

October 8, 2024

From:
West End Home Builders' Association
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To:
Hamilton Council
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Cc: Mallory Smith, Jacqueline De Rocha

WE HBA Letter: Hamilton Green Building Standards

The West End Home Builders' Association ("WE HBA") is the voice of the land development, new housing and professional renovation industries in Hamilton, Burlington, and Grimsby. WE HBA represents 320 member companies made up of all disciplines involved in land development and residential construction. WE HBA is proudly affiliated with both the Ontario Home Builders' Association ("OHBA") and the Canadian Home Builders' Association ("CHBA").

WE HBA appreciates the opportunity to provide further feedback to Council following our delegation to Planning Committee on October 1st. WE HBA has previously submitted feedback as part of the City's consultation over the past several years on Green Building Standards ("GBS"). WE HBA came to this consultation process as key city-building partners. With that aim, we engaged in this process with input from more than 25 of our planning, design, engineering, and building firms who are building the future of Hamilton with a particular emphasis on inviting commentary from builders with Net-zero, Passivhaus, LEED certifications and in-depth experience with building energy efficient homes.

To that end, WE HBA would like to identify serious concerns regarding the draft GBS that have not been addressed through the draft standards shared and have not been noted in the GBS Consultation Summary in Appendix A. **As currently contemplated, the Green Building Standards present unreasonable requirements for developers to implement and may result in developer appeals to their conditions of draft plan approval or site plan to the Ontario Land Tribunal ("OLT"). They may also present significant liability to the City for overstepping municipal jurisdiction to mandate construction standards.** There are issues with the legality of contravening the building code with municipal requirements and potential legal exposure to class action lawsuits if municipalities issue permits for buildings that do not meet the OBC should there be any failures of the building envelope (moisture, mould, etc).

While WE HBA supports moves to encourage new development incorporate greener features, any new policy requirements must be considered in the context of the housing crisis and acute challenges facing the residential construction industry and the City more broadly. As proposed and without incentives – WE HBA estimates the additional costs per unit to be tens of



thousands more expensive in a context where Hamilton has already increased development charges to more than \$79,000-97,000 per unit for 2024.

WE HBA further notes that a home operates as a system and that there are significant technical complexities within the realm of building science that are not currently being contemplated in Hamilton. WE HBA is concerned by potential unintended consequences that aggressive changes to building standards will result in when decisions are being made at the local level—outside the rigorous technical code development process that occurs at a national and provincial level. The development of GBS that do not align with the Ontario Building Code and National Building Code creates vast complexity and risks for developers and planners.

Municipal Authority for the Regulation of Building Standards

The Ontario Building Code (“OBC”), as a regulation under the *Building Code Act, 1992*, sets out the minimum technical requirements for new construction. Recent changes to the 2024 OBC to reflect harmonization with the National Code have resulted in numerous (over 2,400 code changes), wide-ranging changes including provisions related to energy efficiency. These amendments were the result of years of technical building science working groups through a rigorous process. Municipal Chief Building Officials (“CBO”) are only able to enforce the OBC; requirements over and above the OBC cannot be enforced by the CBO. This process should not be circumvented by requiring green development standards through Planning Act approval mechanisms. Targets and metrics are set within the OBC that may be significantly different than the locally set GBS. This creates a very confusing framework for designers, engineers, and even professionals who work in the sustainability space. WE HBA is concerned that through GBSs, Hamilton is seeking to regulate above and beyond what they are authorized to do.

Transition and Review Process

WE HBA understands that the transition policies will be developed throughout the Fall. That said, current, in progress applications must be exempt from the GBS when they are implemented in Q1 2025 to prevent applications from being forced to go through additional delays and reviews to comply with the GBS. Reviewing existing Site Plan and Plans of Subdivision applications against new policies would result in substantial delays. These newly introduced standards would not and could not have been known or accurately predicted during the application process and therefore should not be incorporated into existing development proposals that are in stream and full designs having been complete and locked.

Scope of Green Building Standards

There are numerous elements of the GBS that do not appear to be related to greener buildings, or only tangentially related. **CD8.2** requires the conservation of heritage structures in-situ, which is an element regulated by the *Ontario Heritage Act* and reviewed by Heritage staff at the City. This metric may not be able to be accommodated on all sites; additionally, the OHA applies to lands as a whole, not just the structure. **CD8.3**, which requires public art that celebrates local culture or history to be incorporated, is similarly outside the scope of a GBS and should solely be secured through other mechanisms at the City’s disposal.

WE HBA encourages the City to consider the approach of Toronto Green Standards, which is limited to elements that are directly related to building performance and greener site design. The City should avoid duplication of review that already exist in other documents and are considered by Planning and other departments, and maintain the intent of the GBS to mandate greener buildings and site design. Both the City of Mississauga and the City of Toronto did not include such items into their standards.

Urban Agriculture

Urban agriculture requirements under **CD5.1** are impossible to achieve, especially on high-density sites. The proposed rate of 0.5 sq. m. per unit of garden space is unreasonable, on a high-density intensification site exceeds outdoor amenity requirements and presents challenges related to parkland dedication. A 1000-unit high-density development would require 500 sq. m. of urban agriculture (or two tennis courts) which is impossible to accommodate. While community garden space may be desired by some residents, there are alternative green spaces that may be preferred by others. This element should be eliminated or reworked in its entirety. WE HBA would be happy to discuss this item for further refinement. For example, it would be much easier to accommodate a minimum size community garden space as opposed to a per unit ratio, while meeting the intent of the proposed requirements.

EV Charging Requirements

WE HBA notes that the EV charging requirements remain under appeal, and that the definition of an Electric Vehicle Parking Space do not match in the GBS and Zoning By-law ("ZBL"). The GBS states "[an] **Electric Vehicle Parking Space shall have an adjacent electrical outlet at which an electric vehicle charger can be installed in the future. The electrical outlet shall be capable of providing Level 2 electric vehicle charging, which generally means a voltage of 208V to 240V.**", whereas the Zoning By-law definition states an Electric Vehicle Parking Space "**shall mean a Parking Space equipped with electric vehicle charging equipment which provides, or which is capable of providing Level 2, or greater, electric vehicle charging in accordance with the SAE International J1772 standard, as amended.**" Upon a decision being issue by the OLT, which may result in a change to the definition in the ZBL, the City must ensure alignment between the GBS and the ZBL.

Site Specific Considerations

Several of the metrics require flexibility to be incorporated when other issues arise. For example:

- **EB2.1** which requires the protection of healthy, mature trees may be affected by a required Archeological Assessment, and in some cases not all trees may be protected; There are many other variables that impact this and it does not take into account the City's tree replacement policies.
- **EB2.4** requirements for shade trees may be affected by the location of utilities (which is outside of a developer's control); and



- **EC6.1** requires the exploration of connections to District Energy, however in much of the City such systems are not available or in close proximity.

While the Tier 1 metrics are listed as mandatory, there must be flexibility in the GBS to adapt to site conditions and consider that some may not be achievable, especially in combination with one another and on small, difficult to develop intensification sites, as well as in increasingly dense greenfield development. The City should encourage the overall intent of the GBS in evaluating applications and be prepared to waive certain metrics in cases where they are unfeasible to be met, or a simple checkbox is sufficient rather than a full study.

Emissions and Heating

WE HBA has serious concerns regarding discussions at the October 1st Planning Committee meeting regarding the phase-out of natural gas heating in new homes. While WE HBA supports the transition to electrified heating and cooling in new homes, at the current time, there are several issues related to grid support and local transformer capacity for fully electrified development. The OBC and Electrical Safety Code must be considered in the context of any revisions to the GBS to mandate stricter emission standards, as well as further conversations with local utility providers and provincial grid operators and regulators on their ability to support electrification.

Tier System

The current iteration of the GBS lacks information about how it may evolve over time with stricter standards in future iterations. The development industry requires predictability and the ability to plan for future changes to municipal policy. The Toronto Green Standards clearly demonstrate how they will evolve and become more stringent over time, which allows the development industry to plan future projects at early stages of project development.

Conclusion

WE HBA looks forward to continuing to engage with the City over the fall as we work together to meet our climate and housing goals. The development industry and the City are aligned on the need to advance greener building technologies. However, there are clear issues between local, provincial, and federal jurisdiction within the currently proposed framework. We look forward to a policy environment that enables housing development and encourages the adoption of better technologies.

Sincerely,

Michelle Diplock, RPP, MCIP

Manager of Planning and Government Relations
West End Home Builders' Association