

29-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.*

Staff Report PLAN2017-048

Supplement to my letter dated June 26, 2017

In my earlier correspondence to the Committee I had specifically allowed for the possibility that that my initial comments might need to be supplemented once the staff Report was released. That has indeed turned out to be the case. The two topics on which I would add further comments are those of Official Plan conformity and Servicing.

1. The Subject Application Does Not Conform with the CKL Official Plan

While my previous letter had pointedly addressed itself to the issue of the application's prematurity, it failed to zero-in on the fact that approval of the applicant's request for Large Format Retail uses would conflict with the CKL Official Plan.

To Mr. Holy's credit, his staff Report made specific reference to the applicable policy conflict. Unfortunately, however, he did so only in passing. More to the point: He failed to revisit this issue in the "Planning Comments" section of the Report. I'd therefore provide the needed elaboration herein.

Beginning at the bottom of page 7 Mr. Holy provides a one-paragraph summary of some of the applicable policies in Section 18.7 of the CKLOP – being the section that carries the heading "Large Format Retail Use and Shopping Centres".¹ In doing so, one of the policies he references is the one set out in Section 18.7.2, which reads as follows:

18.7.2. Shopping centres and large format retail use will be directed to areas covered by a Secondary Plan and shall be on full municipal services.

Insofar as Bromont is requesting permissions for Large Format Retail uses, it is of course self-evident that Section 18.7.2 is intrinsically applicable to the subject application.

¹ For your ease of reference, I'm enclosing the applicable extract from the CKLOP

To be clear: Had it been intended to be less categorical and exclusionary, Section 18.7.2 could easily have been formulated to say that a “*large format retail use should be directed to areas covered by a Secondary Plan*” ... or that “*large format retail uses shall be encouraged to locate in areas covered by a Secondary Plan*”. What is clear, of course, is that the CKLOP did not opt for either of those formulations – or anything similar.

Instead, what it specifies is that a “*large format retail use will be directed to areas covered by a Secondary Plan*”.

As for how this applies to the subject application:

The area in which the Bromont property is not located within the area encompassed in the existing Lindsay Secondary Plan (i.e., the Town of Lindsay Official Plan) – nor, of course, in any other secondary plan.

Accordingly it follows that the clear and specific policy set out in Section 18.7.2 of the CKL Official Plan precludes Council from approving Bromont’s request for Large Format Retail uses on the subject property.

To be clear: Bromont, in formulating its application could obviously have opted to incorporate a request to either amend the provisions of Section 18.7.2 or delete that section. Presumably Bromont had reasons for choosing not to do so. Having made that choice, however, it cannot deny that its application is inherently subject to that Section’s provisions.

It would be my expectation that Bromont’s representative will now claim to have relied on the fact that these lands are indeed “covered” in the replacement *Lindsay Secondary Plan* that Council adopted on June 27th. That, however, is a red herring.

To begin with, I can again assure you that that replacement Lindsay Secondary Plan is going to be appealed in its entirety; and until the expiration of the appeal period it has no status. Accordingly the only secondary plan against which Section 18.7.2 can be applied is the existing Lindsay Official Plan – which, of course, does not “cover” the subject lands.

Moreover, even if the proposed new *Lindsay Secondary Plan* were in fact the governing one, that wouldn’t solve Bromont’s problem – insofar as that document incorporates policies that equally preclude approval of Bromont’s requested amendment.

The upshot is that approval of the Bromont application would not comply with the policies of the CKL Official Plan as it currently exists; and it would equally not comply even if the replacement Secondary Plan approved by Council on June 27th were already in effect (which, of course, it is not).

That being the case, it remains my submission that there is no need to have convened a Public Meeting in relation to this application; and there is equally no justification for burdening staff by referring it back to them for further review and processing. Instead, the Committee’s Recommendation ought to be that Council simply turn down the application.

2. The “Servicing Comments” are Misleading

In my earlier letter I’d already raised the issue of the subject property’s lack of entitlement to urban servicing.

I’d now refer to you to page 10 of Report PLAN2017-048 where, under the heading “Servicing Comments”, it is stated that:

“The development is proposed to be serviced by the extension of full municipal water and wastewater services from their current locations at Logie and Lindsay Streets. The servicing for the southeast area has been identified in the City’s Development Charge Study and can be completed either as a City initiated project between now and 2031 planning horizon or as a developer driven project. If developer wishes to proceed with the project in advance of the City’s timeframe, the developer would front end the cost extend the water and sanitary servicing under a cost recovery mechanism in accordance with the City’s Development Charges study.”

I won’t bother reminding you that the subject lands are located well outside the existing Lindsay Urban Servicing Boundary – and, as such, have no entitlement to the full municipal services that are identified in Section 18.7.2 of the CKLOP as being a pre-requisite for the property’s being permitted to house a Large Format Retail use.

Rather I would merely point out that referenced reliance on “*the City’s Development Charge Study*” as the underlying mechanism for providing those services is itself unwarranted at this time.

What the *Engineering and Asset Management Department* has failed to mention, of course, is not only that both the 2014 and 2015 DC By-laws are currently under appeal, but also – and even more to the point -- that the inclusion of the referenced extension of services to the subject property is specifically being challenged in both of those OMB proceedings.

Accordingly, until those appeals are adjudicated it will remain undetermined as to whether “*the servicing for the southeast area*” will actually end up being “*identified in the City’s Development Charge Study*”.

The upshot is that there was no warrant for Engineering’s having confidently asserted that this DC-funded servicing mechanism would be available. At very minimum, in formulating its comments, it was under an obligation to have ensured that Council was aware that there was, at minimum, some intrinsic uncertainty in this regard.

Sincerely yours,

Marty Stollar

Martyn Stollar
Managing Director

18.6.6. The conversion of lands within the Employment Areas to non-employment uses shall only occur through a municipally initiated comprehensive review of this plan. Notwithstanding, the conversion of Employment Areas that are downtown areas or regeneration areas shall be subject to Policy 1.3.2 of the Provincial Policy Statement.

18.7. LARGE FORMAT RETAIL USE AND SHOPPING CENTRES

18.7.1. An amendment to this Plan or a Secondary Plan will be required for the development of a new shopping centre, large format retail use or major extension of either one.

18.7.2. Shopping centres and large format retail use will be directed to areas covered by a Secondary Plan and shall be on full municipal services.

18.7.3. When considering applications to establish a shopping centre or large format retail use in excess of 3,000 square metres of gross floor area, the following shall be submitted and approved by the City:

- Retail Market Analysis Study;
- Traffic Impact Study and the proponents should be responsible for any highway or municipal road improvements identified in the traffic impact studies for such development;
- A Functional Servicing Study;
- Plan showing the buildings, parking, access and landscaped area and surrounding land uses.

18.7.4. The above will also apply to a major enlargement of an existing large format retail use or shopping centre. A major enlargement means an increase of 3,000 square metres or more of gross floor area.

18.7.5. In evaluating applications to permit these uses, the following criteria shall be assessed:

- An evaluation of the Retail Market Study to demonstrate the need for the proposal and the anticipated impact on existing commercial uses within the retail trade area;
- Availability of access to an arterial or collector road or Provincial highway with appropriate capacity to handle traffic generated by the proposed uses;
- Traffic impacts on adjacent land uses;
- Adequacy of proposed accesses and the impact of the proposed use on the operation of the municipal and Provincial road networks, where appropriate and applicable;
- Degree of compatibility and potential impacts of the proposed use on adjacent lands; and
- The adequacy of municipal sanitary sewer, water and stormwater management facilities.

This
Section
Under
Appeal.
See
Appendix
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