

SCALISI BARRISTERS

8800 Dufferin St
Suite 103
Concord, Ontario
L4K 0C5

Telephone: (905) 760-5588

Fax: (905) 738-4901

E-mail: vito@scalisilaw.ca

April 25, 2025

SENT BY EMAIL

Mayor Foster and Members of Council
Municipality of Clarington
40 Temperance Street
Bowmanville, ON
L1C 3A6

RE: Clarington Municipal Council Meeting (April 28, 2025)
Item No. 17.2 – Zoning By-law Amendment Application for 221
Liberty Street N.
Municipal File No. ZBA2024-0029
Letter of Opposition
Our File: EH1003

We are the lawyers for Eastrose Homes, being the developer of the lands municipally known as Napa Valley Plan 40M -2462 constructed in 2008 and the registered owner of three-part lots that are located along Redfern Crescent (Blocks 40, 39 and 37) in Bowmanville within the Municipality of Clarington (collectively, the “**Napa Lands**”).

The Napa Lands are generally located to the north and east of 221 Liberty Street North (the “**Subject Site**”). At the time that the Napa Lands were redeveloped, our client front-ended the costs associated with constructing Redfern Crescent and the water, sewer, and stormwater infrastructure that currently exists adjacent to the Eastrose Lands and the Subject Site, on the basis that those costs would be shared proportionately by any future developers benefiting from those services.

On behalf of our client, we are writing to state our objection to the above-noted application for a Zoning By-law Amendment. The reasons for objection are several and are set out in detail below.

Insufficient Technical Analysis

We have reviewed the application materials that have been filed on behalf of 100801308 Ontario Inc. (the “**Applicant**”) in support of the proposed redevelopment of the Subject Site with five additional single detached dwelling lots (the “**Proposed Redevelopment**”). Despite the scale and intensity of the Proposed Redevelopment, no Functional Servicing Report, no Stormwater Management Report or Traffic Impact Study have been prepared in support of the application.

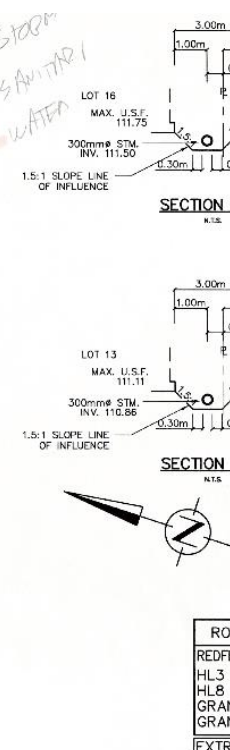
The Planning Justification Report prepared for the Applicant (the “**PJR**”) acknowledges this shortcoming and demonstrates the perils of leaving these important planning-related questions unanswered. As it relates to site servicing, grading, and stormwater management, the PJR suggests that: “should the existing services be determined to be deficient, such services will need to be expanded, or other appropriate arrangements made to accommodate the proposal” (page 15 of PJR). This provides no assurance that the proposed lots can be actually serviced. As it relates to transportation servicing, there is no commentary whatsoever in the PJR regarding site access and circulation, transportation constraints in the neighbourhood, or the appropriateness of creating an additional driveway off Liberty Street North which is identified as a Type “B” Arterial Road on Map 3b of the Region of Durham Official Plan (the “**Durham OP**”). The PJR contains an opinion that “Part 2 is of an appropriate size to allow for one further severance” which suggests that the Applicant may be looking to create even more lots and driveways along Liberty Street North in the future. This raises a traffic impact concern which, as noted above, has not been addressed through the preparation of a Traffic Impact Study.

Given the number of lots being proposed, the requested road widening along Liberty Street North, and the additional traffic and servicing capacity required to facilitate this form of development, Council should require the Applicant to deliver these important technical studies up-front in order to assess potential impacts on the existing and future community. These studies should not be deferred to a later stage where there is no opportunity for public process and/or engagement.

Cost Sharing Requirements

It is important to note that the Proposed Redevelopment is dependent upon the traffic and servicing infrastructure that was funded unilaterally by our client during the redevelopment of the Eastrose Lands (as illustrated in the below excerpt of our client’s servicing drawings):

Location of storm, sanitary, and water services provided by Eastrose Homes
--



Cost sharing in land development is a fundamental principle that ensures that when new developments are constructed that rely on pre-existing, and in this case pre-funded, infrastructure – including roads, water, sewer, hydro, and stormwater systems – benefitting landowners shall contribute proportionately. This principle ensures orderly growth, the reduction of disputes between private landowners, and fairness in the planning process.

We submit that the Applicant should be required to contribute its proportionate share towards the infrastructure that is required to service the Proposed Redevelopment. As noted above, the Applicant has chosen not to submit any technical reports in support of the Application which leaves the public with insufficient information to assess whether the proposal can even be serviced using existing infrastructure or whether infrastructure upgrades are required. In the absence of this information, we submit that the following Holding (H) provisions should be included in the proposed Zoning By-law Amendment:

1. The owner has prepared a Functional Servicing Report and Stormwater Management Report in support of the proposed redevelopment which is in a form satisfactory to the Municipality of Clarington and the Region of Durham.
2. The owner has prepared a Transportation Impact Study in support of the proposed redevelopment which is in a form satisfactory to the Municipality of Clarington and the Region of Durham; and
3. The owner has contributed its share of the cost of infrastructure works associated with the pre-existing road, water, sewer, and stormwater system infrastructure that is available in the area and entered into a Cost Sharing Agreement with the adjacent landowner which is in a form satisfactory to the Municipality of Clarington, the Region of Durham, and the adjacent landowner.

The proposed Holding (H) provisions identified above would strike the appropriate balance between allowing the Application to proceed while imposing reasonable safeguards that ensure that critical matters are addressed in advance of final zoning being granted for the Subject Site. The use of Holding (H) provisions for this purpose is directly supported by the policies of the Durham OP and the Municipality of Clarington Official Plan (the “**Clarington OP**”) including through the following policies:

Policy 5.4.13 of the Durham OP: “It is the policy of Council to require where deemed appropriate by the Region and area municipalities, cost-sharing agreements, front-ending agreements or other measures as appropriate to ensure the timely delivery of infrastructure and the equitable distribution of development and infrastructure costs.” [emphasis added]

Policy 23.4.3 of the Clarington OP: “Holding provisions may be used to ensure that prior to development or redevelopment, the following matters have been addressed and approved to the satisfaction of the Municipality: (a) Services and municipal works including roads; (b) Measures to protect natural areas; (c) Measures to mitigate the impact of development; (d) Submission of technical studies; (e) In a Waste Disposal Assessment Area, the matters referred to in Sections 3.7.12 to 3.7.15; and (f) Execution of appropriate agreements; and/or g) Any other requirements as may be deemed necessary by the Municipality including the implementation of the policies of this Plan.” [emphasis added]

We note that the PJR fails to consider either of these applicable policies.

Matters of Comprehensive Planning

Comprehensive planning requires that development applications are not viewed or advanced in isolation. It ensures that the redevelopment of communities occurs in an

orderly and coordinated manner that is consistent with the long-term vision, land use goals, infrastructure capacities, and environmental sustainability objectives of the community.

The need for comprehensive planning is specifically acknowledged in the policies of the Provincial Planning Statement, 2024 (the “**PPS 2024**”). Policy 6.2.1 of the PPS 2024 directs that a “coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities” including as it relates to planning for infrastructure and public service facilities.

Based on our review of the application materials, it is our submission that the Application does not represent comprehensive planning. The Application effectively sterilizes the use of Block 40 which is immediately adjacent to the Subject Site and has no regard for how the sterilization of this remnant piece of land will be perceived from the public realm (including along Redfern Crescent). This does not conform with the Durham OP which requires, where appropriate, the coordination development applications through measures such as Master Development Agreements to ensure an orderly, coordinated and phased approach to the provision of infrastructure that are provided prior to or coincident with development (Policy 5.4.1.2 of the Durham OP). There is no evidence that the Applicant has undertaken such coordination measures, nor has it met the bare minimum requirement of identifying the servicing capacity that would be needed for its development.

Concluding Statements

As noted in the concluding section of the Staff Report, the Planning Department has recommended that this application be referred back to staff in the event that significant concerns are raised (see below excerpt from page 8):

“Should there be no significant concerns from the public, Staff recommend that the application by D.G. Biddle and Associates to amend Zoning By-law 84-63 to support the creation of five provisionally approved lots be approved and the Zoning By-law as shown on Attachment 1 be passed. In the event that significant concerns are raised, it is recommended that this matter be referred back to staff. {emphasis added}

Based on the concerns raised in this letter, it is our respectful submission that the proposal raises significant concerns that have not been adequately addressed through the application materials provided, and that the application should be either be refused by Council or referred to staff for further discussion with Eastrose Homes and municipal staff.

We thank you for the opportunity to provide comments and request notice of any meetings and decisions related to this matter. Our contact information is provided herein.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Vito Scalisi". The signature is fluid and cursive, with the first name "Vito" and last name "Scalisi" clearly distinguishable.

Vito S. Scalisi