J. STOLLAR CONSTRUCTION LIMITED
219 Dunlop Street W., Barrie, Ontario L4N 1B5 *Phone: (705) 728-7204*
Fax: (705) 728-6118

07-December-2019

To: The Mayor & Members of Council

Re: *Application for Draft Approval for a "Proposed Mixed-Use Residential and Commercial Plan of Subdivision for 563 Residential Units" (16T-18501)*

And Re: **Staff Report PLAN2019-072**

And Re: **Planning Advisory Committee Recommendation PAC2019-082** (Council Agenda Items 13.3.2 and 13.3.5)

The letter appended hereto was forwarded to the Planning Advisory Committee in connection with its consideration of the above-referenced Application and Staff Report at its meeting of December 4, 2019. Insofar as that letter was submitted after the deadline for inclusion in the Committee's adopted Agenda, I have elected to include it herewith both for your ease-of-reference and also so as to ensure that it is part of the official record of Council's consideration of this application.

Insofar as the issues raised in that letter speak for themselves, there is no need to revisit them in detail herein. In sum: My company's submission is that, *inter alia*, the proposed granting of immediate draft approval to 563 residential units does not comply with (what is commonly referred to as) "the 100 unit policy" restriction set out in Section 5.2.2 of the Lindsay Official Plan.

In reviewing the Minutes of the PAC's December 4th meeting, I note that at that meeting Planning staff brought forward a revised recommendation to the Committee – namely the draft plan be revised to incorporate (in addition to the commercial component) only an initial phase of 100 residential units, with the remaining anticipated 463 units being assigned to Blocks for Future Development.

As I read Recommendation PAC2019-082, however, it appears that the Committee elected to reject staff's revised recommendation. Accordingly, as I understand it, what is before Council is a Committee Recommendation that draft approval for all 563 residential units now be granted.

It therefore behooves me to remind you that, were Council to adopt this recommendation, such an outcome would be completely unprecedented. For almost three decades the Councils of both the former Town of Lindsay and the City of Kawartha Lakes have – with only one exception that I can recall – consistently applied "the 100-unit policy" restriction to greenfield plans of subdivision at the draft approval stage.

That sole exception, of course, was the Dunster "Woods of Jennings Creek" draft approval that was adopted by Council on June 21, 2011. I am therefore obliged to remind Council that in that particular case my company appealed that draft approval to the OMB – with one of the grounds being the draft plan's failure to conform to "the 100-unit policy". And it further behooves me to

remind you that the outcome of that appeal, as set out in the Board's 2015 *Decision*, was that the number of draft approved residential units was reduced to 96.

My purpose in writing is to urge Council to reject the Committee's Recommendation and instead be guided by the revised staff recommendation that was presented to the Committee on December 4th. I would further point out that there is nothing to be gained by doing otherwise.

It goes without saying, of course, that in the event that Council adopts the Committee's Recommendation my company will inevitably be appealing that draft approval.

Such an outcome would clearly not be in the Applicant's interest. Bear in mind, after all, that one way or the other, the Applicant will be limited to a 100-unit first phase of development; and under both alternatives it would be equally free to proceed with the installation of underground services and the road network for the entire subdivision (just as other developers have done in similar circumstances). Accordingly, proceeding with the proposed 563-unit draft approval would only have the effect of delaying the Applicant's ability to actually proceed with the servicing and registration of that first phase and bringing those first 100 residential housing units to market.

And it is no less clear that such a delay would not serve the interests of the City itself – which is understandably eager to see more development proceed within the Northwest Trunk encatchment area.

To be clear: My company has no objection to either the proposed Official Plan Amendment or the proposed Zoning amendments; its concerns are solely with the residential component of the proposed draft plan itslef. And the revised staff recommendation would resolve those concerns – thereby eliminating the need for an appeal. Moreover, my understanding is that it would equally resolve the grounds for appeal raised by Ibrans.

Accordingly, in the interests of all concerned, I would again urge Council to reject the recommendation PAC2019-082 and instead be guided by the revised staff recommendation that was presented to the Committee on December 4th.

Sincerely yours,

Marty Stollar

Martyn Stollar
Managing Director

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J. STOLLAR CONSTRUCTION LIMITED
219 Dunlop Street W., Barrie, Ontario L4N 1B5 *Phone: (705) 728-7204*
Fax: (705) 728-6118

02-December-2019

To: Planning Advisory Committee

Re: Application for Draft Approval for a "Proposed Mixed-Use Residential and Commercial Plan of Subdivision for 563 Residential Units" (16T-18501)

-- **Staff Report PLAN2019-072**

The above-referenced application, along with the companion applications for amendments to the Town of Lindsay Official Plan and Zoning By-Law, are scheduled to be considered by the Committee at its December 4th meeting. The accompanying staff Report – PLAN2019-072 – is recommending to the Committee that all three applications be forwarded to Council for approval and adoption.

At this stage I have no concerns with either the proposed Official Plan Amendment or the proposed Zoning By-Law Amendment. However, on behalf of my company, I have no choice but to voice my objection to the Residential portions of the Draft Plan's being approved in its currently-proposed form.

The Applicant's overall plan envisions up to 815 residential units' ultimately being developed on the subject lands. The Applicant's current request, and what Report PLAN2019-072 is recommending, is that Draft Approval now be given for 563 of those units (with the remaining 252 units being assigned to Blocks for Future Development).

My submission is that such an approval would be directly contrary to the clear and explicit policies – as they heretofore have been consistently interpreted and applied -- of both the Lindsay Official Plan[1] and those portions of the CKL Official Plan that are already in force and effect. Additionally it is my submission that such an approval would conflict with the policies and requirements of *The Growth Plan for the Golden Horseshoe* and the *Provincial Policy Statement*.

Let's begin with the matter of Official Plan conformity.

At the bottom of page 8, the staff Report acknowledges that Section 5.2.2 of the LOP restricts "*the total number of dwelling units to which planning approvals can be granted at a time to generally not greater than 100 residential units, unless the applicant/owner can justify market support above the 100 unit provision*". The position then taken in the staff Report is that compliance with this restriction is to be achieved by applying a holding symbol (H) to the zonings for all-but-100 of the units that are being proposed for draft approval, along with incorporating a provision in the *Conditions of Draft Approval* that would limit actual development to sequential phases of roughly 100 units each. My submission is that such an approach, rather

[1] i.e., the existing Lindsay Secondary Plan

than actually achieving compliance with the requirements of the LOP, instead functions as a mechanism for circumventing them.

In this regard it is of some importance to take note of the context in which (what has become know as) "the 100-unit policy" presents itself. To begin with, one notes that Section 5.2.2 occurs within Section 5.2, whose heading "Municipal Services". One further notes the underlying policies set out under that heading, including the following:

> *"Both sewage and water systems must be performing within permitted operating standards. Limitations on the capacity or operating performance of these systems are recognized as a constraint to development." (Sec.5.2.1)*
>
> *" … the Town intends to ensure that new development proceeds in a logical, efficient manner and in keeping with market demand and the Town's ability to provide adequate services. Accordingly, the following phasing policies shall apply.*
>
> *The timing of development shall be based on the regulation of the geographic sequence and balance so that:*
>
> *…..*
>
> *d) there are adequate opportunities for both infilling and greenfield development but first priority is to be given to infilling.*
>
> *This will be done by:*
>
> - *only granting planning approvals to those lands, which are likely to develop within three (3) years from the time that the original planning application was approved; and*
> - *limiting the total number of dwelling units to which planning approvals can be granted at a time to generally not greater than 100 residential units, unless the applicant/owner can justify market support above the 100 unit provision." (Sec.5.2.2.).*
>
> *"Development and re-development in the Town shall be dependent upon the availability of servicing capacity in the Town.*
>
> *When unallocated servicing capacity does not exist for a proposed development, Council shall refuse or defer the processing of the planning application until such capacity is available, or until a servicing agreement is in place to ensure that such capacity will be available to service the development within one year of the granting of the preliminary planning approval." (Sec.5.2.3)*

Taken in their totality, it becomes clear that the intent behind the policies of Section 5.2 is to ensure, *inter alia*, that:

- Approvals are not accorded to developments for which there does not exist sufficient servicing capacity (in the case of sewage, both at the plant and in the downstream collection system).
- The allocation/commitment of capacity to any particular development proposal (or set of such proposals) does not result in capacity's no longer being available for other proposed developments that could proceed in a more timely fashion

- In particular, that allocations/commitments of capacity to proposed Greenfield developments do not impair the availability of capacity for infill projects (to which Section 5.2.2 accords "first priority").

Notwithstanding its obvious artificiality, the "100-unit policy" is designed to prevent capacity from inadvertently being committed in a fashion that would undermine the aforesaid goals.

In considering the subject application, accordingly, what is above all essential to note is that -- notwithstanding the application of the (H) to all but 100 of the proposed units, and likewise notwithstanding the proposed Condition of Draft Approval restricting actual development to roughly 100 unit phases -- the approval of the 563-unit Draft Plan would result in an immediate commitment of servicing capacity to all 563 units.[2]

What must equally be noted is that not only would such an approval (and outcome) be unprecedented as applied to the former Town of Lindsay – it would run directly contrary to the manner in which such applications have consistently been handled by both the former Town and the City in the past. By way of example:

- In bringing forward the masterplan for my company's Pearson Farm development in 1988, what had originally been requested was draft approval for a 409 unit plan of subdivision.[3] Because of constraints at the sewage treatment plant, it was decided that only 49 of those units could be draft approved at the outset (Phase I), with subsequent phases becoming eligible for draft approval only after each prior phase was registered.
- More recently, in 2005 my company brought forward a proposal for a 130-unit subdivision (Pearson Farm Phase IV). The position taken by Planning Staff was that no more than roughly 100 of those units could be draft-approved at the outset. Accordingly the resulting draft plan consisted of only 99 units along with two Blocks for Future Development (for which subsequent approvals for the remaining 31 units were applied-for and obtained only after the original 99-unit plan was registered).
- In 2011 my company brought forward a proposal for a 175-unit subdivision (Pearson Farm Phase V). Once again the position taken by Planning Staff was that no more than roughly 100 of those units could be draft-approved at the outset. The outcome, confirmed by an OMB Decision, was that actual draft approval was accorded to only 103 units, with the remainder of the subdivision being consigned to Blocks for Future Development (for which subsequent draft approval would be required after the original 103-unit plan was registered).
- The Mason Homes Cloverlea masterplan was likewise restricted to being draft-approved in phases of roughly 100 units or less.[4] And the same was true of the multi-phase Manorview subdivision.

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[2] This is not merely my interpretation. Planning staff, during a phone conversation, confirmed that this would be their understaning as well.

[3] It is to be noted that this application was submitted prior to the adoption of the "100 unit policy".

[4] It goes without saying that both Mason Homes and my own company are accustomed to obtaining draft approval for subdivisions encompassing many hundreds of units in other municipalities (i.e., ones that are free of the sorts of servicing constraints to which Lindsay has historically been subject … and in which the uptake-rate is many times higher than in CKL).

In sum: While Planning Staff have historically taken an appropriately flexible view of the 100-unit threshold (extending it in one instance to encompass an approval for a 113-unit subdivision), for more than two-and-a-half decades (and through numerous changes in staffing and leadership) the Planning Department has consistently taken the position that the 100-unit restriction applies at the draft approval stage.

It goes without saying, therefore, that to now accord draft approval for 563 units would be completely at variance both with consistent prior practice and the consistent pattern in which Section 5.2.2 has been interpreted and applied by both staff and Council.

In addition, I am obliged to point out that, even in the absence of the "100-unit policy", there is reason to question whether Council could properly regard itself as being in a position to approve a commitment of 563 units of servicing capacity to this subdivision at this time.

To explain:

- For the past six months my company's representative at the Planners' Meetings dealing with the appeals to the CKLOP and Secondary Plans has been asking that Engineering provide an up-to-date report that details the amount of unallocated capacity at the Lindsay sewage treatment plant.
- To date no such report has been provided. Nor has any such report materialized in connection with the subject application. In fact, the last such report of which I am aware was the one prepared for the Northwest Trunk Steering Committee back in 2013.
- Based on that prior report, along with the weather patterns of the past three years and the approvals that have been accorded in the interim, there is ample reason to question:
    a. whether at the present time the requested 563 units may not possibly exceed the available uncommitted capacity at the plant;
    b. whether, even there are in fact more than 563 units available for allocation, the removal of those 563 units would leave an insufficient number of remaining unallocated units of capacity to accommodate other pending applications;
    c. whether the resulting constraints on available allocation could impair the City's ability to achieve the intensification thresholds mandated under The Growth Plan.

In effect, Council is being asked to make a decision on this application without knowing the answers to any of those questions.

Turning to the subject of Growth Plan compliance: I would point out that the subject application is for a Greenfield development … and that there are currently pending applications for developments within the Lindsay Built-boundary that are already in the pipeline (including one for which the Public Meeting is only now being convened). Moreover, there are a number of Built-boundary parcels that are tributary to the Colborne St. Sanitary Pumping Station that have been waiting – literally for decades – for pumping station capacity to become available in order to proceed to development. (This includes my company's own 3.5-acre riverfront parcel that was approved by the OMB for a 110-unit high-rise development in the early '90s that has been waiting ever since for the capacity deficiencies at the Colborne St. SPS to be addressed – which has only now finally occurred.)

It would accordingly be my submission that in order to achieve compliance with the Growth Plan the City is, at minimum, obligated to ensure that the allocation of 563 units of capacity to this development would not prevent those within-the-Build-boundary projects from receiving their own allocations.

In sum, my requests to the Committee are as follows:

> Firstly, that the proposed Draft Plan be recommended to Council for approval subject to its being amended to incorporate only roughly 100 residential units – with the remainder of the proposed residential component being shown as Blocks for Future Development.
>
> Secondly, that Engineering be directed to bring forward in January a detailed report documenting the number of units that are currently available for allocation at the Lindsay sewage treatment plant.[5]

The Committee's consideration of the foregoing request would be greatly appreciated.

Sincerely yours,

Marty Stollar

Martyn Stollar
Managing Director

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[5] I should perhaps mention that in the other municipalities in which my company develops land, such reports are submitted to Council at least once a year … and in many cases accompany an updated capacity report accomanues each application that is up for consideration.