

VIA EMAIL

August 8, 2022

The City of Hamilton
71 Main St. W
Hamilton, ON
L8P 4Y5

Attention: Ms. Andrea Holland, Clerk

Committee, Mayor, and Members of Council

**Re: City Files: UHOPA-21-012 and ZAC-21-026
Wellings Planning Consultants Inc. on behalf of Royal Living
Development Group Inc.
Preliminary Comments for CP REIT Ontario Properties Limited and
Loblaws Inc.
705 and 713 Rymal Road East
Hamilton, ON**

Our File: CHO/GEN/14-01

We are the planning consultants for CP REIT Ontario Properties Limited (CP REIT) and Loblaws Inc. (collectively "client"), who are the owner and tenant of the lands municipally known as 1645 Upper Sherman Avenue, which are currently occupied by a No Frills Retail Food Store (No Frills).

SUMMARY

Our client has concerns with the proposed application, including relating to noise and the required mitigation measures in the context of compatibility with the existing CP REIT lands and their operation as a grocery store. As a result, based on a preliminary review by our client's consultants, **consistency with the Provincial Policy Statement and conformity with the Growth Plan and City of Hamilton Official Plan has not been demonstrated.** Accordingly, **we respectfully request that any consideration of the draft Official Plan and Zoning By-law Amendments by Council be deferred to allow for our client and their representatives to have additional discussions with Staff and the applicant.** As currently proposed, **our client objects to the subject applications on the basis that there are concerns related to compatibility with the existing development at the CP REIT lands.** Further, we suggest that a peer review be undertaken as it relates to the Noise Study submitted by the proponent for the applications.

We will continue to review the application in more detail, and subject to any further submissions by the applicant, we may provide additional comments or details with respect to the comments already provided.

BACKGROUND

Only recently was our client made aware of the proposed development applications proposed by Royal Living Development Group Inc. on the north side of Rymal Road, being applications City Files: UHOPA-21-012 and ZAC-21-026, to which our clients are the immediate neighbour.

For context, CP REIT is the landowner of 1645 Upper Sherman Avenue in Hamilton, which are immediately adjacent (to the west) of the lands subject to the applications. The lands are currently occupied by a grocery store, leased and operated by Loblaws Inc. The No Frills is oriented such that back of house operations, including loading, are concentrated towards the north/east of the site, facing in an easterly direction.

We understand that the existing No Frills store generates possible noise emissions as a part of ongoing operations. The CP REIT Lands directly interface with the proposed development by the proponent.

THE PROPOSED DEVELOPMENT

According to the Staff Report PED22171, the applicant is proposing to amend the Official Plan and Zoning by-law, which would permit the development of 41 three-storey street townhouse dwellings. The concept plans depict the rear yard of the townhouses as being adjacent to the CP REIT lands, where an approximately 6.0 m setback to the building is to be provided.

COMPATIBILITY AND NOISE CONCERNS

As part of the technical reports submitted in support of the proposed OPA and ZBA, a Noise & Vibration Assessment ("Noise Study") was prepared by the proponent's consultants.

Our client retained the services of a professional noise consultant, Aercoustics, to undertake a preliminary review of the Noise Study prepared by the proponent. Based on the preliminary review, Aercoustics has advised CP REIT that the existing operations of the CP REIT Lands may not be sufficiently captured by the proponent's analysis. As noted above, the existing No Frills store generates noise as a part of routine operations.

Due to the timing of our client becoming aware of the application and the requested comment deadline for the Public Meeting, our review is preliminary. However based on this review, CP REIT and Loblaws request that the application be deferred until such time as a sufficient review of the potential compatibility concerns is undertaken by the proponent, with appropriate regard for the CP REIT land's existing operations. Our suggestion is that a peer review of the Noise Study be undertaken prior to consideration of the application.

Based on the noise consultant's review of the proposed applications our preliminary comments are as follows:

1. The development proposes 3-storey dwellings as outlined by Staff Report PED22171. However, the Noise Impact Study for the proposed development depicts the proposed development as only 2-storeys. It should be clarified whether 2 or 3 storeys are proposed to be permitted and the noise report updated accordingly;
2. The Noise Impact Study for the proposed development does not appear to assess the commercial noise impact from the No Frills. Section 2.0 of the report

- notes the commercial lot including No Frills as *“This commercial development was required by the City of Hamilton and MOE Publication NPC-300 entitled “Stationary & Transportation Sources-Approval & Planning guidelines, that prior to site plan approval the commercial property met specific noise mitigation criteria relevant to the existing residential zoning of the area including the proposed site development.”*
- As Aeroustics understand it, the Noise Impact Study for the proposed development is arguing that stationary noise from the commercial development is not a concern because the commercial store permitting would have required an acoustic assessment for the surrounding area, including the proposed development. We note that the No Frills store received site plan approval in 2018, prior to the proposed OPA and ZBA applications, and so consideration of the proposed residential development would not have been required for the No Frills as no application for the proponent’s lands had been made. While residential permissions in the zoning may exist, the noise assessment for the No Frills development would not specifically cover the proposed residential development plans. Accordingly, the proponent’s Noise Impact Study should have provided that detailed assessment and any recommendations for mitigation in support of the applications. In our opinion, any required noise mitigation measures from the existing commercial operations, including the existing food store, on the CP REIT lands is the responsibility of the Applicant.
3. The Noise Impact Study references the existing 4 m high noise barrier on the commercial property line as mitigating any delivery truck noise. However, there is concern regarding the proposed proximity of the proposed townhouses against the No Frills loading area and orientation of the loading bay facing the rear yard of the proposed townhouses. Given the proposed layout, certain townhouse units are likely to have direct line of sight into the No Frills loading area from their second storey windows, above the existing 4 m acoustic barrier.

PLANNING CONTEXT AND FRAMEWORK

The issue of compatibility between land use is a consideration at all levels of planning policy. The Province and City of Hamilton provide direction for compatible development, including the following at a preliminary basis:

Provincial Policy Statement (PPS)

The 2020 Provincial Policy Statement (PPS), issued under the authority of Section 3 of the *Planning Act*, “provides policy direction on matters of provincial interest related to land use planning and development” in order to ensure efficient, cost-effective development and the protection of resources. All decisions affecting planning matters “shall be consistent with” the PPS. Relevant policies from PPS include:

- Policy 1.1.1 states “Healthy, liveable and safe communities are sustained by: ... c) avoiding development and land use patterns which may cause environmental or public health and safety concerns”;
- Policy 1.1.3.4 states “Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety”;
- Policy 1.2.6.1 states “Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate

- any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures”; and
- Policy 1.2.6.2 states “Where avoidance is not possible in accordance with policy 1.2.6.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:
 - there is an identified need for the proposed use;
 - alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
 - adverse effects to the proposed sensitive land use are minimized and mitigated; and
 - potential impacts to industrial, manufacturing or other uses are minimized and mitigated.”

As there remain outstanding concerns dealing with noise and the required mitigation measures in the context of compatibility with the existing commercial development, consistency with the PPS has not been demonstrated.

Growth Plan (2019)

The Growth Plan was approved by the Province, with the most recent consolidation being August 2020. All decisions that affect a planning matter “will conform” to the Growth Plan. Relevant Growth Plan policies include:

- Policy 2.2.1.4 states: “Applying the policies of this Plan will support the achievement of complete communities that: ... b) improve social equity and overall quality of life, including human health, for people of all ages, abilities, and incomes”;
- Policy 2.2.5.8 states “The development of sensitive land uses, major retail uses or major office uses will, in accordance with provincial guidelines, avoid, or where avoidance is not possible, minimize and mitigate adverse impacts on industrial, manufacturing or other uses that are particularly vulnerable to encroachment”;
- Policy 2.2.5.15 states “The retail sector will be supported by promoting compact built form and intensification of retail and service uses and areas and encouraging the integration of those uses with other land uses to support the achievement of complete communities”.

As there remain outstanding concerns dealing with noise and the required mitigation measures in the context of compatibility with the existing commercial development, conformity with the Growth Plan has not been demonstrated.

City of Hamilton Official Plan

The City of Hamilton Official Plan addresses matters of land use compatibility through its policy. This includes F1.19.6, which identifies the requirement for the submission of studies to evaluate for compatibility, including noise studies:

- Residential intensification developments shall be evaluated based on the following criteria: the compatible integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the

- City encourages the use of innovative and creative urban design techniques (Policy B2.4.1.4d); and
- When considering an application for a residential intensification development within the Neighbourhoods designation, the following matters shall be evaluated: compatibility with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects (Policy B2.4.2.2b).

As there remain outstanding concerns dealing with noise and the required mitigation measures in the context of compatibility with the existing commercial development, conformity with the City of Hamilton Official Plan has not been demonstrated.

We would appreciate if this letter and the expression of interest from our client are put on record at the Public Meeting on August 9, 2022 and that our office be provided with notice of any and all future considerations of the application and/or decisions related thereto.

Yours very truly,

ZELINKA PRIAMO LTD.



Rob MacFarlane, MPL, MCIP, RPP
Senior Planner

- cc. CP REIT Ontario Properties Limited (via email)
Borden Ladner Gervais LLP (via email)
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