



Durham Region Home Builders' Association
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May 29, 2020

Jade Schofield
Town of Whitby
575 Rossland Road East
Whitby, Ontario L1N 2M8

Re: Whitby Green Standards

The Durham Region Home Builders' Association (DRHBA) proudly represents over 170 member companies and is the voice of the residential construction industry in Durham Region.

Unfortunately, we have not received a response to our letter, dated and sent on May 11, 2020 outlining our concerns in regards to the proposed Whitby Green Standards. These concerns are still valid and still stand.

Representatives from DRHBA watched the May 11, 2020 special council meeting and would like to bring to the committee's and council's attention that the presentation made it seem as though the checklists were presented to builders at the second stakeholder group session. This is incorrect. DRHBA had two representatives at that stakeholder meeting and no specifics were provided. The first time our organization was made aware of the criteria in the four tiers was when they were released on April 15, 2020. Given that the province of Ontario is in the midst of a pandemic, the timelines for feedback on these important issues are very rushed. It is essential that the Whitby Green Standard is not pushed through quickly without receiving, reviewing and considering important feedback from the building and development community.

It was concerning to hear during the presentation that the Town plans on not only making Tier One mandatory, but eventually making all of the tiers mandatory in the future. With this information, DRHBA's GR committee continued their review and focused on Tiers 2-4. Our comments/concerns are as follows:

Technical Comments/Concerns

Draft Plan of Subdivision

Section HH1.3 - Parkland and Open Space Provision

Requiring builders to provide an additional 10%, 15% and 20% (respectively) of parkland and open space presents two separate issues. First, donating that much land means that builders will have less

land to build homes on or will the Town be purchasing this additional land (it should be noted that all contributions for parkland will be captured under the new Community Benefits Charge)? With less homes to build, the price of the remaining homes will increase to make up for the lost revenue. This flies in the face of affordability and is directly opposed to the spirit of the province's *Bill 108 More Homes, More Choice Act*. Second, what are the costs to the Town of Whitby to maintain all of this additional parkland? Is this cost going to be borne solely by new homeowners (again decreasing affordability through raised development charges) or will the burden fall on the Town's property tax payers?

Section LUN1.4 - Tree Canopy

How will a developer guarantee this condition if the boulevard is insufficient in size to accommodate this tree canopy? The residual land will be held by private ownership that will not be controlled by the developer. Will developers be required to provide a letter of credit for this canopy and will the subdivision agreement have a 10 year maintenance window? If so, who will inspect and sign off on this condition at the 10 year mark?

Section LUN1.5 - Heat Island Effect

Mandating roofs to have a minimum solar reflectance will affect the type and colour package of roof materials available to use. This will add costs to the building of the home, which will be passed on to the purchaser. As for colour selection, how does this mesh with the Town of Whitby's current architectural design controls? What is the rationale behind only requiring this for residential buildings four stories or more and not for other building types?

Section LUN1.6 - Bird and Bat Friendly Glazing

What is the cost of glazing? How will this affect affordability? Has the Town prepared a needs and justification report for this that is specific to the low rise housing form of construction?

Section LUN1.7 - Green Spaces

The criteria does not specify where the plantings are required - on individual lots or in public parks? On individual lots, it would require homeowner cooperation to maintain these plantings - would there be a bylaw created to prevent them from removing any of the plantings? In public parks, the Town of Whitby would bear the responsibility of maintenance and upkeep. Is this additional cost being borne by new homeowners through development charges or by the entire tax base? How will the Town determine "Green Space Area" on the plan of subdivision?

Section SW1.3 - Stormwater Management Quality (Private Lots/Units)

Will the Town be providing and maintaining a current list of approved treatment units and storage devices? Further, will there be a by-law with enforcement to ensure that residents maintain these systems after occupancy? When the checklist speaks to oversizing, it is part of an "or" statement; what will be oversized?

Section SW1.4 - Irrigation for Lots/Units

As part of the plan of subdivision, how will the developer satisfy this requirement? It will be the homeowners' choice on how often and what source irrigation water is drawn from. How will the Town be managing this with residents?

Section SW1.5 and 1.6 - Stormwater Management Quantity & Water Balance

This will require access to private lots after assumption for a period of up to 10 years for the top tier. Is the Town willing to facilitate inspections on private homeowner properties for 10 years post-assumption? Will the subdivision agreement require a 10 year maintenance period? Also, will there be a letter of credit held for this and if so, to what cost base?

Section TT1.6 - Access to Transit

Has the Town discussed the requirement for 70% of residential units to have a transit stop within 350 metres walking distance to the lot/unit? What impacts will this have on operating costs to the Durham Region Transit System? Who will pay these costs?

Section TT1.10 - Electric Vehicle Charging Stations

Mandating 20% and 30% will not only increase building costs, but will also add ongoing costs for electricity. How is the ongoing cost going to be covered - through condo fees?

Section ECC1.5 - Building Energy Performance for Low Rise Residential

DRHBA is of the belief that a municipality cannot legally mandate building above and beyond the Ontario Building Code. Furthermore, if voluntary advanced building standards were to be used, the requirement should, at a minimum, be brand neutral, as there are numerous valid labelling programs that builders can subscribe to and utilize.

Site Plan Checklist

Section HH1.3 - Parkland and Open Space Provision

See above - same as in Subdivision Plan comments.

Section LUN1.4 - Tree Canopy

See above - same as in Subdivision Plan comments.

Section LUN1.5 - Heat Island Effect

See above - same as in Subdivision Plan comments.

Section LUN1.6 - Bird and Bat Friendly Glazing

See above - same as in Subdivision Plan comments.

Section LUN1.8 - Biodiverse Green Roofs for Pollinators

This request creates several challenges. First, and most importantly, the concept of green roofs lends itself to concrete construction as it has the durability to withstand rot and decay. This building style is one of the most costly forms of construction and is why wood framed structures are now permitted to six stories in height. This wood framed style of construction has limitation on its ability to bear the dead loads imposed by this green roof and the ability to protect the structure against water penetration.

Can the Town share any justification or research documents that highlight the required need to provide this space specifically on a roof for the purpose of pollinators?

Section LUN1.9 - Restoration of Biodiversity and Pollinator Habitat

Will this area be required as ground contact space and will it be additional to the parkland requirement in section HH1.3? It should be highlighted that between this requirement and the rooftop requirement, the developer could have to provide upwards of 60% of their project area for pollinator habitat - this seems to be high.

Section SW1.5 - Water Balance

See above - same as in Subdivision Plan comments.

Section ZW1.3 - Waste Reduction

This is a municipal issue and relates to the final occupants purchasing behaviour and waste disposal habits. The developer is only able to provide the appropriate waste receptacles and space to collect these materials, not control the behaviours of the end user. For this reason, this item should be removed from this program.

Section TT1.7 - Access to Transit

See above - same as in Subdivision Plan comments.

Section TT1.8 - Carpooling and Car-Share Parking

By restricting parking spaces for the sole use of various services with exclusion to handicap parking, you will place a strain on general parking use and this may result in the requirement to construct larger parking lots, which seems counterproductive to the whole "green plan." The most efficient parking is to provide the greatest number of general/non-specific spots.

Section TT1.9 - Parking Footprint

The comment, "either do not build new off-street parking lots" has alignment issues with standard building and development practices and likely is in contradiction to any Whitby town parking standard requirements. Please clarify and confirm that the works and operations departments are comfortable with this new standard.

Section TT1.15 - Electric Vehicle Charging Stations

See above - same as in Subdivision Plan comments.

Section ECC1.6 & ECC1.7

DRHBA is of the belief that a municipality cannot legally mandate building above and beyond the Ontario Building Code.

Section ECC1.8 - Building Resilience

The Ontario Building Code stipulates the requirements for building resilience. The OBC is updated with technologies that have been thoroughly researched, tested and costed. It is not the municipality's place to mandate untested and uncoded measures to new home construction. It also should be noted

the *Durham Region Climate Resilience Standard* for new home construction has been shelved by the Region of Durham and the Region is not pursuing it any further - either as a voluntary or a mandatory program. This decision was made by the Region after several meetings with DRHBA, which included a report and expert opinion from Michael Lio of Lio & Associates.

There are over 400 municipalities in the province of Ontario. The Ontario Building Code was created to prevent a patchwork of rules and regulations that adds considerable cost and delays to building homes in Ontario. With the Whitby Green Standards, any builder/developer looking to build in Whitby will be faced with extra costs and delays to meet these standards. Not only will this increase the cost of homes in Whitby, but it will also make it an undesirable place to build.

Legal Comments/Concerns

As DRHBA has stated before, the Association does not believe that the Town of Whitby has the legal right to mandate these standards. In support of this view, DRHBA has received a legal opinion from Leo Longo of Aird & Berlis LLP (attached), which states the municipalities do not have the authority to impose on land developers/builders a construction standard for energy efficiency which exceeds the Ontario Building Code; Sections 41 and 51 of the *Planning Act* do not grant municipalities the authority to regulate energy efficiency construction; Green standards are not "applicable law" - building permits; it is unlawful for site plan or subdivision agreements to link occupancy permits to energy efficient construction; municipalities do not have the authority to require that energy efficiency be to one standard brand to the exclusion of other approved equivalent standards; the Town of Whitby does not have authority under the *Planning Act* to impose many of the policies contained in its Whitby Green Standards related to the construction of buildings; the *Modernizing Ontario's Municipal Legislation Act, 2017, S.O. 2017, c. 10* [Bill 68] has only limited impact on municipalities' powers to regulate the energy efficiency of buildings.

DRHBA would like to reiterate that much more consultation needs to take place with the building and development industry, and the Town of Whitby must perform costing to understand the full impact of the measures before this project moves forward.

The Durham Region Home Builders' Association does not and will not support the Whitby Green Standards in its current format or mandating any of the tiers.

We are available to answer any questions you may have and look forward to further communications with you on this matter.

Sincerely,



Stacey Hawkins

Executive Officer
Durham Region Home Builders' Association

cc:

Mayor Mitchell and Members of Council
Johnathan Schickedanz, president, DRHBA
Tiago Do Couto, vice-president, DRHBA