

# J. STOLLAR CONSTRUCTION LIMITED

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26-June-2017

To: The Planning Advisory Committee,  
City of Kawartha Lakes

Re: *Application by Bromont Homes Inc. to amend the City of Kawartha Lakes Official Plan*  
-- *to permit additional uses on the lands comprising a portion of the Northeast Quadrant abutting the intersection of Highway 7 and Lindsay Street South.*

It is my understanding that the above-referenced application is scheduled to be aired at a *Public Meeting* being convened in conjunction with your Committee's July 5, 2017 meeting.

At this point, of course, the staff Report that will be tendered at that *Public Meeting* is not yet available to me. Accordingly the comments and observations set out herein are to be regarded as being preliminary only.

That being said, I *have* been able to review the application itself, as well as the consultant reports/studies that have been prepared and submitted on behalf of the applicant. Moreover, Bromont's efforts to secure additional entitlements and permissions in relation to this particular property have been ongoing for many years -- during which time, of course they have generated an extensive paper trail. Accordingly, notwithstanding that my comments are only preliminary, they have by no means been arrived-at in a vacuum. Nevertheless, I would allow for the possibility that they may need to be supplemented once the staff Report is released later this week. *[Note: My reason for writing to you at this point (rather than waiting until the staff Report is released) is to enable Committee members ample time to consider the matters raised herein prior to the July 5<sup>th</sup> Public Meeting,]*

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Rather than mincing words, let me begin by bluntly stating what should be self-evident: This is a fundamentally flawed application – one for which it is at least arguable that no *Public Meeting* should even held at this point.<sup>1</sup>

In sum:

- o The application is premature.
- o The applicant's *Planning & Urban Design Rationale* prepared (by Bousfields Inc.) has explicitly premised its attempt to justify the proposed amendment on a number of counter-factual assertions and assumptions.

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<sup>1</sup> Members of Council may not be aware – although staff should know – that Sections 17 & 22 of the *Planning Act* do not oblige a municipality to hold a Public Meeting simply because an application to amend the Official Plan has been submitted. The convening of a Public Meeting is a precondition to adopting the requested amendment; but there is no statutory requirement to hold such a meeting if the outcome is that the application is being turned back.

- The applicant's *Functional Servicing Report* (prepared by Valdor Engineering Inc.) likewise bases its conclusion that the subject property is serviceable on a counter-factual assumption.
- The applicant's *Retail Market Demand and Impact Analysis* (prepared by TER) bases both its analysis and the conclusion at which it arrives – namely that the approval of the large-format department store requested by the applicant is fully supportable and would not result in “*any adverse impacts on existing commercial uses*” – on data that is both flawed and self-evidently incomplete.

Let's begin with the Bousfields *Planning Rationale*:

On at least two occasions<sup>2</sup> the consultant claims that the subject property is located in “*an area that has been in the urban boundary ... for decades*”. I assume that all of the Committee members are well aware that this is completely untrue. Accordingly it strikes me as remarkable that the consultant appears not to know that – especially given how little research would have been required in order to have obtained that knowledge.

At very most, the subject lands have been in the urban boundary since 2012 – and even that claim would be subject to question. Bear in mind, after all, that:

- The 2012 CKL Official Plan incorporated an expansion to the *Lindsay Settlement Area* to encompass, *inter alia*, the subject lands. (Prior to that, this parcel had been definitively outside the “urban boundary”.)
- That re-delineation of the *Lindsay Settlement Area* boundary is currently under appeal at the OMB.
- Accordingly, depending on the outcome of the Board's adjudication of that issue, the subject property could end up remaining outside the urban boundary.

The upshot is that, insofar as that determination has yet to be made, it is far from clear that the consultant's repeated claims (and assumption) that the subject property is located within the *Lindsay Settlement Area* is in fact either accurate or warranted.

Even more noteworthy is the fact that the applicant's consultant has chosen to simply take it for granted that full urban services would be available to the proposed development. For example:

In addressing the matter of Wastewater Servicing the consultant states:

*“The subdivision is to be serviced by the extension of a 375mm diameter sanitary sewer from Logie Street, southerly along Lindsay Street South. This sewer is not deep enough to cross under Sucker Creek so a pump station will be require to service the lands south of the creek.”* (p.56)

and in addressing the matter of Water Servicing the consultant states:

*“The subdivision is to be serviced by the southerly extension of a 300mm diameter watermain from Logie Street, along the east side of Lindsay Street South, to the subject site.”* (p.56)

Given the matter-of-fact fashion in which these assertions have been made, it would appear that the consultant either does not realize or has chosen to ignore the fact that:

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<sup>2</sup> On pages 44 and 59

- a. The subject property lays well outside the existing Lindsay Urban Servicing Boundary, and
- b. Accordingly the current application is explicitly premised on the availability of services to which these lands have no actual entitlement.

Nor, of course, does Bromont's planning consultant bother to address the issues of Growth Plan and PPS conformity that necessarily arise in connection with the leapfrogging inherent in this proposed extension of services.

Correspondingly: While the applicant's engineering consultant has prepared an extraordinarily detailed and otherwise seemingly-comprehensive *Functional Servicing Report*, at no point does that *Report* make even passing reference to the Lindsay Urban Servicing Boundary -- much less to the impediment posed by the fact that the subject property is not actually located within it.

I rather suspect that both consultants were instructed to premise their work on the proposed new Lindsay Secondary Plan that was "endorsed" by Council in December of 2015 -- which had indeed proposed to extend the Urban Servicing Boundary to encompass the subject property. But it is to be remembered that that document -- and accordingly the extension of that Boundary -- has no status at this point in time. Accordingly for purposes of this application the Lindsay Urban Servicing Boundary remains co-extensive with the urban boundary delineated in the Town of Lindsay Official Plan<sup>3</sup> -- which, of course, does not encompass the subject property.

Rather than further elaborating on these points herein, I would specifically refer you to the letter I'd submitted to the Planning Committee on July 27, 2015 -- a copy of which I've appended hereto as Attachment #2.

The position taken in that letter -- which had of course been prepared in the context of the Committee's consideration of the then-proposed Lindsay Secondary Plan -- was that there was no justification for applying any sort of urban development designation to the subject property at this particular point in time. Let me respectfully suggest that the detailed grounds on which that argument is based are no less applicable to the subject application -- above all insofar as it also details the case for why no expansion of the Lindsay Urban Servicing Boundary can be justified at this time.

In a nutshell:

- o The Bromont application is explicitly premised on the subject property's being within the existing Lindsay Urban Servicing Boundary. In reality, however, it isn't.
- o The application equally relies on the assumption that the subject lands are within the approved *Lindsay Settlement Area*. At minimum, however, that is a point of controversy -- insofar as the CKLOP's delineation of the *Lindsay Settlement Area* is currently under appeal.

In both these respects, accordingly, the subject application must properly be regarded as being, at best, premature. (At worst, of course, its consideration is simply unwarranted.)

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<sup>3</sup> Based on the efforts he has made on behalf of Bromont in the past, I rather suspect that Director Rojas could well end up deciding to dispute this. If so, he would be wrong. The fact is that since 2007 Lindsay's "Urban Servicing Boundary" has been explicitly delineated in a score of documents; and its being limited to the Lindsay Official Plan's boundary was likewise explicitly pre-supposed in the City's 2011 *Growth Management Strategy* (which was adopted, it should be noted, after Council had already approved the CKLOP that provided for the expansion of the Lindsay Settlement Area in 2010)

Turning now to the applicant's *Retail Market Demand and Impact Analysis*:

The consultant's conclusion, of course, is that Council's approving the applicant's requested large format retail use (eg., Walmart) – including, of course, its substantial food-store component – is warranted and would not result in “*any adverse impacts on existing commercial uses*”. [I say “of course” because if the consultant had reached any other conclusion its report would not have been tendered in support of the application.]

That conclusion, in turn, is based on the application of the general sort of methodology that is typical of such reports -- which takes as its starting point the assembly of a detailed inventory that includes not only all of the existing commercial square footage in the marketplace but also any existing approvals that have not yet been realized. It then analyzes and assesses the impacts that would potentially result from the introduction of the applicant's requested uses into that marketplace.

I must confess that, to this point, I have not bothered applying any close scrutiny to the details of the consultant's actual analysis – the reason being that it immediately became apparent to me that the data on which the consultant was basing that analysis was itself incomplete and flawed.

Let me begin by drawing your attention to the claim that the consultant makes on page iv of its report (with my emphasis):

“All proposed major retail developments in the Study Area, for which applications have been submitted to the City, have been recognized in the TER analysis.”

That turns out not to be true, however.

It is in Section 5.2 (page 11) of its report that the consultant itemizes the “significant potential/proposed commercial development in the Primary Zone” that “TER has accounted for” in undertaking its impact analysis. One notes, however, that that list includes only:

- the proposed new Home Building Centre,
- the potential expansion to Lindbrook's *Kent Street Village* plaza,
- the re-tenanting of the then-vacant former Target space at the Lindsay Square Mall, and
- the Mason Homes site at Colborne and Highway 35.

Let me respectfully suggest that anyone who had done even the most cursory research would instantly realize that this list is glaringly incomplete.

Let's begin with a minor example: The consultant has failed to include the retail permissions accorded to the vacant 4-acre commercial parcel on the former Fairgrounds property on Angeline. I suppose it could be argued that this would represent a fairly small addition to the retail marketplace; but the same is equally true of the Lindbrook plaza expansion – which the consultant *has* chosen to incorporate in its inventory.

More significantly, however:

- a. The consultant has failed to either acknowledge or make allowance for the existing zoning permissions for the Loblaws site – which were obtained in order to permit an expansion of the current roughly 6,000 m<sup>2</sup>. supermarket to 12,000 m<sup>2</sup>.

- b. In dealing with the Mason site, the consultant has explicitly presupposed that it will end up being developed solely for a home improvement store along with the permitted 54,000 sq.ft. of “*specialty retail, service and convenience commercial uses*”. The consultant has based this, of course, on the assumption that if Walmart were to locate on the Bromont property there would end up being no department store on the Mason site.

To begin with, it’s not clear that failing to make allowance for two department stores is methodologically warranted; after all, even if it’s true that at the present time “*Walmart is the only department store banner that would be located in Lindsay*”, that does not mean that that will continue to be true in the future.

More to the point: Bromont’s consultant has completely overlooked the fact that, even if the Mason site does not obtain a conventional department store tenancy, under its existing zoning that property would be permitted to house a free-standing contemporary supermarket.

I would acknowledge, of course, that the inclusion of the former Fairgrounds site would not have had any significant impact on either the consultant’s analysis or its conclusions. The same cannot be said, however, of its oversights in relation to either the Loblaws property or the permissions available to the Mason site.

In the case of the Loblaws property: ;

The property’s current zoning would allow for the existing supermarket’s being enlarged by more than 60,000 ft<sup>2</sup>. In accordance with the property’s existing zoning permissions, this would take the form of an expansion of both its food and non-food components – with the former being capped at roughly 75,000 ft<sup>2</sup> (which would allow for a total of more than 55,000 ft<sup>2</sup> of non-food merchandise and services).

It goes without saying that such an expansion would represent an enormous addition to both the supermarket and the overall retail inventory – one of which the consultant has taken no note in its impact analysis.

In the case of the Mason commercial site:

The existing zoning for this property permits a “Department Store” having a *gross floor area* of no more than 12,500 sq.m. that would be permitted to include up to 3,716 sq.m. of *gross floor area* devoted to the sale of *Food Store Related Merchandise*.

What is to be noted is that the definition of “Department Store” incorporated into the property’s site-specific zoning would allow it to house a contemporary (rather than a traditional) supermarket – which typically includes an ever-broadening range of non-food merchandise and services under the supermarket banner.

What this means, of course, is that even if consultant’s assumption that the Mason development would be unable to secure a Walmart-type tenancy turns out to be accurate, allowance still has to be made for that property’s entitlement to include a contemporary supermarket that could be as large as 70-80,000 ft<sup>2</sup>.

Bromont’s consultant has failed to acknowledge this, of course. And it has therefore equally failed to make allowance for this in analyzing and assessing the impact of its client’s proposal.

As for the implications of these “oversights”:

- Bromont’s consultant has premised its impact analysis on the assumption that the existing inventory of supermarket space in the Primary Zone consists of only 131,000 ft<sup>2</sup>. It then takes as its benchmark a rate of sales-per-ft<sup>2</sup> that is computed by dividing the total projected expenditures by that 131,000 ft<sup>2</sup>. It then undertakes to show that the addition of its client’s proposed large-format retail use would not produce future sales-per-ft<sup>2</sup> rates that would fail to meet an acceptable threshold.
- All this would change, of course,, once one takes account of the existing permissions on the Mason and Loblaws sites. The realization of those permissions alone would have the effect of almost doubling the amount of supermarket square footage in the Primary Zone. The projected sales during the study period would then be distributed over a massively greater denominator, resulting in correspondingly reduced sales-per-ft<sup>2</sup> – which might therefore already be below (or, at the very least, approaching) the level at which “*adverse impacts*” would be occurring.
- It is true, of course, that the added space introduced by the proposed Bromont development would then represent a smaller percentage increase. But it would be a smaller percentage addition to a marketplace that might already be functioning in a well-less-than-healthy fashion.

The upshot is that in order to be able to properly determine whether the addition of its client’s proposed large-format department store (including, of course, the same 40,000 ft<sup>2</sup> food component that was approved for the Mason site in 2016) is actually warranted and would not result in adverse impacts, the consultant is obligated to undertake an analysis that is actually based on the methodology that it itself explicitly claimed to have been following -- namely:

“All proposed major retail developments in the Study Area, for which applications have been submitted to the City, have been recognized in the TER analysis.”

As noted, neither the report nor the analysis submitted in support of the Bromont application lives up to that standard.

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Given the self-evident defects in the documentation submitted in support of this application – not to mention the intrinsic challenges it faces in relation to the policies of the Growth Plan and PPS – one might well question why the applicant would nevertheless expect Council to view this application favourably. I can therefore scarcely refrain from addressing that question – specifically by reminding you of what might be termed “the Pivotal Issue” that forms the context for this application.

I need hardly mention, of course, that for many years Mr. Montemarano, on behalf of Bromont, has been trumpeting the impending arrival of Pivotal Therapeutics Inc. (“Pivotal”) to Lindsay.

Mr. Montemarano’s announcement in September of 2012 was that this “*globally recognized business*” was eager to relocate to Lindsay – specifically to the lands that are the subject of this application – and would establish “*an approx. 40,000 sq.ft. hi-technology research and*

*manufacturing facility*” that would initially bring with it “75 *hi-tech jobs*” that were forecast as growing “*to more than 150 as the need for qualified jobs arose*”.

As vacuous as this promise may have been, there is no question as to the impact it’s had. For the past four-and-a-half years, in its self-styled role as “the saviour of Lindsay”, Bromont has sought and received a seemingly unending string of concessions, favours, and windfalls from both staff and Council (at an enormous cost to the public purse, I should add). On virtually every such occasion, moreover, it has been evident that Council’s seemingly single-minded obsession with doing nothing that would jeopardize Pivotal’s relocation has driven the City’s decision-making – most often, I should mention, as a result of Bromont’s at least implying that Pivotal’s relocation to Lindsay was dependent on Bromont’s receiving those windfalls.

I’ve already made reference to the letter I’d submitted to Planning Committee in July of 2015 (being the one attached hereto). As well as addressing the earlier-cited issues, in that letter I’d documented the fact that the promise of Pivotal’s establishing itself as a major employer in Lindsay had been little more than smoke-and-mirrors. Again I’d urge you to review that letter in its entirety. For the moment, however, I’d like to quote one pertinent extract from it:

*“Pivotal Pharmaceuticals Inc. is a public company whose shares are traded over-the-counter in both the U.S.A. and Canada. It was incorporated scarcely more than four years ago. According to its filings its office is located at 81 Zenway Blvd, Unit 10 in Woodbridge.*

As a company whose shares are publicly traded, Pivotal is obliged to maintain up-to-date filings – including, of course, detailed *financial reporting* – with the securities authorities on both sides of the border. According to its current compendium of filings on the *Canadian Securities Exchange* website (a couple of whose extracts I have appended hereto, so that you may confirm this for yourselves):

- Both of the commercial products that Pivotal was set-up in order to bring to the marketplace have in fact been on the market for a number of years.
- Pivotal’s total sales in each of 2013 and 2014 was just on the high side of \$300,000 per annum.
- Let me repeat that: Sales for each of 2013 and 2014 was just over \$300,000 a year.
- Both its sales-force and its manufacturing operations are contracted-out (rather than being conducted in-house by employees).
- The bulk of its operating expenses appear to be related to interest on its debt and executive compensation/benefits; the actual payroll figures implied in its filings appear to be relatively modest.
- Its filings acknowledge a need to secure alternative financing in order to maintain ongoing viability.

While one may want to believe that *anything* is possible, I’d respectfully suggest that it’s not easy to reconcile this information with the impression that has apparently been communicated to Council – namely, that of Pivotal’s being a “*globally recognized business*” planning to occupy a 40,000 ft<sup>2</sup> research and manufacturing facility employing 75 to 150 hi-tech workers. The fact is that sales of \$300,000/year are what one would more typically associate with a corner convenience store that is struggling to stay afloat.”

Notwithstanding the documentation I’d enclosed with that letter, my impression was that Council’s unwavering belief in Bromont’s promises remained unshaken. And the record is certainly clear that Mr. Montemarano had no hesitation in continuing to play “the Pivotal card” thereafter.

Very much to the point is a letter he sent to Council five months later (in December of 2015) in which he asked the City to front-end the extension of services that would be required in order for the lands that are the subject of the current application to be developed. A copy of that letter is appended hereto as Attachment #1.

In particular I'd draw your attention to the final paragraph of that letter, in which he stated:

“One of our proposed developments was a pharmaceutical filling plant. The initial phase will be a 40,000 square foot facility expected to create about 75 skilled and semi-skilled jobs. The second phase will be 100,000 square feet and 150 jobs. Although this use can proceed in south-east Lindsay under the approved Lindsay Secondary Plan, the approval does not provide sufficient opportunity for the recovery of the cost to bring services to this area. Had we received the commercial approval then Bromont Homes could have financed the cost to do so. The City of Kawartha Lakes has front-ended the cost of extending services into other parts of the urban boundary. We request that it does so for south-east Lindsay so as to permit the pharmaceutical filling plant to proceed at this time.”

In bringing forward its current application, Bromont is now dangling a much larger collection of “bright shiny objects” before you in the form of a massive new subdivision -- incorporating high-level commercial and employment uses that carry with them the promise of hundreds-upon-hundreds (if not thousands) of new jobs -- that, according to Bromont’s consultants, would be designed to serve as the “Gateway” to Lindsay. Given how mesmerizing this vision is, it’s entirely possible that Committee members may have failed to take note of the fact that this current proposal no longer includes any reference to Pivotal Pharmaceuticals.

When Bromont’s representatives address\ the *Public Meeting*, I'd urge you to ask why that is.

As for Bromont’s new set of “bright shiny objects”: Let me respectfully suggest that you consider whether what is being proposed, rather than being a “Gateway”, isn’t actually intended to function as a “Force Field” – designed to repel both the travelling public and non-Lindsay residents of the City by enabling them to meet the bulk of their needs without ever having to enter into Lindsay itself.

Needless to say, the applicant’s *Retail Market Demand and Impact Analysis* neither identifies nor addresses itself to this potential impact. Assuming that the Committee does not decide to exempt Bromont’s market study from being peer-reviewed, this is obviously a concern that the peer reviewer clearly ought to be asked to address.

Sincerely yours,

*Marty Stollar*

Martyn Stollar  
Managing Director



**BROMONT**  
HOMES  
"Above and Beyond"

Attachment #1

**By Fax to 1 (705) 324-8110**

December 7, 2015

Mayor Latham and Members of Council  
c/o City Clerk  
City of Kawartha Lakes  
P.O. Box 9000  
26 Francis Street  
Lindsay, ON K9V 5R8

Dear Mayor Latham and Members of Council:

**Re: Lindsay Secondary Plan**

As you know, Bromont Homes has been an active investor in and civic booster of the City of Kawartha Lakes with a focus on South-East Lindsay. We have actively developed where we could such as completing the Country Club Subdivision which included the reconstruction of Logie Street. Our high level of confidence in Lindsay allowed us to front-end the cost of Logie Street and fully service the subdivision prior to sales.

Recently Council rejected our request for commercial permission at Highway 7 and Lindsay Street. We are, of course, disappointed and expect to see our transaction for the commercial portion of our lands to expire. Notwithstanding, we intend to continue to pursue these permissions both at the Ontario Municipal Board where the secondary plans have been referred and through the planning process.

Bromont Homes had begun the planning process first requesting a pre-consultation on August 21<sup>st</sup> and meeting with staff on November 12<sup>th</sup>. From that meeting we expected to receive a checklist of submissions required to support the application. However, contrary to usual process, we are now required to submit considerable information prior to getting a checklist. To avoid the further delay resulting from this unusual requirement, we will proceed to submit our planning application.

One of our proposed developments was a pharmaceutical filling plant. The initial phase will be a 40,000 square foot facility expected to create about 75 skilled and semi-skilled jobs. The second phase will be 100,00 square feet and 150 jobs. Although this use can proceed in south-east Lindsay under the approved Lindsay Secondary Plan, the approval does not provide sufficient opportunity for the recovery of the cost to bring services to this area. Had we received the commercial approval then Bromont Homes could have financed the cost to do so. The City of Kawartha Lakes has front-ended the cost of



**BROMONT**  
HOMES  
*"Above and Beyond"*

extending services into other parts of the urban boundary. We request that it does so for south-east Lindsay so as to permit the pharmaceutical filling plant to proceed at this time.

Yours Truly,

Bromont Homes

Saverio Montemarano, President

Cc: Chief Administrative Officer

Director of Planning

Director of Public Works

27-July-2015

To: The Planning Committee  
City of Kawartha Lakes  
**By Email**

Re: *Pivotal Therapeutics Inc. and the proposed "Mixed-use Gateway Designation"*

In September of 2012 an article in the *Lindsay Post* reported that a company identified as **Pivotal Therapeutics Inc.** had announced "*plans to move to Lindsay and to be part of the new country club community*". In that same article Bromont Homes had in turn announced that Pivotal – which it described as one of the "*globally recognized businesses*" that Bromont would be drawing to the area – was already "*in the planning stages for an approx. 40,000 sq.ft. hi-technology research and manufacturing facility*" that would, by 2014, provide "*75 hi-tech jobs growing to more than 150*".

The property on which Pivotal Therapeutics would allegedly be locating this facility, of course, was Bromont's parcel on the northeast corner of Highway 7 and Lindsay Street South. According to Bromont, its masterplan for the site also included "*a hotel, training centre, business centre, cinema, adult lifestyle community, retail outlets...*".

A copy of that article is appended hereto ... and I'd urge members of Council to re-read it for themselves.

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At the time this article appeared I couldn't help but be somewhat amused by these headline-grabbing pronouncements To begin with:

- The property on which this promised relocation would allegedly be occurring was well outside the Lindsay *Urban Service Boundary*.
- The draft of the proposed new Lindsay Secondary Plan *Land-use Schedule* that had been released just two months earlier had given no indication of an intention to either extend that *Urban Service Boundary* or apply a development designation to that property. In fact it had explicitly indicated the opposite.
- That, in turn, was consistent with the outcome the City's recently-completed *Growth Management Strategy* – based on which, of course, no such extension or re-designation could possibly be justified in the foreseeable future.

As for Pivotal Therapeutics itself: A few minutes of research made it clear that its characterization as a "*globally recognized business*" had perhaps been, shall we say, more-than-a-bit-fanciful.

The upshot was that, at the time, I'd simply dismissed these various "announcements" as nothing more than a bit of self-aggrandizing promotion that Bromont was generating in order to stimulate interest in its *actual* development on Logie Street. Certainly it never occurred to me that anyone at City Hall would take *any* of this seriously – especially after Mr. Sherk confirmed to me that he was well aware that this "grand vision" was nothing but smoke-and-mirrors.

It now appears that I was wrong. My error, however, was *not* in thinking that this was smoke-and-mirrors -- but rather in assuming that no one would have been taken-in by the promise that Pivotal Therapeutics would be relocating to the Bromont property and bringing 75 hi-tech jobs with it.

My wake-up call, of course, came at the May 27, 2015 *Public Meeting*. On that occasion I was in the audience when Mr. Macos, speaking on behalf of Bromont, attempted to make a case for including retail uses in the proposed *Mixed-use Gateway* designation. One of his contentions, as you may recall, was that excluding retail uses would throw the entirety of Bromont's envisioned "gateway development" into jeopardy – including, of course, the relocation of Pivotal Therapeutics.

While I'll confess that my initial reaction had been to stifle a giggle, it quickly apparent to me that Mr. Macos was quite serious ... and that he was clearly expecting his passing reference to the potential loss a "pharmaceutical industry" to have an impact on Council. Moreover, glancing at the faces of around the Council-table made it equally apparent that his expectation had been well-founded. It was at that point, of course, that I recalled the 2012 *Lindsay Post* article; and in doing so I realized that I had obviously erred in not having taken it more seriously at the time.

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What's been made abundantly clear to me since that May 27<sup>th</sup> *Public Meeting* is that at least some members of Council apparently view the prospective relocation of Pivotal Therapeutics to Lindsay as a potentially-transformational watershed opportunity for the city. Their belief, I'm told, is that -- over and above the immediate impact of the 75 to 150 hi-tech jobs it would create -- Pivotal's choosing to set up shop in Lindsay would effectively put Kawartha Lakes on the map as a location capable of attracting and accommodating other "*globally recognized businesses*" in the future.

It also appears to be their understanding that the key to securing Pivotal's relocation is Bromont's willingness to make this happen. As such, it's been explained to me that members of Council are simply not willing to put that outcome at risk – which is in turn the primary explanation, I'm advised, for Council's apparent willingness to support Bromont's request to permit retail uses in the proposed *Mixed-use Gateway* designation<sup>1</sup>.

As hard as I found this to fathom, I had to acknowledge that it also shed some light on the pattern of otherwise inexplicable decisions that I'd been witnessing over the past few years<sup>2</sup>. I will have more to say about these in due course. For the present, however, I will be focusing my attention solely on the illusion under which members of Council appear to be labouring.

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<sup>1</sup> Notwithstanding Mr. Holy's having indicated that the inclusion of retail uses is not supportable.

<sup>2</sup> These "*otherwise inexplicable decisions*" include (to take but a few examples):

- Bromont's having been allowed to construct its Sales Office without first going through Site Plan Approval ... indeed, without having initially even bothered to take out a Building Permit ... and notwithstanding that the Sales Office did not comply with the then-existing zoning on the property.
- Council's having agreed to allow Bromont to construct a 30+ "model homes" in its Logie St. subdivision (even though everyone was fully aware that these were not *actually* model homes) so as to enable Bromont to jump-start home-construction prior to completing the pre-conditions for the issuance of *actual* Building Permits.
- The \$2.0M+ windfall that the previous Council was evidently chomping-at-the-bit to confer on Bromont last fall ... and the somewhat reduced windfall that the current Council insisted on proceeding-with this past April.
- Staff's having accorded priority status to the extension of sewage and water infrastructure along Lindsay St. S. to Highway 7 in the City's current capital forecast – notwithstanding that this extension is outside Lindsay's existing *Urban Service Boundary*.
- The proposed creation of the obviously misnomered "Gateway" designation itself.

As I've already indicated: It appears that members of Council (as well as, perhaps, some others who happened to read that September 2012 *Lindsay Post* article) have had their imaginations captivated by the fantasy that Pivotal Therapeutics is a "*globally recognized business*" that is fully capable of providing at least "*75 hi-tech jobs*" in conjunction with its establishing a "*40,000 sq.ft. hi-technology research and manufacturing facility in Lindsay*".

Here's the reality:

*Pivotal Pharmaceuticals Inc.* is a public company whose shares are traded over-the-counter in both the U.S.A. and Canada<sup>3</sup>. It was incorporated scarcely more than four years ago. According to its filings its office is located at 81 Zenway Blvd, Unit 10 in Woodbridge.

As a company whose shares are publicly traded, Pivotal is obliged to maintain up-to-date filings – including, of course, detailed *financial reporting* – with the securities authorities on both sides of the border. According to its current compendium of filings on the *Canadian Securities Exchange* website<sup>4</sup> (a couple of whose extracts I have appended hereto, so that you may confirm this for yourselves):

- Both of the commercial products that Pivotal was set-up in order to bring to the marketplace have in fact been on the market for a number of years.
- Pivotal's total sales in each of 2013 and 2014 was just on the high side of \$300,000 per annum.
- Let me repeat that: Sales for each of 2013 and 2014 was just over \$300,000 a year.
- Both its sales-force and its manufacturing operations are contracted-out (rather than being conducted in-house by employees).
- The bulk of its operating expenses appear to be related to interest on its debt and executive compensation/benefits; the actual payroll figures implied in its filings appear to be relatively modest.
- Its filings acknowledge a need to secure alternative financing in order to maintain ongoing viability.

While one may want to believe that *anything* is possible, I'd respectfully suggest that it's not easy to reconcile this information with the impression that has apparently been communicated to Council – namely, that of Pivotal's being a "*globally recognized business*" planning to occupy a 40,000 ft<sup>2</sup> research and manufacturing facility employing 75 to 150 hi-tech workers. The fact is that sales of \$300,000/year are what one would more typically associate with a corner convenience store that is struggling to stay afloat.

How is it, then, that for the past couple of years members of Council have not only been allowed, but actually encouraged, to make decisions based on the latter misimpression? After all, it would have taken only a 5-minute *Google* search to pull up the information I've provided you herein (which is, of course, how I obtained most of it). More to the point: There's nothing I've told you that is not already known to at least some members of senior City staff. One can scarcely imagine, accordingly, how (or why) Council was not already aware of this.

\*

<sup>3</sup> with shares in Pivotal (symbol – PVO) having most recently been changing hands in Canada at a price of \$0.05/share – with typical activity in the range of 2,000 to 10,000 shares a day.

<sup>4</sup> Which any of you can of course access for yourself at:

<http://www.cnsx.ca/CNSX/Securities/Life-Sciences/Pivotal-Therapeutics-Inc.aspx>

As I've already suggested, my current understanding is that much of the special treatment and benefits that have been conferred on Bromont during the past few years is to be explained, at least in part, by Council's being of the view that the City's over-riding priority must be to secure the relocation of Pivotal Therapeutics to Lindsay. Needless to say, this has in turn led to Councilors' reacting with barely-concealed hostility to the objections and questions that have been voiced by those expressing concerns about this special treatment -- especially, of course, concerns about the costs the City has incurred in conferring it.

This same attitude, of course, has now extended to those expressing opposition to the addition of retail uses to those already proposed for the *Mixed-use Gateway* designation. To me, however, the issue of retail uses is a little more than a distraction. The real question is whether there is any possible justification for creating this proposed "Mixed-use Gateway Designation" to begin with. My submission herein will be that there isn't.

As always, it's helpful to begin by establishing some context:

Council needs to be reminded that this "*Mixed-use Gateway Designation*" had not been included in the initial version of the proposed *Lindsay Land-use Schedule* that was released in July of 2012. In fact, if you review that map you'll see that the Bromont parcel at the intersection of Highway 7 & Lindsay Street was not given any sort of development designation. In understanding why this had been the case, it is to be remembered that:

- The City's *Growth Management Strategy* – which had been approved by Council in September of 2010 and updated by staff in May of 2011 – had clearly documented that the lands it had canvassed were vastly more than sufficient to meet the City's need for both greenfield residential and non-residential development to well beyond the 2031 planning horizon.
- Insofar as the subject Bromont property had not been included in the inventory of lands canvassed in the *GMS*, there was clearly no need to either extend the *Urban Service Boundary* to encompass them or accord them a development designation.
- Consequently the fact that no such designation was applied to the subject Bromont property in the July 2012 *Lindsay Land-use Schedule* was precisely what one would have expected (especially insofar as it is well outside the current *Urban Service Boundary*).

It was, of course, scarcely 2 months after the release of that July 2012 map that the article appeared in the *Lindsay Post* trumpeting the transformational impact that was going to result from allowing development on the Bromont property. As to what occurred thereafter:

- When the next iteration of the *Lindsay Land-use Schedule* was released in April of 2013, it introduced that brand-new *Mixed-use Gateway* designation and applied it to these lands – implying at the same time, of course, an extension of the *Urban Service Boundary* to encompass them.
- The initial draft of the proposed new Lindsay Secondary Plan that came out a couple of months later incorporated a set of policies and permitted uses for that *Mixed-use Gateway* designation that were far more generous than for any other (going beyond even those allowed in the *Central Business District* designation).
- Mr. Macos' June 3, 2015 correspondence (attached) makes specific reference to Bromont's having "*worked with City staff to formulate the requested policies*" for what subsequently became that "*Mixed-use Gateway Designation*". (It also, of course, makes specific reference to "*Pivotal Pharmaceuticals*".)

In March of 2014, something even more remarkable occurred:

- Staff circulated the initial draft of the proposed “Downtown and Main Streets Community Improvement Plan” that had been prepared with the assistance of the City’s consultant – under which, of course, properties within the identified *Community Improvement Plan* (“CIP”) boundaries would become eligible for various specified forms of financial assistance from the City<sup>5</sup>.
- In the case of Lindsay, both the downtown core and the existing transitional commercial strips on Queen Street and the northern part of Lindsay St. S. were included within *CIP* boundaries – just as one would have fully expected them to be.
- What one would never have expected, however: Both the Bromont property at Highway 7 & Lindsay St. S. and Bromont’s commercial parcel on the southeast corner of Lindsay St. S. & Logie St. were also included in the *CIP* and assigned their own dedicated boundaries.
- What staff were thereby proposing, of course, was that Bromont’s development of these lands was to be made eligible for financial assistance from the City.

Given both the circumstances and context, it would be hard to believe that the remarkable 180° turn-about that occurred in April of 2013 was not somehow related to (what I’ll term) “the Pivotal Therapeutics carrot” that had been dangled in front of Council almost immediately after the release of the July 2012 draft of the *Lindsay Land-use Schedule*.

As for staff’s subsequently proposing that the development of both Bromont parcels be eligible for taxpayer-funded and ratepayer-funded subsidies via their inclusion in the *Community Improvement Plan*: That simply beggars belief.

\*

The upshot is that I’m not going to even bother weighing-in on the narrow question of whether retail uses should or should not be permitted on the lands falling within the proposed new “Mixed-use Gateway” designation. I’ll leave that to others.

My own position, by contrast, is essentially generic, being that:

- a. There is no justification for proposing any sort of development designation for these lands at the present time.
- b. There is equally no justification for proposing the extension of Lindsay’s current *Urban Service Boundary* to encompass them.

The fact is that, as previously referenced above, the City’s *Growth Management Strategy* documented that there is already a vastly more than sufficient supply of development-designated land within the existing urban service boundaries to meet the City’s need for both greenfield residential and non-residential development to well beyond the 20-year planning horizon mandated under the *Growth Plan*.

---

<sup>5</sup> including, *inter alia*:

- Development Charge Exemptions/Reductions
- Waiving of Planning, Development and Permit Fees
- Waiving of Parkland Dedication (or Cash-in-Lieu)
- Other forms of Tax Increment Grant Funding/Financing

Nor can the foregoing simply be dismissed as being “Mr. Stollar’s opinion”. This very same conclusion is specifically articulated in the “General Amendment” to the CKL Official Plan that *Council itself* approved scarcely 3 weeks ago via the incorporation of the new Section 18.4.3:

**“18.4.3** The City recognizes that it has a surplus of designated greenfield land to support future residential and non-residential development, and further acknowledges that it is difficult to reconcile the surplus by phasing-out or de-designating lands with inherent development rights. The City shall therefore retain all existing designated greenfield land and only designate additional greenfield land if justified through a comprehensive Official Plan review, which includes updates to the growth management, transportation, and municipal servicing strategies.”

The upshot is that according any sort of development designation to the subject Bromont parcel at this point would directly contravene Section 18.4.3 -- an explicitly-directory Official Plan provision to which Council (at Director Taylor’s recommendation) chose to accord its approval only three weeks ago.<sup>6</sup> The same is true, of course, of the proposed extension of Lindsay’s *Urban Service Boundary* to encompass this parcel. And Section 18.4.3 would appear to equally preclude Council’s approving staff’s apparent plan (as reflected in the updated project-list supplied to the Development Charge Study peer reviewer) of having the City undertake the extension of servicing to this parcel (as a public work) over the course of the next few years.

It follows, therefore, that:

- I. The proposed *Lindsay Land-use Schedule* should be amended to remove the proposed “Mixed-use Gateway Designation”, as well as other development designations applied to the lands on Lindsay Street south of the existing *Urban Service Boundary*, and either replace them with a *Future Development* designation (or something of that sort) or simply leave in place the existing designations already established under the existing CKL Official Plan.
- II. The corresponding policies should be excised from the body of the proposed new *Lindsay Secondary Plan* itself.
- III. The proposed *Lindsay Land-use Schedule* should further be amended to identify the *Lindsay Urban Service Boundary* as coinciding with the one on which the City’s existing *Growth Management Strategy* was premised.

Sincerely yours,

*Marty Stollar*

Martyn Stollar  
Managing Director

---

<sup>6</sup> With respect to the narrower issue of according retail entitlements to this property, it should be noted that on July 7<sup>th</sup> Council adopted a further policy that is directly applicable:

“18.4.4 The City recognizes that the Growth Management Strategy (May 2011) did not include a comprehensive review of the commercial hierarchy and until such time that a full commercial lands study is undertaken, the City will generally discourage any Official Plan Amendments that add to the range of permitted commercial land uses for a site and/or create additional commercial lands. When the City has completed a full commercial lands study then the relevant results of the study will be amended into the Official Plan.”

**TOYOTA 2012 FACTORY EVENT** **FALL SAVINGS** Offer Ends SEPT 30, 2012

Financing From **9% OR 1.9%**  
 OAC For 48 Months 36 Month Lease OAC

2012 CAMRY **RACE TOYOTA**



## NEWS LOCAL

# Developer says it is attracting good-paying jobs to Lindsay

Tuesday, September 25, 2012 9:53:35 EDT AM



Bromont Homes owner Saverio Montemarano sits in the kitchen of the company's new sales office at Lindsay St. S. and Logie St, which showcases the first phase of The Country Club of Lindsay – a \$30 to \$40 million development - which will see 130 homes backing onto the golf club's fairways. DAVE FLAHERTY/The Lindsay Post

LINDSAY - Bromont Homes says its new Lindsay development is attracting some globally recognized businesses, bringing a variety of well-paying jobs to the area.

In a press release, it said Pivotal Therapeutics Inc. is the first to announce their plans to move to Lindsay and to be part of the new country club community and the overall conceptual master plan.

Pivotal Therapeutics Inc., a specialty pharmaceutical company with a focus on cardiovascular disease and overall health, is in the planning stages for an approx. 40,000 sq. ft. hi-technology research and manufacturing facility in Lindsay. Bromont Homes has announced.

Scheduled for completion in 2014, the company will employ 75 hi-tech jobs growing to more than 150 as the need for qualified jobs arise.

Pivotal CSO, Dr. George Jackowski said "Lindsay is the ideal place for growth and the opportunity to work on Canadian soil is a big plus for us. Lindsay is ideally located with close proximity to all the major GTA hubs and we wanted to find a location for our operations that our employees will want to live, work and play."

The move to Lindsay will not only allow for Pivotal to manufacture, package and distribute from a Canadian location, it will allow for future expansion into other markets, offering services of contract pharmaceutical services for other pharmaceutical products, as well as contract research and development, ensuring that the Canadian market is getting a truly Canadian made product, not only from Pivotal, but from other companies that see the value of a Canadian operation, the release said.

"Owner Saverio Montemarano is not just your everyday developer that comes to a community and builds, then moves on," said Eugene Bortoluzzi, CEO of Pivotal. "He has a conscience, he has a vision, he knows what he wants to develop and he puts the time and effort into making it happen. We don't want to have our operations set in a bedroom community where people commute everyday, Lindsay not only provides the ideal location, it provides the lifestyle that we want our employees to enjoy."

Bromont Homes has seen the need for other local amenities that will complete the conceptual master plan for his housing estate.

They include a hotel, training centre, business centre, cinema, adult lifestyle community, retail outlets and the Lindsay Golf & Country Club in the centre of it all.

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June 3, 2015

Mayor Latham and Members of Council  
c/o City Clerk  
City of Kawartha Lakes  
P.O. Box 9000  
26 Francis Street  
Lindsay, ON K9V 5R8

RECEIVED

JUN 04 2015

OFFICE OF THE CITY CLERK  
CITY OF K.L.

Dear Mayor Latham and Members of Council:

**Re: Lindsay Secondary Plan**

We are solicitors for the Bromont Group, the owner of lands in south-east Lindsay. Together with our client's planning, engineering and marketing consultants, I deputed at the public meeting held on May 27<sup>th</sup>. Our detailed comments were set out in correspondence from Bousfields Inc. dated May 26, 2015. We would like to summarize our position and requested action by Council.

The Bromont Group requests that the policies related to the Mixed Use Gateway be reinstated. A copy of these policies as had formed part of the secondary plan proposal until May 2015 is attached for your convenient reference. In support of this request:

- Bromont Group worked with City staff to formulate the requested policies which were publically circulated and subject to comment since the Bromont Group's involvement in the secondary plan process began in early 2012.
- Without notice or consultation with Bromont Group or direction from Council, the Gateway policies were substantially amended by staff to the original failed tourist/highway commercial policies in the Town of Lindsay Official Plan. Environmental constraints were also added without any current mapping or inspection.

- 2 -

- In reliance on the publically circulated policies, Bromont Group made commitments to a broad range of users including Pivotal Pharmaceuticals, Unique Broadband Systems and the Goldman Group to bring high end manufacturing and retail options.
- The limited gateway uses now proposed by planning staff cannot happen because they will not support the cost of the extension of services to south-east Lindsay.
- The exclusivity of new retail for one landowner has failed to deliver the anticipated department store.
- The departure of Target and the repurposing of the space for non-department store retail have provided an opportunity to revisit market demand and recapture.
- Planning staff has committed to certain commercial policies without the benefit of an up to date market study. Bromont Group has engaged Mr. James Tate of Tate Economic Research Inc. to perform a study in accordance with Section 18.7 of the Official Plan.

Unless the Mixed Use Gateway policies are restored, Bromont Group shall be appealing the Lindsay Secondary Plan at the Ontario Municipal Board and require a complete review of all of the policies set out.

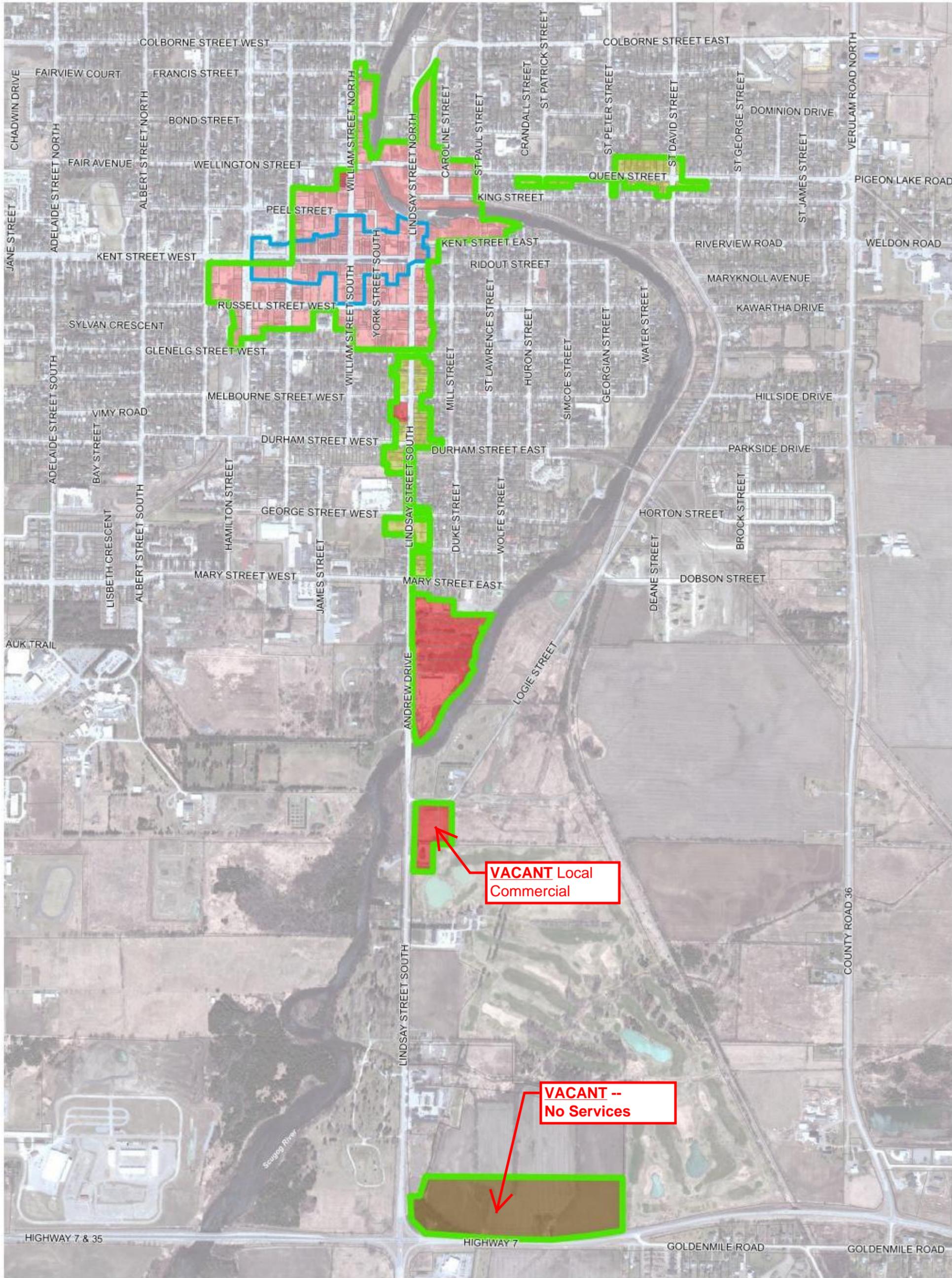
Yours truly,

BLACK SUTHERLAND LLP

  
Nicholas T. Macos

NTM:rcp  
Encl.

cc Bromont Homes Inc.



**KAWARTHA LAKES**  
 Downtown and Main Streets Revitalization CIP  
 Lindsay Settlement Area

**Schedule 4-1**



Community Improvement Plan (CIP) Boundary  Business Improvement Area (BIA)



FILE LOCATION:  
 Ottawa Server  
 G:\CAD\2011\115009\Design\_GIS\MXDc  
 PROJECT: 11-5009 STATUS: DRAFT DATE: 15/07/13



# News Release

## PIVOTAL THERAPEUTICS ANNOUNCES 2014 FINANCIAL RESULTS

FOR IMMEDIATE RELEASE

APRIL 30, 2015

Woodbridge, Ontario, April 30, 2015 - Pivotal Therapeutics Inc. (OTCQX: PVTTF) (CSE: PVO), a specialty pharmaceutical company with a focus on Omega-3 therapies for cardiovascular disease (CVD) and overall health, announced its operational highlights and financial results for the fiscal year ended December 31, 2014. All dollar amounts referenced herein are in Canadian dollars unless otherwise stated.

"Pivotal's accomplishments in 2014 have been significant, with the right strategic partners and additional capitalization in 2015, investors can look forward to a more realistic valuation of the Company," stated Mr. Eugenio Bortoluzzi, Pivotal's CEO and CFO.

### Highlights from 2014

- Received Notice of Allowance on its unique 6:1 EPA:DHA formulation in conjunction with anti-obesity agents for the reduction of body weight in cardiovascular disease patients and diabetics;
- Announced the adjustment of terms, expansion and closing of a debt financing, resulting in gross proceeds of CDN \$7,743,580;
- Presented two posters discussing Omega-3 deficiency and **VASCAZEN**<sup>®</sup>'s unique formulation to correct the deficiency at the American Heart Association's Arteriosclerosis, Thrombosis and Vascular Biology (ATVB) 2014 Scientific Sessions in Toronto, Canada;
- Issuance of U.S. Patent **8,715,648** titled "Formulations Comprising Omega-3 Fatty Acids and Anti-Obesity Agent for the Reduction of Body Weight in CVD Patients and Diabetics";
- Entered into a Memorandum of Understanding to create a Joint Venture with ACGT Corporation in an effort to explore commercial opportunities in China;
- Publication by *PLOS ONE* reporting a study confirming that the **VASCAZEN**<sup>®</sup> formulation is superior to the other existing commercial products in the marketplace in terms of sustained coronary vasodilation (increase of blood flow), which is important for patients with Coronary Heart Disease who have compromised coronary vessels;
- Presented a poster indicating that the chronic intake of **VASCAZEN**<sup>®</sup>'s 6:1 EPA:DHA formulation prevented the development of hypertension and endothelial dysfunction in a rodent model at the 2014 Annual Meeting of the European Society of Cardiology Congress in Barcelona, Spain;
- Publication of the **VASCAZEN**<sup>®</sup>-REVEAL trial showing the positive effects of **VASCAZEN**<sup>®</sup> in the correction of an Omega-3 deficiency in cardiovascular patients is available in the peer-reviewed journal titled *Molecular and Cellular Biochemistry* (MCB) with open public access at <http://link.springer.com/article/10.1007/s11010-014-2132-1/fulltext.html>;
- Received Notice of Allowance for U.S. Patent Application 13/584,480 titled "Statin and Omega-3 Fatty Acids for Reduction of Apolipoprotein-B Levels";
- Received Notice of Allowance for U.S. Patent Application Number 13/584,403 titled "Cholesterol Absorption Inhibitor and Omega-3 Fatty Acids for the Reduction of Cholesterol and for the Prevention or Reduction of Cardiovascular, Cardiac and Vascular Events";



- Announced the creation of a new product line **BeneFishial™** specifically to be sold in the OTC direct to retail or direct to consumer markets. **BeneFishial™** differentiates itself from other OTC products as it is greater than 90% pure and has a unique formulation that is backed by clinical data.
- Announced R&D efforts and resources used to develop reagents for a rapid format point-of-care (POC) diagnostic test that can easily identify patients that are Omega-3 deficient at the physician's office, clinics and pharmacies
- Announced clearance by the French FDA of the clinical evaluation part of the **POMEGA Phase IIa** trial protocol;

### Subsequent to Year End

- Received final approval to conduct the **POMEGA Phase IIa** clinical trial with its **PVT-100** drug candidate. **PVT-100** uses **VASCAZEN®**'s proprietary formulation for the stabilization of vulnerable plaque in patients undergoing carotid endarterectomy, a surgical procedure to remove material accumulated in the arteries to reduce the risk of stroke;
- Issuance of two patents, that were allowed during Q4 2014, U.S. Patent Number **8,951,514** related to the combination of **VASCAZEN®** with key cholesterol lowering agents (statins) and U.S. Patent Number **8,952,000** related to the combination of **VASCAZEN®** with cholesterol absorption inhibitors;
- Received Notice of Allowance for U.S. Patent Application Number 13/584,428 related to a kit for the dietary management of cardiovascular patients that includes **VASCAZEN®** and an Omega-3 fatty acid diagnostic assay;
- Executed a memorandum of understanding with Korea Animal Medical Science Institute (KAMSI) and its newly created affiliate for the exclusive sales and distribution of the **BeneFishial™** family of products in Korea;
- Received Health Canada approval to expand the indication of **OMAZEN®** to include products with claims to maintain and support cardiovascular health and normal triglyceride levels.

### **2014 Financial Review**

For the twelve months ended December 31, 2014 the Company reported a loss of \$5.4 million, or \$0.06 per common share, compared with a loss of \$3.0 million, or \$0.04 per common share for the twelve months ended December 31, 2013. Major items contributing to the loss are increases in selling and marketing expenses of \$1,395,593 versus \$1,097,913 in the previous year, stock based compensation of \$1,037,294 versus \$Nil in the previous year and research and development expenses of \$788,316 versus \$454,443.

Sales for the three and twelve months ended December 31, 2014 are \$107,728 and \$306,596 respectively as compared to \$75,859 and \$303,530 for the three and twelve months ended December 31, 2013. While annual sales increased slightly compared to the previous year, fourth quarter sales achieved an increase of 42% compared to the previous year.

The audited consolidated financial statements, accompanying notes thereto and Management's Discussion and Analysis for the year ended December 31, 2014, will be accessible on SEDAR [www.sedar.com](http://www.sedar.com), CSE [www.cnsx.ca](http://www.cnsx.ca) under the symbol "PVO" and OTCQX [www.otcqx.com](http://www.otcqx.com) under the symbol "PVTTF".

### **About Pivotal Therapeutics Inc.**

Pivotal Therapeutics is a publicly traded (**OTCQX:PVTTF; CSE:PVO**), specialty pharmaceutical company with a focus on cardiovascular disease and overall health. Pivotal Therapeutics' lead product **VASCAZEN®** is a prescription only medical food formulated to meet the dietary Omega-3 deficient needs of patients with

cardiovascular disease through elevating Eicosapentaenoic acid (EPA) and Docosahexaenoic acid (DHA) to levels associated with reduced risk of cardiovascular complications. **OMAZEN**<sup>®</sup> is a pharmaceutical grade Omega-3 providing over 90% pure Omega-3 in each capsule for the maintenance of good health. **OMAZEN**<sup>®</sup> is a patented product available for sale and distribution in Canada for the professional market. **BeneFishial**<sup>™</sup> is the first product in Pivotal's new nutraceutical product line, which has been specifically designed to be sold in the OTC direct to retail or direct to consumer markets.

### **About VASCAZEN**<sup>®</sup>

**VASCAZEN**<sup>®</sup> is currently available in the U.S. as a prescription only medical food specifically formulated for the dietary management of an Omega-3 deficiency in cardiovascular patients. **VASCAZEN**<sup>®</sup> is a >90% pure Omega-3 with a proprietary 6:1 EPA:DHA fatty acid formulation, protected by a series of both U.S. and foreign patents.

**VASCAZEN**<sup>®</sup> has been clinically shown to correct an Omega-3 deficiency within eight weeks of treatment with positive concomitant effects on the lipid profiles, mainly a 48% reduction of triglycerides and an increase of HDL without negative impact on the LDL-C lipid profile.

### **About OMAZEN**<sup>®</sup>

**OMAZEN**<sup>®</sup> is Pivotal's second commercial product to market and is available for sale and distribution for the professional over the counter (OTC) market in Canada. **OMAZEN**<sup>®</sup> contains greater than 90% pure, pharmaceutical grade Omega-3 with a unique ratio of EPA to DHA for the maintenance of good health. **OMAZEN**<sup>®</sup>, like all of Pivotal's products, is backed by clinical data and scientific support providing a superior alternative to what is currently available on the market.

### **About BeneFishial**<sup>™</sup>

**BeneFishial**<sup>™</sup> was created as the cornerstone of our new nutraceutical product line, which will include prenatal, children, heart and animal health orientated products. **BeneFishial**<sup>™</sup> is designed to be sold as a nutraceutical in the OTC direct to retail or direct to consumer markets in both the U.S. and in Canada. **BeneFishial**<sup>™</sup> contains the highest content of Omega-3 fatty acids of any other OTC product on the market. It is specifically formulated to give the highest purity, highest anti-inflammatory properties and the best therapeutic effect for a healthy body and mind. It contains the optimal purity, ratio and dose of Omega-3 and is a simple solution to a number of health risk factors.

### **Disclosure Notice**

*The information contained in this document is as of April 30, 2015. This press release contains forward-looking statements. Such forward-looking statements are subject to a number of risks, assumptions and uncertainties that could cause Pivotal's actual results to differ materially from those projected in such forward-looking statements. These statements can be identified by the use of words such as "will", "anticipate", "estimate", "expect", "project", "forecast", "intend", "plan", "believe", "project", "potential", and similar expressions with any discussion of future operating or financial performance or events. In particular, factors that could cause actual results to differ materially from those in forward looking statements include the following: Pivotal's inability to obtain additional financing on acceptable terms; growth in costs and expenses; inability to compete with others who provide comparable products; risk that the Company's products will not gain widespread market acceptance; risks relating to the Company's ability to maintain its CSE listing. Forward-looking statements speak only as of the date made and are not guarantees of future performance. The Company undertakes no obligation to publicly update or revise any forward-looking statements contained in this document as a result of new information or future events or developments. The CSE has not reviewed and does not accept responsibility for the adequacy or accuracy of this information.*



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**[www.pivotaltherapeutics.us](http://www.pivotaltherapeutics.us)**

## FORM 7

### MONTHLY PROGRESS REPORT – August 2012

**Name of CNSX Issuer:** Pivotal Therapeutics Inc. (the "Issuer").

**Trading Symbol:** PVO

**Number of Outstanding Listed Securities:** 79,453,509 common shares

**Date:** September 8, 2012

This Monthly Progress Report must be posted before the opening of trading on the fifth trading day of each month. This report is not intended to replace the Issuer's obligation to separately report material information forthwith upon the information becoming known to management or to post the forms required by the CNSX Policies. If material information became known and was reported during the preceding month to which this report relates, this report should refer to the material information, the news release date and the posting date on the CNSX.ca website.

This report is intended to keep investors and the market informed of the Issuer's ongoing business and management activities that occurred during the preceding month. Do not discuss goals or future plans unless they have crystallized to the point that they are "material information" as defined in the CNSX Policies. The discussion in this report must be factual, balanced and non-promotional.

#### **General Instructions**

- (a) Prepare this Monthly Progress Report using the format set out below. The sequence of questions must not be altered nor should questions be omitted or left unanswered. The answers to the items must be in narrative form. State when the answer to any item is negative or not applicable to the Issuer. The title to each item must precede the answer.
- (b) The term "Issuer" includes the Issuer and any of its subsidiaries.
- (c) Terms used and not defined in this form are defined or interpreted in Policy 1 – Interpretation and General Provisions.

## Report on Business

- 1. Provide a general overview and discussion of the development of the Issuer's business and operations over the previous month. Where the Issuer was inactive disclose this fact.**

Over the previous month, the Issuer received the 1<sup>st</sup> tranche from the CDN \$5 million private placement it entered into with a US Institutional Fund; Crossover Healthcare Fund LLC, an Affiliate of Summer Street Research Partners. These funds are being used for the further commercialization of its lead product **VASCAZEN™**. It is now available through prescription in a vast majority of pharmacies throughout the US and is receiving partial reimbursement from a growing number of the nations largest private insurers. VASCAZEN™ is a prescription only medical food for the aid in the dietary management of Omega-3 deficient cardiovascular disease patients. Additionally, the Issuer exhibited at two Medical trade shows: The 17<sup>th</sup> World Congress on Heart Disease in Toronto and the European Society of Cardiology Congress 2012 in Munich, Germany. A scientific study presented at both shows demonstrated that VASCAZEN™'s unique formulation was superior to other existing commercial products in increasing blood flow in arteries.

- 2. Provide a general overview and discussion of the activities of management.**

Management has continued to work and deliver on the objectives laid out in the business plan to commercialize VASCAZEN™ and increase shareholder value. Management is happy to report that prescriptions for VASCAZEN™ are being written, filled and partially reimbursed in the US. Management has also entered into a subscription agreement with Crossover Healthcare Fund LLC, an Affiliate of Summer Street Research Partners, and has received the 1<sup>st</sup> tranche of the CDN \$5 million private placement. The proceeds will be used as working capital to build sales of the company's lead product VASCAZEN™.

- 3. Describe and provide details of any new products or services developed or offered. For resource companies, provide details of new drilling, exploration or production programs and acquisitions of any new properties and attach any mineral or oil and gas or other reports required under Ontario securities law.**

This item is not applicable to the Issuer for the month of August 2012.



For the year ended December 31, 2011  
ANNUAL REPORT

**Pivotal Therapeutics Inc.**

Corporate Office

81 Zenway Blvd., Unit 10  
Woodbridge, Ontario, Canada  
L4H 0S5

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E-Mail: [info@pivotaltherapeutics.us](mailto:info@pivotaltherapeutics.us)

Website: [www.pivotaltherapeutics.us](http://www.pivotaltherapeutics.us)

- November 24, 2011 – expansion of the Board of Directors with the appointment of Mr. John Gebhardt. Mr. Gebhardt has worked for over thirty years in the US financial and securities industry and most recently was Managing Director at Knights Capital Markets in New York;
- December 5, 2011 – the Canadian Natural Health Products Directorate (“NHPD”) concluded that OMAZEN™, a second product for the Company, is in compliance, pursuant to Section 7 of the Natural Health Products Regulations, and issued license NPN 80028433 allowing for the sale of such product in Canada;
- February 22, 2012 – the Company files for five international patent filings covering 142 countries;
- February 29, 2012 – the Company’s presentation at the 61<sup>st</sup> Annual Scientific Session and Expo of the American College of Cardiology,
- March 8, 2012 – Standard and Poors Capital IQ’s Market Access Program begins coverage of the Company.

## GOAL

Pivotal is focused on the optimization, clinical refocusing and market development of an established product. By avoiding target discovery, the Company thereby bypasses the long and costly process of concept-to-commercialization clinical trials. VASCAZEN™ and OMAZEN™ are being manufactured by a third party contract manufacturer familiar with the manufacturing of Omega-3 capsules and operating a Food and Drug Administration (“FDA”) regulated, Good Manufacturing Practice (“GMP”) facility, thus mitigating the costs and risks associated with the manufacturing process. The Company intends to have VASCAZEN™ commercialized through the utilization of a contract sales force’s established specialty care sales team, thereby reducing the time to market and the time it will take for Pivotal to realize revenues. VASCAZEN™ is being commercialized in the United States (US) as a prescription only medical food formulated to meet the dietary Omega-3 deficient needs of patients with cardiovascular disease through elevating EPA and DHA to levels associated with reduced risk of cardiovascular complications. OMAZEN™ is being commercialized in Canada for the maintenance of good health through elevating Omega-3 fatty acid levels. The details surrounding the commercialization strategy for OMAZEN™ are still being finalized.

The benefits of Omega-3 are well established and endorsed by the American Heart Association for its use in the prevention of cardiovascular events in patients with coronary heart disease. Pivotal’s medical food strategy is designed to position VASCAZEN™ as the pre-eminent Omega-3 product, and to differentiate it from the many over-the-counter supplements available. The differentiation will be driven by: (i) the lead product’s unique EPA:DHA ratio, (ii) its anti-inflammatory properties, (iii) its high purity, (iv) the implementation of a far-reaching intellectual property strategy, (v) the physicians who will be targeted and (vi) Pivotal’s strategy for monitoring Omega-3 blood levels. Cardiovascular disease has a high inflammatory component. Pivotal’s high purity product enriched with high EPA and a specific level of DHA is capable of managing the underlying metabolic processes of the cardiovascular system to restore the proper metabolic balance of inflammatory metabolites to reduce the inflammatory response at the cell membrane level, and thereby promote normal physiologic function and cardiac protection in patients with coronary heart disease. Pivotal is pursuing reimbursement through negotiations with managed care providers for both its product and monitoring tools.

## STRATEGY

Pivotal's strategic commercialization of its lead product, VASCAZEN™, encompasses the following eight concurrent activities:

1. Secure the Supply of Oil,
2. Contract Encapsulation,
3. Develop and File Intellectual Property,
4. Source and License Diagnostic Testing,
5. Conduct Marketing Clinical Trial,
6. Branding, Packaging and Labeling,
7. Hire Contract Sales Force,
8. Product Launch of VASCAZEN™ and OMAZEN™.

### **Secure the Supply of Oil – Manufacturing Capability**

There are a limited number of organizations that can provide a high purity, pharmaceutical-grade Omega-3 oil. Pivotal has entered into an exclusive arrangement for a source of Omega-3 oil with the required ratio and purity from a reputable internationally based company, with a well-established source of Omega-3 and GMP and pharmaceutical grade manufacturing capabilities. The oil manufacturer has the capacity to meet the production requirements anticipated by Pivotal.

### **Contract Encapsulation**

Pivotal has entered into arrangements with two encapsulators who are currently manufacturing Pivotal's omega-3 products. These encapsulators are experienced with the special requirements and material-handling issues involved in producing a high quality product in a GMP FDA regulated environment. Alternative supply arrangements afford the Company flexibility and excess capacity to meet anticipated future customer demands.

### **Develop and File Intellectual Property**

The Omega-3 patent field is crowded, with at least one dominant player focused on its own specific EPA:DHA ratio (that differs from the Company's ratio). Based on an extensive patent review, however, Pivotal believes that its unique formulation allows for freedom-to-operate. On February 22, 2012 Pivotal filed five international patent applications under the Patent Cooperation Treaty ("PCT"), directed towards its novel lead product VASCAZEN™, and combinations thereof with certain cardiovascular treatment agents. A PCT application has the effect of a national application for a patent in any of 142 designated PCT countries, including the United States of America, and thereby secures patent pending status for VASCAZEN™.

### **Utilization of a Diagnostic Test**

Pivotal has combined a unique diagnostic monitoring strategy with VASCAZEN™ to analyze the fatty acid composition of blood, including EPA and DHA, to determine a patient's risk of developing cardiovascular disease or dying from a cardiovascular related event. This diagnostic test will assist physicians in the identification of the correct population, those individuals deficient in EPA and DHA, and permits monitoring of patient compliance and effectiveness of VASCAZEN™, in addition to providing confirmation that the patient should be taking the product and that the product is effective and working as intended.

### **Conduct Marketing Clinical Trial**

A clinical trial involving cardiovascular patients is currently underway and will be completed in 2012, using VASCAZEN™, and will form the basis of a dossier of information to assist Pivotal's contract sales force. The clinical trial patients will be provided with a fixed daily dosage of VASCAZEN™ for a specified period of time and the data will be analyzed. Throughout the trial, the patient's blood levels of EPA and DHA will be measured. The results of the clinical trial will assist physicians and patients to make informed decisions regarding the benefits of taking VASCAZEN™.

### **Hire Contract Sales Force**

On October 6, 2011, the Company announced that it had engaged Phoenix Health Care LLC (“Phoenix”) as its contract sales force provider. Phoenix is responsible for the recruitment and development of a dedicated contract sales force to assist in the commercialization of Pivotal Therapeutics' lead therapeutic, VASCAZEN™. This is a very important aspect of Pivotal's marketing plan for VASCAZEN™, because it improves time to-market and minimizes additional costs and delays through the utilization of an experienced contract sales team. On January 2, 2012 the contract sales force initiated the commencement of sales activities in the United States. Future plans include that expansion of the sales force in an effort to broaden geographic coverage.

### **Product Launch of VASCAZEN™ and OMAZEN™**

Pivotal officially introduced its Company at the Canadian Cardiovascular Congress Vancouver 2011 Conference and launched VASCAZEN™ at the American Heart Association's Scientific Sessions 2011, in October and November respectively.

On December 5, 2011 the Canadian Natural Health Products Directorate (“NHPD”) concluded that OMAZEN™, a second product for the Company, is in compliance, pursuant to Section 7 of the Natural Health Products Regulations, and issued license NPN 80028433 allowing for the sale of such product in Canada.

### **PRINCIPAL PRODUCTS**

Pivotal's lead product, VASCAZEN™, is a >90% pure, proprietary EPA:DHA fatty acid formulation, protected by a series of both issued and pending US and foreign patents and commercialized as a prescription only medical food. This unique formulation will provide the cornerstone upon which a family of cutting edge combination products, with efficacy across a broad spectrum of cardiac care, will be commercialized. VASCAZEN™ is currently being sold in the US market as a prescription medical food formulated to meet the dietary Omega-3 deficient needs of patients with cardiovascular disease.

Pivotal's second product, OMAZEN™, is a >90% pure, proprietary EPA:DHA fatty acid formulation being commercialized for sale and distribution in Canada for the maintenance of good health through elevating Omega-3 fatty acid levels. The unique formulation and dosage will be available to patients and consumers who realize the health benefits of Omega-3 supplementation with a quality product.

## **Credit Risk**

Credit risk is defined as the risk that one party to a financial instrument will cause a financial loss to the other party by failing to discharge an obligation. Substantially all the Company's cash is held with major financial institutions in Canada and management believes the exposure to credit risk with such institutions is not significant.

## **General and Industry Risks**

The Company's financial success may be dependent upon the extent to which it can develop, market and distribute its first lead product, VASCAZEN<sup>TM</sup>.

## **Competition**

The pharmaceutical/health care industry is intensely competitive in all of its phases, and the Company will compete with many companies possessing greater financial resources and technical facilities than the Company.

## **Additional Funding Requirement**

The Company will require additional capitalization to further manufacture and market its products, and to continue protection of its intellectual property portfolio. While the Company believes its current capital resources and the proceeds from the exercise of its warrants will be sufficient to meet most of its capital requirements, the Company will likely need to raise additional funds to support its long-term product development and commercialization programs. The Company offers no assurance that the required funding will be secured or, if secured, will be on reasonable terms.

## **Capital**

The only source of future funds presently available to the Company is through the sale of equity capital or the assumption of debt. There is no assurance that such sources of financing will be available on acceptable terms, if at all. If the Company seeks additional equity financing, the issuance of additional shares may dilute the interests of their current shareholders. Failure to obtain such additional financings could result in delay or indefinite postponement of the Company's strategic goals.

## **No History of Earnings or Dividends**

To date, the Company has no history of earnings, and there is no assurance that the Company will generate earnings. The Company has not generated any revenues from the sale of products and accordingly has not made an operating profit. The accumulated deficit as at December 31, 2011 was \$3,992,917. It is anticipated that the Company will continue to experience operating losses in the short run until commercial sales have been achieved. There can be no assurance that the Company will ever achieve significant revenues, profitable operations or provide a return on investment in the future. The Company has no plans to pay dividends for the foreseeable future.

## **Potential Profitability Depends Upon Factors Beyond the Control of the Company**

The potential profitability of the Company is dependent upon many factors beyond the Company's control. Profitability also depends on the costs of operations, including costs of labor,

and enforceable if challenged or that any patent will provide the Company with a competitive advantage. In addition, others may have filed patent applications and may have been granted patents or otherwise obtained proprietary rights to technologies potentially useful to the Company. The extent to which the Company may be required to modify its products by reason of the rights asserted by others is also unknown. There is no assurance that the Company's proprietary technology will not be circumvented through adoption of a competitive though non-infringing process or product. The cost of enforcing the Company's patent rights, if any, in lawsuits that the Company may bring against infringers or defending itself against infringement charges by other patent holders may be significant and could limit the Company's operations.

### **Manufacturing Capabilities**

The Company is a development stage Company with no existing manufacturing capabilities and is reliant upon entering into supply and manufacturing agreements with third parties for the manufacture of product. There can be no assurance that the Company will be able to manufacture or negotiate agreements to manufacture any products on a cost effective basis.

### **Limited Supply**

There are a limited number of potential suppliers of highly purified Omega-3 for the Company's products. There can be no assurance that the Company will be able to lock up supply from these organizations for any significant length of time nor is there any assurance that the supplier will be able to supply all the oil required by the Company.

### **Dependence on Single Product Line**

Although the Company anticipates developing other products, its operations are currently restricted to the development of its lead product, VASCAZEN™. In the event the Company is unable to market such products for any reason, it would be materially adversely affected.

### **Sales and Marketing**

The Company has no history of selling, marketing or distributing any products. In order to market any of its products, the Company has pursued a strategic alliance with a third party in the medical sales field who can contribute specific expertise in such areas as marketing, sales and customer support. There can be no assurance that the third party's sales or marketing efforts will be successful. With the Company relying on a third party to market and distribute its products, the commercial success of such products may be outside of the Company's control.