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**DELIVERED BY EMAIL**

Planning and Development Committee  
Municipality of Clarington  
Municipal Administrative Centre  
40 Temperance Street, 2nd Floor  
Bowmanville, Ontario

Dear Members of the Planning and Development Committee:

**Re: Planning and Development Committee – September 16, 2024  
Comment Letter - PDS-034-24  
98 Concession Street East, Bowmanville**

We are counsel to Maria Shcolyar, the owner of 98 Concession Street East, Bowmanville, Ontario (“**Subject Property**”). Our client is in the pre-application process with Municipality of Clarington (“**Clarington**”) staff to advance *Planning Act* applications to redevelop the Subject Property.

We write to provide comments in response to the Staff Report PDS-034-24 (“**Staff Report**”). In particular, we ask the Committee to adopt only Recommendations 1, 2 and 5 set out in the Staff Report.

The Owner has no objection to the listing of the Subject Property on the Municipality’s Heritage Register at this time. Nor does the Owner object, in principle, to the future designation of the Subject Property under Part IV of the *Ontario Heritage Act*.

However, Recommendations 3 and 4 in the Staff Report are premature and, if adopted, will have no legal effect. As such, we ask the Committee to not adopt Recommendations 3 and 4 and, instead, decide only to list the Subject Property on the Heritage Register at this time.

Recommendations 3 and 4 state:

3. *That 98 Concession Street East, Bowmanville, be required to be designated under Part IV of the Ontario Heritage Act, as a condition of approval of development applications, including:*
  - a) *a Zoning By-law Amendment with a (H) Holding Symbol provision that be conditional on the designation of 98 Concession Street East, Bowmanville; and*

- b) *the designation of the property be included as a condition of a Site Plan approval*
4. *That the (H) Holding Symbol provision associated with the designation of the property be lifted, once the approved site plan is registered on title;*

The only matter presently before the Committee is the request to list the Subject Property on the Municipality's Heritage Register. Any decision regarding the zoning by-law application or site plan application is premature until such time as the applications have been submitted to the Municipality and presented to the Committee for consideration. As such, the Committee should make no decision regarding future zoning and site plan applications for the Subject Property that are not before the Committee.

Candidly, even if the Committee and, subsequently, Council, adopt Recommendations 3 and 4, the decision to do so will have no legal effect. Any decision that purports to bind a future decision Council regarding the zoning by-law and site plan applications for the Subject Property will fetter Council's discretion on the future applications. It is *ultra vires* the Municipality to decide in advance that it will exercise its legislative powers in a particular way. The appropriate time to make a decision regarding the holding provision and site plan condition is when the zoning and site plan applications are properly before the Committee.

Our client is committed to continuing to work with the Municipality to protect this heritage resource. Deciding to not adopt Recommendations 3 and 4 will not prejudice the Municipality's ability to consider whether it is necessary and appropriate to impose a holding symbol on the future zoning by-law amendment for the Subject Property or require that the Subject Property be designated under Part IV of the *Ontario Heritage Act* as a condition of site plan approval.

Please provide us notice of any future meetings or decisions regarding this matter.

Yours truly,

**BORDEN LADNER GERVAIS LLP**



Lee English

cc      Client  
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