HAND DELIVERED

June 22, 2011

Chair and Members of the
City of Hamilton General Issues Committee
City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Chair and Members of the Committee:

Re: Special Meeting scheduled for Thursday, June 23, 2011
Delegation by Fred Losani and Losani Homes; Jack Restivo and Chris Barnett

I wish to advise that I represent Losani Homes and will be appearing before you on Thursday. I and the other Losani delegates will endeavor to clarify the position and concern of Losani and other builders and developers in the Binbrook area with regard to what appears to be a misconstrued interpretation of the basis of a settlement reached between Losani and the City in June of 2009. The settlement related to the correction of calculation errors in the determination and allocation of Special Area Charges in effect at that time.

It is my understanding and that of Mr. Losani that some of the Members of this Committee and other Councillors may have been advised that there was some sort of unspoken agreement that as a result of the correction settlement, Losani and other builders and developers had agreed to never appeal development charges. For ease of reference, I am enclosing a copy of the Agreement to which I refer and you will note that nowhere in the Agreement is any mention made of relinquishing any rights of appeal.

I was present at a meeting at the commencement of the negotiation process and at that meeting, no mention was ever made of the negotiation and ultimate settlement being based on the relinquishment of any appeal rights.
The more important issue which we ask you to consider and address is the continuing inequity in maintaining the SAC for the Binbrook area. The chronology of this inequity, its origin and implementation, is accurately set out in the report to the Chair and Members of the Audit and Administration Committee submitted by Roberto Rossini, General Manager, Finance and Corporate Services on May 20, 2009 and again, for ease of reference, I have enclosed that report. It is important to note that the rationale outlined in Mr. Rossini’s report for inclusion and merger of the Binbrook SAC into the DC Bylaw is as valid today as it was in 2009. Essentially, the inequity continues and works, in a discriminatory fashion, against new home owners in the Binbrook area. In view of amalgamation, there is no compelling or justifiable reason for continuing to maintain the SAC in Binbrook as separate and apart from the DC.

Merger of the SAC into the DC Bylaw represents a win-win situation for all parties impacted by the SAC. I am advised that the impact of merging the SAC into the DC Bylaw is approximately $20.00 or so per unit charge. Implementation of the merger on the basis of this minimal impact is at zero cost to the City of Hamilton.

The present inequity cannot continue to be ignored and is acknowledged not only in Mr. Rossini’s report of May 20, 2009, but also by the Hamilton-Halton Home Builders’ Association whose letter of support dated June 6, 2011 is enclosed. The conclusion of the Hamilton-Halton Home Builders’ Association is as follows:

“After reviewing a report with regards to the Binbrook SAC recently prepared by Adi Irani of A.J. Clarke and Associates on behalf of Losani Homes (and based on his witness statement dated May 3, 2011 re: OMB File #DC090025), it appears a case has been made that there is an inequity in the system.

The HHHBA trusts that the City will carefully review this information and respond accordingly.”

Additional correspondence in support and providing further clarification from Mr. Losani and Mr. Stipsits of Branthaven Homes is also enclosed.

On Thursday, I will be urging the Committee to “do the right thing” and put an end to the continuing inequity.

I thank you for your consideration of this matter.

Yours very truly,

YACHETTI, LANZA & RESTIVO

JACK S. RESTIVO
JSR/rl
Encls.

Encls.
c.c. Losani Homes
As per the discussions between the City of Hamilton and the above referenced developers on Tuesday, June 17, 2009, this letter will summarize the conditions and obligations agreed to by both above mentioned parties. They are as follows:

1. SAC - based on Binbrook Secondary Plan – Phase 1 amount based on the following: Empire Communities 99 units, Losani Homes 442 units and Rob Geoff Properties 415 units. The total number of Single Detached Equivalent Units (SDE’s) remaining is 874.16. The Outstanding Debt remaining is $2,943,765. The financing costs on the debt is $194,075. This works out to $3,137 per single and semi-detached home.

2. The area affected by the special area charge will be the phase 1 area as outlined in the attached map. Only residential buildings in this area will be subject to the special area charge.

3. This agreement will become effective as of July 6, 2009 and be complete when the terms of the original Binbrook special area agreement have been fulfilled and the above stated Standard Dwelling Equivalent (SDE) units have been completed. This does not apply to any permits or development charges acquired before said date.

4. That the reduced SAC be based on staff’s interpretation of additional capacity based on City flow standards and the acceptable level of associated risk based on additional budgeted infrastructure.

5. This subsequent agreement does not alter the original Binbrook special area charge agreement which was approved by Council January 10, 1999. All terms in that agreement are still binding. Only the number of SDE’s has changed.

6. There will be no rebates or refunds for previously charged development charges.
Binbrook Phase 1 boundary map
SUBJECT: 2009 City of Hamilton Water and Wastewater Development Charge Bylaw (2-year Term) and Development Charge By-law for all other growth services (5-year Term) (FCS09060) (City Wide)

Note: Recommendations represent new charges and/or policies from the previous DC Bylaw and related amendments (Refer Appendix C for summary of existing policies which have not changed from the previous DC Bylaw and related amendments).

RECOMMENDATION:

a) That the residential development charge rate for a single detached unit increase to $26,875. All residential classes to increase per Table 1 of this report, taking effect on July 6, 2009.

b) That the industrial development charge rate be set at $6.75 per sq ft (the wastewater service component) effective July 6, 2009.

c) That the non-residential development charge rate for new commercial, institutional and office developments be set as per the following, effective July 6, 2009:

1. For developments up to 5,000 sq. ft. at 50% of the rate in effect ($9.74 sq.ft.).
2. For developments, 5,001 to 10,000 sq. ft. at 75% of the rate in effect ($14.60 sq.ft.).
3. For developments 10,001 sq. ft. and greater at 100% of the rate in effect ($19.47 sq.ft.).

d) That the City continue its practise to index its Development Charges (per the DC Act prescribed Statistics Canada Construction Cost Index) and that the next anniversary date for this adjustment would be July 6, 2010.
e) That the City (per the resolution adopted for the 2004 DC report FCS03051A) continue to endorse the principle of limiting the use of special area charges in the future and that the current area specific charges in Dundas/Waterdown and Binbrook be merged in the City-wide Development charge (refer Table 6).

f) That the City establish a development charge reserve specifically for the wastewater plant expansion project from which the growth-related debt charges for the plant expansion would be funded.

g) That for all classes of development activity, the development charge revenue collected go first towards payment of 100% of the wastewater DC service and that any foregone development charge revenue due to exemptions be applied to the balance of the DC services.

h) That hotels, for development charge purposes, be classed as industrial, per Council motion dated October 14, 2008.

i) That the initial 5,000 sq ft of non-industrial (includes commercial/ institutional) expansions of developments existing at the commencement of this by-law be exempt from DCs. Expansion square footage greater than 5,000 sq.ft. to be assessed 100% of the “non-industrial” rate in effect. Also, that these expansions be considered expansions only if a minimum period of 1 year has passed from the time that the last occupancy permit was issued for the subject property.

j) That, where public stormwater management facilities have been provided at the cost of a developer as a condition of development approval, and the said facilities are deemed to be permanent and part of an ultimate solution, “credits for services in-lieu” for the related stormwater component of the DC charge will be applied for any unbuilt units upon the said facilities being included in the DC background study and related amendments. Should external future development lands take benefit of said stormwater management facilities and where a best efforts provision has been included within the development agreement under which the facility was built, the City will collect the full DC from the external developer and reimburse the original developer (constructor of storm pond) only the original value of the proportionate share of the best effort.

k) That the maximum dollar value the city will contribute to any stormwater management facility be fixed to the value identified in the DC background study and related amendments for both land and construction costs plus indexing as appropriate.

l) That “credits for services in-lieu” for a portion of the related stormwater component of the DC charge will be applied for unidentified stormwater management facilities that are deemed to be an appropriate and permanent enhancement/improvement to the approved downstream solution(s).

m) That hospitals governed by the Public Hospitals Act be 50% exempt from the development charges payable. (Policy previously approved by Council through
levies. Others consider health facility costs to be solely a Provincial jurisdiction and maintain full DC charges to avoid the associated levy impacts.

It should be noted that hospitals pay a payment-in-lieu of property taxes which is much less than the property taxes they would pay otherwise.

RECOMMENDATION: That hospitals governed by the Public Hospitals Act be 50% exempt from development charges and that the 10-year DC deferral payment also be applicable only to hospitals. This is a continuation of current City DC policy approved by Council in 2003 and previous deferral agreement approvals. (Policy previously approved by Council through Report FCS02100c).

PROS

- Consideration given to the social good that hospitals contribute to, while still collecting a nominal charge.
- Provincial contributions towards the capital costs of the hospital would be flowed down to the City.

CONS

- Since we would not be charging the full charge, some growth-related costs would have to be paid for by the tax levy and rates.

OTHER OPTIONS

a) Exempt hospitals totally.
b) Offer no exemption.

g) Dundas/Waterdown and Binbrok Special Area Charges (SAC's)

These special area DC’s are imposed in addition to the regular DC’s that are payable. They pertain to infrastructure that was put in place to service these areas. Under agreements that are in place, the City collects the special area charges and remits them to the front-ending developer until the financial terms of the agreements are satisfied.

During the previous DC Bylaw process, Council (by resolution adopted for the 2004 DC report FCS03051A) endorsed the principle of limiting the use of special area charges in the future. Staff concur, on the basis that in the new City of Hamilton there are instances where development in former municipal boundaries (i.e., Dundas and the Red Hill Parkway) pay for growth infrastructure without receiving commensurate benefits. The current SAC’s were put in place at a time when former municipal boundaries still existed and the notion of an amalgamated City was just beginning. Also, due to the relatively minor impact on the City-wide DC that merging these SAC’s will have, staff are recommending that this occur in the proposed DC Bylaws. Some developers contend that this would give the area-specific developers an unfair cost advantage (refer Appendix D). This would be true when City-wide DC’s were approximately $8,000 (year 2000). Now the proposed DC is approaching $30,000 and the impact of any cost
advantage has significantly diminished. Table 6 illustrates the 2 Options before Council with Option 1 being the staff recommended Option.

Table 6

<table>
<thead>
<tr>
<th>Special Area Charge (SAC) Impacts</th>
<th>Staff recommended</th>
<th>Option 1 Merge SAC</th>
<th>Option 2 Keep SAC separate</th>
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</thead>
<tbody>
<tr>
<td>City-wide DC</td>
<td>$</td>
<td>26,684</td>
<td>$</td>
</tr>
<tr>
<td>Binbrook</td>
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<td>52</td>
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<tr>
<td>Subtotal Binbrook</td>
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<td>Dundas/Waterdown</td>
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<tr>
<td>Subtotal Dundas Waterdown</td>
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<td>$</td>
</tr>
<tr>
<td>Total City-wide (Option 1)</td>
<td>$</td>
<td>26,875</td>
<td></td>
</tr>
</tbody>
</table>

RECOMMENDATION: That the current special area charges be merged as per Option 1, Table 6.

PROS

- City-wide DC reinforces the notion that everyone pays for the growth infrastructure benefits regardless of City location. More equitable.

OTHER OPTIONS

- Keep the current Special Area Charges in place.

h) Deferral Policies

Currently, the City has the following development charge deferral policies:

Non-residential developments: Charges can be deferred for up to 5 years with interest (external debenture rate plus .25% administration). ("Residential facilities" are also eligible for this deferral).

Considering the City's need to attract non-residential development it is recommended that the non-residential deferrals be maintained.

RECOMMENDATION: That the City continue its existing DC deferral agreement policy (except in the case of Hospital developments – 10 years, no interest).

PROS

- In-line with objective of increasing non-residential tax assessment.
- For the most part interest charges apply so there is minimal DC revenue lost.
VIA EMAIL TO jspiler@hamilton.ca

June 6, 2011

City of Hamilton
Finance Department, City Hall
71 Main Street W., 1st Floor
Hamilton, ON L8P 4Y5

Attention: Joe Spiler
Manager, Capital Budgets and Development

Dear Joe:

Re: Binbrook SAC, Hamilton 2011 Development Charges Bylaw

The Hamilton Halton Home Builders’ Association (HHHBA) advocates for affordability and choice on behalf of homebuyers and for a level playing field for builders and developers doing business within the City of Hamilton.

With respect to Development Charges, we always encourage the City to be fair and reasonable with their calculation and their collection. Further, we support any builder who can show that they are being unfairly charged through the DC process. If the city is found to be overcharging or ‘double dipping’, we cannot support the charges regardless of the consequences or benefits to builders.

After reviewing a report with regards to the Binbrook SAC recently prepared by Adi Irani of A.J. Clarke and Associates on behalf of Losani Homes (and based on his witness statement dated May 3, 2011 re: OMB File #DC090025), it appears a case has been made that there is an inequity in the system.

The HHHBA trusts that the City will carefully review this information and respond accordingly.

Respectfully,

Doug Duke
HHHBA Executive Officer

Per:

Hamilton Halton Home Builders’ Association

cc. Fred Losani, Losani Homes
    Adi Irani, A.J. Clarke and Associates

1112 Rymal Road East, Hamilton, ON L8W 3N7 • T: 905-575-3344 • F: 905-574-3411 • www.hhhba.ca
Mayor and Members of Council  
City of Hamilton  
71 Main St. West  
Hamilton, ON  
L8P 4Y5  

Your Worship and Members of Council  
Re: 2009 Agreement on Binbrook Special Area Charges  

As you know, Losani Homes has appealed the City’s 2009 Development Charges By-law, asking for the Special Area Charge for Binbrook to be merged with the general City Development Charge.  

From the witness statements that have been filed in that hearing and from conversations that have taken place over the last few weeks, it has become clear that there is a very different understanding about the agreements that were entered into with the City and our companies just prior to the adoption of the by-law in June, 2009. We are writing collectively to confirm our understanding of what was agreed to.  

We all took (and continue to take) the position that the Binbrook SAC is unfair and should be merged. However, beyond that fundamental opposition was the fact that the charge was being incorrectly calculated.  

Each of us had provided the City with the number of units remaining based on our current Plans of Subdivision which amounted to 956 units or 874 Standard Dwelling Equivalent (SDE). The remaining SDE in the Infrastructure Agreement was 418 and so this allowed the SAC to be spread over a greater amount of units in Phase I and thereby decreasing the total SAC.  

We therefore agreed that the charge, should it remain in place, should be re-calculated to take that reality into account. When we met to discuss this with City staff, we were not asked and we did not agree to waive any appeal rights on the existence of the charge as a whole. This is reflected in the fact that the signed documents make no reference to such an agreement.  

It is clear that staff take the view that such an agreement was implied or actually agreed to, and they therefore take issue with the filing of the Losani appeal as being in violation of an agreement.  

We respectfully disagree with staff’s recollection. If we had made such a deal, we would live by it. We did not, and it is unfortunate that an effort to resolve the SAC issue in Binbrook might be held up because of the perception that we are not living up to our end of a deal.
We hope that this clarifies matters, and welcome the opportunity to work with staff and council to resolve this important issue once and for all.

Respectfully,

[Signature]

Losani Homes
Mayor and Members of Council
City of Hamilton
71 Main St. West
Hamilton, ON
L8P 4Y5

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[Signature]

Branthaven Homes