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Planning Committee
City of Kingston
216 Ontario Street
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Dear Honourable Committee Members:

**Re: 223 Princess Street - IN8 (The Capitol) Developments Inc.
City File No. D-14-027-2019**

We are counsel for Building Kingston's Future Inc. and Frontenac Heritage Foundation with respect to the above noted application. The history of this application is long and arduous, and our clients, who are grass roots community organizations, have expended extensive resources with widespread support through contributions from across the City. We ask that this be added to the Planning agenda for this evening's meeting.

The City's staff report includes a letter from Soloway Wright LLP dated September 10, 2020, which unfortunately contains several inaccurate and/or misleading statements.

IN8's Promise to Abandon the Divisional Court Appeal

IN8's application for a zoning amendment to permit 16 storeys was refused by the province's Local Planning Appeal Tribunal ("LPAT"). Subsequently, IN8 commenced an appeal before the Divisional Court. This appeal was argued on February 26, 2020, and the Divisional Court has reserved its decision on the appeal. The City did not appear at this appeal and took no position. **This appeal is still in the hands of the Divisional Court.**

IN8's lawyer, Mr. Osterhout advises that "IN8 hereby confirms that it has instructed our firm to abandon its Appeal before the Divisional Court in the event that the revised application permitting the construction of the 12 storey mixed use proposal is supported by the Committee and passed by Council." No authority is cited for the proposition that an appeal that has already been argued before the Court may be abandoned. Abandoning appeals is a procedural step that would require that the appeal be abandoned **before** the appeal is argued.

While the parties to the appeal could agree to settle the matter, there has been no principled discourse with our clients. IN8 is making an empty promise.

IN8's Expectation

Incredibly, Mr. Osterhout's letter states:

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In providing this assurance, it remains IN8's expectation and understanding that, if the current zoning by-law amendment is appealed to the Local Planning Appeal Tribunal, the City would participate fully in the hearing of those appeals in defence of the by-law amendment.

It appears that IN8's expectation is that Kingston City Council would fetter its future discretion. It is common knowledge that Council must maintain its public interest mandate, and that it continue to make decisions as an independent statutory decision-maker. Council cannot fetter its ability to make a decision with respect to any future appeals, should such arise. This expectation of IN8 is unreasonable and unsupportable in law.

Land Use Planning Failures of the Revised Proposal

The City's lengthy staff report does not consider adverse impacts arising from the proposed design, including the impact on the development rights of adjacent parcels. This is an issue flagged in the last two Peer Reviews from ERA dated July 22, 2020 and September 9, 2020. This issue has not been addressed. This building proposal has the potential to sterilize the development rights of the adjacent landowners.

Lower Princess Street (from Barrie Street to the water) and the St. Lawrence Heritage Character Area (Queen Street and north) are protected by special policies in the City's Official Plan. This proposed development is covered by both of these policies. Despite these policies, the City has entertained proposals that ignore them.

One of the root issues is that the City does not have a comprehensive or consistent approach with respect to development proposals in the downtown core. Height, density, and the compatibility of proposed developments with neighbouring buildings and the heritage streetscape are critical factors in the City's policies and related Zoning By-law. At this time, the City does not have an approved policy on density, floor plates, or the appropriate separation between tower buildings. Making up policy for one development sets a dangerous and unsupportable precedent that is not consistent with the principles of good planning.

This proposal represents a piecemeal, site-specific approach to land use planning, which is not consistent with the principles of good planning.

The subject property straddles two heritage character areas in Kingston's downtown, neither of which have yet been evaluated for heritage protection. The concept of a very large podium with a tower extending to 12 storeys clearly challenges the compatibility provisions of the City's Official Plan (just as the LPAT found the prior application did).

The proposal continues to be problematic with respect to the angular plane of this iteration of the proposal. The current in force Zoning By-law requires an angular plane of 39 degrees. ERA's peer review recommends 45 degrees. The proposal seeks 54 degrees – it is inconsistent with the policy and with the peer review.

The staff report references Community Benefits Charges. This is misleading as the provincial legislative amendments introducing Community Benefit Charges through Bill 108 are not in force. Further, the City of Kingston does not have an approved Community Benefits By-law. The failure to reference the requirements pursuant to the *Planning Act* is informative, as staff's position is flawed.

With respect to Planning Act Section 37 / Community Benefits, staff's position is flawed because: (1) staff falsely conclude that the proposal constitutes good land use planning; (2) it includes scant analysis on the calculation and negotiation of the Community Benefits amount; and (3) it promises but does not provide details of the community benefits to be received. Instead the staff report promises future information about the substance of the proposed amount through the use of a holding symbol.

As part of the public consultation process, it is critical that comprehensive analysis be available to inform Council and the public as to what constitutes appropriate Community Benefits. The issue of section 37 / Community Benefits is premature; Planning Committee does not have sufficient information to make an informed decision. The staff report and the draft by-law do **not** demonstrate that the requirements pursuant to the Planning Act have been followed.

The LPAT made findings that the prior proposal did not conform with the Official Plan. This current iteration does little to address the issue of conformity with the Official Plan and now seeks approval for 16 changes to the in force Zoning By-law. Accordingly, our clients request: that this application be refused.

Sincerely,



Roberto D. Aburto

RDA

cc: *Planning Committee* (rhutchison@cityofkingston.ca; rkiley@cityofkingston.ca; whill@cityofkingston.ca; losanic@cityofkingston.ca; jneill@cityofkingston.ca)

cc: *Clients*

cc: *Philip Osterhout, Soloway Wright LLP*