and members of the Planning Committee:

Re: Applications by IBI Group (c/o Jared Marcus), on behalf of Losani Homes (c/o Fred Losani) and 1080992 Ontario Inc. (c/o Dan Gabriel) for Urban Hamilton Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision for Lands Located at 11, 19, 20, 21, 23, 27 and 30 Lakeside Drive and 81 Waterford Crescent, Stoney Creek (Ward 10)

Aird & Berlis LLP acts on behalf of Romesh Galagoda, owner of the property municipally known as 42 Lakeside Drive in Stoney Creek. Mr. Galagoda has a number of concerns with the applications before this Committee for an Official Plan Amendment, Zoning By-law Amendments, and a Draft Plan of Subdivision (collectively, the “Applications”). From correspondence and discussions with other neighbours, it appears that some of these concerns are widespread, indicating that perhaps more work by both the Applicant and City staff is required before approving this significant land development.

Our client’s most pressing concerns can be broadly characterized into three groupings: (i) impacts on the use and enjoyment of their property; (ii) drainage and stormwater management; and (iii) natural heritage and environmental concerns. A general theme intersecting these groupings is uncertainty, a lack of information, and the resulting prematurity of the Applications.

(i) Impacts on The Use and Enjoyment of our Client’s Property

The development of 35 additional single family homes on the subject lands creates a number of direct and indirect impacts on the use and enjoyment of the existing neighbouring properties, including noise and light pollution and privacy.

Of primary concern to our client is the potential use of the lands to be re-zoned as Conservation/Hazard Land (P5) Zone, for which little information has been given by the Applicant or staff. The properties along the north side of Lakeside Drive all extend to the water line, such that the beach areas behind each home are private property. The rezoning of lands from R2 to Conservation/Hazard Land, and the subsequent conveyance of these lands to the City, converts a portion of this beach to public lands on which passive recreation is a permitted use under By-law 05-200. The introduction of public uses on these lands creates a public access point to a once private beach, with no clear plan or direction with respect to maintenance, privacy, or security.

At the public open house in February, it was suggested by Councillor Pearson that the block will remain naturalized. Other residents have heard of plans for a parkette. The instruments before this Committee are completely silent on this matter and do not in any way address the public/private interface that that they propose to create.

The City's plans for the Conservation/Hazard lands should be made explicit to the surrounding owners in advance of approval. Further, specific measures to protect the property interests of the waterfront owners from public incursion should be included as conditions of draft plan approval.

(ii) Drainage and Stormwater Management

Our client's property, like all of the lots on the north side of Lakeside Drive, is a waterfront property with a shoreline regulated by the Hamilton Conservation Authority. A key concern of the waterfront owners, including our client, is flood and erosion control with respect to the Lake Ontario shoreline.

Through its review of the application, the Conservation Authority identified concerns with the stormwater management approach proposed by the Applicant and the potential for outlets to the lake contributing to dynamic beach erosion in the vicinity of the outfall.¹ Beach erosion and shoreline integrity are ever-present concerns for our client and other property owners on the north side of Lakeside Drive, and the increased stormwater and drainage flows resulting from the proposed development only serve to exacerbate these issues.

In particular, the proposal seeks to remove nearly 750 trees from the subject lands, and substantially increases the maximum permitted lot coverage from 40% to 60%. The result will be a dramatic increase in impermeable surface with no natural vegetation to mitigate overland flow.

The Applicant's response to these issues is to address these matters through conditions 20 and 34 to the draft plan approval, requiring a stormwater management report, an erosion and sediment control plan, a grading plan and drainage plan to be prepared *after* approval of the Applications.

A comprehensive understanding of stormwater management, erosion and sediment control, grading and drainage should be established *prior* to approval of the Applications in order to assess the potential impacts on the existing uses on surrounding lands and to allow any required changes to the development plans to be reflected in the underlying zoning by-laws.

Requiring this analysis after the Applications have been approved removes any *Planning Act* mechanism available to surrounding landowners to review or challenge the findings, or to form the basis of an appeal to the Ontario Land Tribunal.

(iii) Natural Heritage and Environmental Concerns

The proposed development of 35 new single family homes in the neighbourhood raises significant environmental issues that remain unaddressed in any of the instruments before this Committee for approval.

¹ See Hamilton Conservation Authority comments, page 26 of the staff report.

The Official Plan Amendment (“OPA”) seeks to remove lands designated *Linkages* within the development lands. Importantly, the OPA makes no similar redesignation of other lands to replace them.

Although the Applications propose the rezoning of Block 51 to Conservation/Hazard Lands (P5), the staff report notes that those lands are already designated as a *Core Area* within the Natural Heritage System within the Urban Hamilton Official Plan (“UHOP”). As a result, the removal of the *Linkages* lands without replacement represents a net loss of lands from the City’s Natural Heritage System. This approach runs contrary to the clear policy directions of the Provincial Policy Statement² and the Growth Plan for the Greater Horseshoe.³ It also does not accord with policy 2.7 of the UHOP, which states:

“Linkages are natural areas within the landscape that ecologically connect Core Areas. Connections between natural areas provide opportunities for plant and animal movement, hydrological and nutrient cycling, and maintain ecological health and integrity of the overall Natural Heritage System. The City recognizes the importance of Linkages shown on Schedule B –Natural Heritage System in reducing the adverse impacts of habitat fragmentation on natural areas. Habitat fragmentation results in loss of species diversity and reduced ecosystem health and resilience. **It is the intent of this policy that Linkages be protected, restored, and enhanced to sustain the Natural Heritage System wherever possible.**”

None of these policies are addressed in the staff report.

The UHOP, the PPS and the Growth Plan all speak to the **maintenance, protection, restoration, enhancement, or improvement** of natural heritage systems, which include *Linkages*. The Applications propose none of these actions, but instead simply recommend removal.

While it is suggested that the rezoning of Block 51 to Conservation/Hazard Lands and the eventual conveyance to the City represents compensation for the function of the *Linkages* lands, there is no policy basis in the UHOP or elsewhere upon which to base such a recommendation. There is no policy that permits removal with compensation, or that sets out the criteria for doing so. There is no metric established by policy upon which to assess whether such compensation is appropriate. In the absence of such guidance, the clear policy direction to maintain, protect, restore or improve natural heritage areas should prevail.

² See policy 2.1.2: “The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be **maintained, restored** or, where possible, **improved**, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.”

³ See policy 4.2.2.2: “Municipalities will incorporate the Natural Heritage System for the Growth Plan as an overlay in official plans, and will apply appropriate policies to **maintain, restore, or enhance** the diversity and connectivity of the system and the long-term ecological or hydrologic functions of the features and areas as set out in the policies in this subsection and the policies in subsections 4.2.3 and 4.2.4.”

In addition to stripping portions of the subject lands of their natural heritage protections, the Applications propose the removal of 749 of the 782 trees inventoried on the subject lands. 96% of the trees on these lands are proposed to be removed. While the City is requesting 1:1 replacement of these trees, it will likely take a generation to recover from such clearcutting. This will have untold impacts on the natural environment, but will also increase surface runoff and compound the drainage, grading, sediment and erosion concerns discussed in detail above.

Conclusion

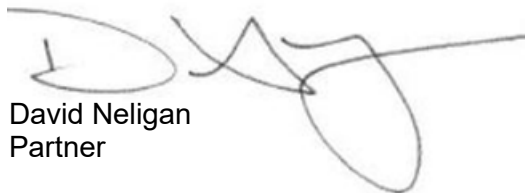
Our client knows that the Applicant and the City have been working diligently for a number of years to advance these Applications forward for approval. This is not an example of a proposal being rushed through the system.⁴ However, there are so many unknown impacts and unanswered questions arising from the Applications that ought to be understood up front instead of punted along as a condition of draft plan approval, or a question to be answered during detailed design review.

Subsection 51(24)(b) of the *Planning Act* requires this Committee, and ultimately Council, to consider whether the proposed subdivision is premature or in the public interest. It is our respectful submission that the Applications are premature, and the impacts on the natural environment are not in the public interest. For these reasons, we ask that the Committee not adopt staff's recommendations at this time and require, instead, further refinement, analysis and consultation to lessen the impacts of the development on the surrounding neighbours, including our client.

We will attend the Planning Committee meeting virtually on July 5, 2022 to speak to the above and to answer any of the Committee's questions.

Yours truly,

AIRD & BERLIS LLP



David Neligan
Partner

DN:DPN

⁴ Although it should be noted that, for the residents, it does feel rushed. The planning staff report was provided to the residents on June 29, providing only 3 business days to review and prepare to respond at the Planning Committee meeting. Further, the underlying reports and studies supporting the application are not publicly available online for review, further limiting the opportunity for the residents to provide meaningful contributions to the discussion.