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DELIVERED BY EMAIL
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Clerks Division
Municipality of Clarington
Municipal Administrative Centre
40 Temperance Street, 2nd Floor
Bowmanville, Ontario

Dear Mayor and Members of Council:

**Re: Municipality of Clarington
April 22, 2024 Regular Council Meeting
Report CAO-002-24
Request to Defer or Refuse Recommendations**

We are legal counsel to 2056421 Ontario Inc. (“**2056421**”). 2056421 owns lands in the Municipality of Clarington (“**Municipality**”) municipally known as 1738 Bloor Street, Clarington and legally described as Concession 2, Part Lot 29.

Redwood Properties (“**Redwood**”) is an established builder of condominium and apartment rental buildings in the Greater Toronto Area. Redwood is the beneficial owner of the lands owned by 2056421 and intends to build vibrant, mixed-used communities in the Municipality.

We write to request that Council defer or refuse to accept the recommendations set out in Staff Report CAO-002-24 dated April 8, 2024 (“**Staff Report**”). In particular, we request the Municipality defer or refuse the third recommendation in the Staff Report, which recommends the Municipality not approve *Planning Act* applications until a fiscal impact assessment is completed (“**Recommendation Three**”).

Request to Defer: Lack of Time to Respond and Procedural Fairness

We ask the Municipality to defer this matter for consideration at a later date. At a minimum, Recommendation Three should be deferred or refused. The Municipality has not afforded impacted stakeholders sufficient time to consider this matter and provide meaningful submissions to Council.

The Staff Report purports to respond to legislative changes introduced by the *More Homes Built Faster Act, 2022*, SO 2002, c. 21 (“**Bill 23**”). Bill 23 received Royal Assent on November 28, 2022 – more

than one year and four months ago. The Watson & Associates Economists Ltd. Report attached to the Staff Report is dated December 16, 2022 – again, more than one year ago.

Meanwhile, the Municipality's General Government Committee considered the Staff Report on April 8, 2024 (which was added as a late item to the agenda) and the Staff Report will be presented to Council for adoption on April 22, 2024.

While the Municipality may consider this matter to be urgent, the rushed nature of this proposal denies affected landowners and residents a meaningful opportunity to consider staff's recommendations and provide submissions to the Municipality. This is undemocratic and inexplicable given the passage of time since Bill 23 received Royal Assent.

This is especially concerning in light of the recent introduction of Bill 185, Cutting Red Tape to Build More Homes Act, 2024, which is relevant to matters raised in the Staff Report. The Municipality should defer Recommendation Three until Bill 185 is enacted to better enable all stakeholders, including the Municipality, to understand the impacts from the proposed legislative changes reflected in Bill 185.

As of the date of this letter, neither the agenda nor any staff reports for the April 22, 2024 regular meeting of Council are available on the City's website. This exacerbates the lack of opportunity for meaningful public participation in a matter that has broad implications for landowners in the Municipality.

The Municipality's approach in this instance is procedurally unfair to those who are most impacted, including Redwood. Procedural fairness concerns the decision making process – the steps before, during and after a decision is made. In this case, there was insufficient notice and a lack of time to provide a meaningful response to the Staff Report with a consequent breach of the procedural fairness owed by the Municipality to its ratepayers. Consequently, Recommendation Three should be deferred.

The Recommendation to Defer *Planning Act* Approvals Sets the Stage for Appeals

The Municipality has no legal basis upon which it can decide to refuse to receive or make a decision regarding privately-initiated *Planning Act* applications. Among other matters, the *Planning Act* provides a right for persons to apply to municipalities to amend the official plan, amend the zoning by-law, for draft plan or subdivision approval or site plan approval. There are only limited circumstances where a municipality can refuse to receive an application, none of which apply in the present circumstance.

The ramifications of Recommendation Three are unclear. If the Municipality refuses to accept *Planning Act* applications and engage with applicants in a review of those proposals, it runs the risk of applicants turning to the Ontario Land Tribunal for direction and decision. Adopting Recommendation Three may lead to increased appeals and motions regarding completeness of applications (in addition to potential allegations of bad faith conduct on the part of the Municipality for failing to exercise its responsibility under the *Planning Act*).

Redwood has a long history of working collaboratively with local and upper tier municipalities to advance mutually-beneficial redevelopment projects. If Council adopts Recommendation Three,

Redwood (and other landowners) may have limited recourse but to seek the assistance of the Tribunal to adjudicate planning disputes between public and private interests.

Conclusion

We request the Municipality defer this item to provide a meaningful opportunity for input from relevant stakeholders, including Redwood. The hurried approach to advancing this matter is not reflective of the uncertain, significant and prejudicial implications this has for landowners and ratepayers in the Municipality.

At a minimum, the Municipality should defer consideration of Recommendation Number Three or dissociate the proposed pause on *Planning Act* approvals from the commencement of the fiscal impact assessments.

Very truly,

BORDEN LADNER GERVAIS LLP



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