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**Delivered Via Email**  
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June 17, 2021

Our File: 76072-1 JAA

**City of Calgary**  
Law and Legislative Services  
Legal Division (#8053)  
Calgary Municipal Building  
12th Floor, 800 Macleod Tr. S.E.  
Calgary, Alberta T2G 2M3

**Attention: Jill Floen, City Solicitor**

Dear Madam:

**Re: The North Hill Local Area Plan ("North Hill Plan") and  
The Guidebook for Great Communities, ("Guidebook"), subsequently  
renamed as The Guide to Local Area Planning ("Guide") May 5, 2021**

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I represent a group of individuals from Calgary who are property owners and residents, from several Calgary communities, all of whom are affected by the North Hill Plan, the Guidebook, and the Guide. I have reviewed the procedures and actions undertaken by the City of Calgary ("City") either through its Planning Department ("Administration"), City Council ("Council") or a Committee of Council, I am writing to raise significant legal issues with respect to the process that the City undertook in dealing with the North Hill Plan, the Guidebook and the Guide to date as well as the publicly stated next steps with respect to both the North Hill Plan and the Guide. Based on my legal and procedural assessment, I am of the view that:

1. Council should re-advertise the North Hill Plan and re-open the public hearing so that the public has an opportunity to comment and make submissions with respect to June 2021 version of the North Hill Plan;
2. the Administration recommendation to Council presented at the Standing Policy Committee on Urban Planning and Development ("PUD") May 5, 2021 meeting should be returned to Council for Council consideration, as stipulated in the March 24, 2021 Council motion; and

3. Administration's recommendation to Council that was lost at the PUD May 5, 2021 meeting (the lost recommendation) and replaced with a new PUD recommendation to Council (the replacement recommendation) should be returned to Council for consideration.

**B. The North Hill Plan**

4. The public hearing in relation to both the Guidebook and the North Hill Plan took place during the March 22 to 24, 2021 Council meeting.
5. The North Hill Plan that was advertised for that hearing incorporated policy from the Guidebook. The North Hill Plan was the City's pilot local area plan.
6. Neither the Guidebook nor the North Hill Plan were voted on at the March 2021 meeting. Council directed that the North Hill Plan be brought back to Council on April 12, 2021. Council directed that Administration's recommendations, including proposed amendments, for the Guidebook be reported to PUD at the May 5, 2021 PUD meeting and then brought back to Council.
7. At the April 12, 2021 Council meeting, Council directed various amendments to the North Hill Plan to address concerns raised during the public hearing. Council then referred the North Hill Plan back to Administration to incorporate amendments and policies from the Guidebook and report back to Council by June 21, 2021.
8. Subsequently, there were significant proposed amendments to the Guidebook. Further, on May 5, 2021, PUD accepted the Guidebook as amended, renamed it the Guide for Local Area Planning and directed Administration to use the Guide as administrative guidelines in local area plans. Many of these amendments are now incorporated into the North Hill Plan. While some of the amendments are just text amendments, other amendments are substantive policy amendments. In short, through the incorporation of portions of the Guidebook and the Guide into the North Hill Plan, there have been substantive amendments to the North Hill Plan since the close of the public hearing.
9. Section 230(5)(b) of the *Municipal Government Act* ("MGA") permits amendments to a proposed bylaw after the public hearing. However, where material changes are made to a proposed bylaw, fairness requires an opportunity for affected parties to make further submissions prior to final passage of the bylaw. In the present case, the March 2021 version of the North Hill Plan is substantively different from the June 2021 version of the North Hill Plan.
10. In light of the foregoing, it is my view that Council is required to re-advertise the North Hill Plan and re-open the public hearing so that the public has an opportunity to comment and make submissions with respect to June 2021 version of the North Hill Plan.

**C. The Guidebook and the Guide**

11. As noted, at the March 2021 Council meeting, Council directed Administration to report back to PUD with proposed amendments to the Guidebook on May 5, 2021. The wording of the motion addressing this point is as follows:
  5. Direct Administration to report to the 2021 May 05 Standing Policy Committee on Planning and Urban Development committee meeting with a "What We Heard" report based on the Guidebook for Great Communities Public Hearing 2021 March 22-24 and proposed recommended amendments to the Guidebook for Council consideration, engaging with stakeholders as needed, with public participation at the committee meeting;
  6. As part of the work in (5) above, consider whether the Guidebook should be adopted as policy rather than a statutory document; ...
12. At the May 5, 2021 PUD meeting, Administration recommended that PUD make the following recommendation to Council:
  1. Abandon Proposed Bylaw 17P2020, originally proposed at the 2021 March 22 Combined Meeting of Council;
  2. Amend the Guidebook for Great Communities (Attachment 2), with amendments contained in Attachment 3, including changing the name of the document to Guide for Local Area Planning;
  3. Adopt, by Resolution, the Guide for Local Area Planning (Attachment 2, as amended); and
  4. Direct Administration to return to the Standing Policy Committee on Planning and Urban Development with an update on the implementation of the Guide for Local Area Planning and any necessary amendments, with each multi-community Local Area Plan.
13. PUD accepted the Guidebook, now called the Guide, as amended and passed the following motion:
  1. Accept the Guide for information;
  2. Direct Administration to use the best practices in the Guide, evolving with time and experience as administrative guidelines to use in community engagement in Local Area Plans;

3. Direct Administration to return with a workplan for which Local Area Plans will be completed in the next budget cycle to the Standing Policy Committee on Planning and Urban Development no later than Q1 2022;
  4. Direct administration to develop a lessons learned document after each Local Area Plan, highlighting evolution and changes to the guide for discussion at Standing Policy Committee on Planning and Urban Development; and
  5. Recommend that Council abandon Proposed Bylaw 17P2020.
14. The effect of the May 5, 2021 PUD direction was to convert the Guidebook, now called the Guide, which was to be a statutory plan into a non-statutory direction to Administration. As a result, amendments to the Guide would no longer come back to Council. The only item related to the Guide to come back to Council would be abandonment of the bylaw related to the Guide (which would have made it a statutory plan). The issue is whether the PUD had authority to make this direction in light of the March 2021 Council motion. In my view, PUD did not have the authority to do so.
  15. Section 131 of the City's Procedure Bylaw authorizes a Standing Policy Committee of Council ("SPC") to postpone, refer, file or otherwise not send a report to Council. Section 132 of the Procedure Bylaw states that a SPC cannot file, table or refer a report that Council has directed return to Council by a specific date, unless there is sufficient time to have the report return to Committee and proceed to Council by the specified date. This provision indicates that when Council makes a direction that a report is to return to Council, the SPC cannot make a direction that diverts the report from going back to Council, which is exactly what PUD did.
  16. The March 2021 Council motion made it clear that Administration's proposed recommended amendments to the Guidebook, now called the Guide, were to return to Council but did not specify a date. Notwithstanding the lack of a date, given the clear direction in the March 2021 Council motion, the amendments to the Guidebook, now called the Guide, had to return to Council.
  17. Further, Section 133 of the Procedure Bylaw states that when Administration's recommendations are defeated at an SPC and replaced with new recommendations, then both the lost recommendations as well as the replacement recommendations are required to be forwarded to Council.
  18. In the present case, the PUD did not vote on the Administration recommendations. Instead, the PUD changed the Guidebook, now called Guide, from a statutory plan to a set of non-statutory guidelines. Although Administration's recommendations were not voted on, they effectively were "lost"

when the new recommendations were approved. Therefore, both recommendations are required to be forwarded to Council.

19. In short, it is my view that, based on the March 2021 Council motion, amendments to the Guidebook, now called the Guide, had to return to Council, which has not occurred. Further, PUD breached the City's Procedure Bylaw at the May 5, 2021 meeting and acted outside its authority when it failed to send the Administration recommendations to Council along with the PUD recommendations as stipulated in the March 24, 2021 Council motion. It is my view that PUD is required to refer both the lost recommendations and the replacement recommendations, to Council.

If you would like to discuss the foregoing in more detail, please do not hesitate to contact me.

Yours truly,

**KENNEDY AGRIOS OSHRY LAW**

Per:



**JANICE A. AGRIOS, Q.C.**

JAA/th

cc. clients