



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 12-021

TO: Mayor and Members of Council

FROM: Gerard Hunt, Chief Administrative Officer

RESOURCE STAFF: Hal Linscott, City Solicitor, Director of Legal Services
George Wallace, Senior Special Projects Manager,
Sustainability and Growth Group

DATE OF MEETING: December 6, 2011

SUBJECT: Agreement with Springer Group of Companies
1085 Gardiners Road

EXECUTIVE SUMMARY:

The City received a request from the Springer Group of Companies that it be released from its Agreement with the City not to apply for commercial designations, policies and/or zoning permissions for its lands located at 1085 Gardiners Road for a five year period ending August 3, 2014. The Springer Group request was set out in their letter to the Mayor dated May 31, 2011. According to the letter, a major US retailer whose identity was not disclosed, not currently in the Kingston market, has approached the land owner to build a new store on the 1085 Gardiners Road lands. In exchange for permission to file applications for the 1085 Gardiners Road lands, the owner proposes transferring the restriction on seeking commercial permissions to another 10.51 acre parcel of their land located at the northeast corner of Midland Avenue and Cataraqui Woods Drive.

The Agreement not to apply for commercial designations, policies and/or zoning permissions on the lands located at 1085 Gardiners Road was part of a negotiated settlement between the City, various Springer companies and Lowe's Companies Canada, ULC arising from an appeal to the Ontario Municipal Board (OMB) of Council's refusal to approve amendments to the City's Official Plan and Zoning By-Law to allow construction of a new Lowe's large-format home improvement retail warehouse facility. Initially the new Lowe's store was proposed on the northerly portion of the Springer lands (1085 Gardiners Road). However, the negotiated settlement resulted in the Lowe's store being constructed on the southerly portion of the Springer lands (1035 Gardiners Road).

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The Agreement conditions to limit the parties from making applications for commercial designations, policies and/or zoning permissions or supporting similar applications by others were considered to be key components of the Settlement Agreement because, at that time, the City was still in the process of completing its new Official Plan. The approved Official Plan now contains new policies (See Section 3.6.5 in the Existing Policy/By-Law section of this report) that establish criteria to be considered by Council in assessing all requests to re-designate employment lands for other uses.

Council has discussed the request from the Springer Group of Companies in “Closed Meetings” in order to obtain legal advice that is subject to Solicitor-Client privilege respecting the agreement and the request for a partial release from the agreement, including communications necessary for that purpose.

It is being recommended that Council approve the request to release the property owner from the Settlement Agreement conditions regarding applications for commercial designations, policies and/or zoning permissions respecting the 1085 Gardiners Road lands only, subject to:

- the same restrictions being applied to another 10.51 acre parcel of land owned by the Springer Group of Companies located at the northeast corner of Midland Avenue and Cataraqui Woods Drive;
- successful negotiations for the City to purchase the Springer lands located at 1316 Princess Street for the purposes of advancing the City’s affordable housing strategies; and,
- any development proposal for the lands at 1085 Gardiners Road being subject to the City’s normal planning process.

Council’s consent to release the Agreement with respect to the 1085 Gardiners Road lands only allows the owner to file the necessary applications and does not in any way bind Council to approve a development proposal for the subject lands. The owner must still go through the normal planning process, including filing the appropriate applications, public consultation, submitting all required supporting studies/reports and meeting the Official Plan criteria for re-designating employment lands to demonstrate that the proposal is appropriate and represents good land use planning.

RECOMMENDATION:

THAT Council approve the May 31, 2011 request from the Springer Group of Companies to release its lands located at 1085 Gardiners Road, located in Part of Lot 10, Concession 3 and more particularly described as Parts 1 and 4 of Plan 13R-19822, from the provisions of the October 14, 2009 Agreement not to apply for commercial designations, policies and/or zoning permissions for a five year period commencing on August 4, 2009, subject to:

1. Entering into a new Agreement to apply all of the applicable restrictions for no applications for commercial designations, policies or zoning permissions to a 10.51 acre

parcel of Springer owned lands located at the northeast corner of Midland Avenue and Catarauqui Woods Drive for the remaining term of the original Agreement (i.e. until August 3, 2014); and,

2. Successful negotiations for the City to purchase the Springer property located at 1316 Princess Street for the purposes of housing as part of the City’s affordable housing strategy; and,
3. Any development proposals for the lands located at 1085 Gardiners Road being subject to the normal planning processes for Official Plan and Zoning By-Law amendments, Site Plan Control and any other related municipal approvals and the submission of all required supporting reports/studies.

AUTHORIZING SIGNATURES:

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER
 Gerard Hunt, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Cynthia Beach, Sustainability & Growth	N/R
Lanie Hurdle, Community Services	N/R
Denis Leger, Transportation, Properties & Emergency Services	N/R
Jim Keech, President & CEO, <i>Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

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OPTIONS/DISCUSSION:**Purpose**

The purpose of this report is to provide a response to a request from the Springer Group of Companies that Council release it from certain provisions contained within a Settlement Agreement with the City respecting lands located at 1085 Gardiners Road. This report sets out a recommendation with respect to the request together with conditions deemed appropriate should the request to release the agreement be approved by Council.

The Springer Group of Companies Request

The City received a request from the Springer Group of Companies that it be released from its Agreement with the City not to apply for commercial designations, policies and/or zoning permissions for its lands located at 1085 Gardiners Road for a five year period ending August 3, 2014. The Springer Group request was set out in their letter addressed to the Mayor dated May 31, 2011. According to the letter, a major US retailer whose identity was not disclosed, not currently in the Kingston market, has approached the land owner to build a new store on the 1085 Gardiners Road lands, which site is viewed as their absolute choice because of neighbouring uses (Lowe's and Wal-Mart). According to the letter, the Springer Group of Companies view this as an opportunity to bring new jobs, increased tax revenues, new funds from development charges and impost fees and a multi-million dollar construction project to the City. In exchange for permission to file applications for the 1085 Gardiners Road land, the owner proposes applying the restriction on seeking commercial permissions to another 10.51 acre parcel of their land located at the northeast corner of Midland Avenue and Cataraqui Woods Drive.

Subject Lands

The subject lands are located on the west side of Gardiners Road, immediately north of the existing Lowe's store, and comprise an area of 10.51 acres. These lands are currently vacant and are designated Business Park Industrial on Schedule 3-A (Land Use) to the Official Plan and are zoned 'M1' General Industrial in Zoning By-Law No. 76-26 of the former Township of Kingston.

Background

The Springer Group of Companies authorized Lowe's Companies Canada, ULC to submit applications for amendments to the City's Official Plan and Zoning By-Law and Site Plan Control for the lands located at 1035 -1085 Gardiners Road. The purpose of the applications was to allow for the construction of a new Lowe's large-format home improvement retail warehouse facility. Initially, the new Lowe's store was proposed on the northerly portion of the property (1085 Gardiners Road). Council refused the applications for Official Plan and Zoning By-Law amendments and the owners appealed Council's decision to the Ontario Municipal Board. As part of a negotiated settlement of the appeal, the City agreed to permit the Lowe's store to locate on the southerly portion of the property (1035 Gardiners Road), immediately north of Canadian Tire.

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A key element of the negotiated settlement was an Agreement by the parties that, for a period of five years from the date of the settlement, they would not apply for commercial designations, policies and/or zoning permissions on the lands located at 1085 Gardiners Road. Additionally, the Owners agreed to accept an Official Plan designation for the 1085 Gardiners Road lands for Business Park Industrial, which designation did not permit retail uses (except ancillary retail uses contemplated by the Official Plan). This Agreement ensured that the lands would continue to be available for employment land uses for the five year period. Also, at that time, the City was still in the process of preparing its new Official Plan.

Minutes of Settlement were entered into between the City, Lowe's and the Springer Group of Companies. The Minutes provided in Section 4.2 that the Agreement parties, for a period of five years from August 4, 2009:

- Would not apply for commercial designations, policies and/or zoning permissions on the balance of the Gardiners Road lands (i.e. 1085 Gardiners Road);
- Would not support any other land owners who made such applications; and
- Would register the Agreement on title to the Gardiners Road lands to bind future owners of the lands.

The Springer Group of Companies also entered into a Restrictive Covenant that was registered on title to the 1085 Gardiners Road lands that imposed the same conditions on the owners of the lands as were contained in the Minutes of Settlement. The Restrictive Covenant binds any future owners of the lands to comply with the original Agreement conditions.

Discussion

The Springer Group of Companies has requested that the City consider a partial release from the Settlement Agreement to allow applications to be submitted for planning approvals in order to further an opportunity that has been presented to the owners for development of their lands located at 1085 Gardiners Road. According to the letter dated May 31, 2011, a major retailer, not currently located in Kingston, proposes to build a new store on the 10.51 acre parcel of land.

Under the terms of the Settlement Agreement, the owners cannot file applications for commercial designations, policies and/or zoning permissions until after August 3, 2014. In exchange for removing the restrictions on the lands at 1085 Gardiners Road, the owners have suggested that those restrictions be applied to a 10.51 acre parcel of the owner's lands located at the northeast corner of Midland Avenue and Cataraqui Woods Drive. The City is under no obligation to provide a partial release from the terms of the Settlement Agreement. However, should the City decide to approve the request by the Springer Group of Companies, such approval could be subject to conditions as deemed appropriate by Council and as negotiated with the land owner.

Council has discussed the request from the Springer Group of Companies in "Closed Meetings" in order to obtain legal advice that is subject to Solicitor-Client privilege respecting the agreement and the request for a partial release from the agreement, including communications

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necessary for that purpose. It is being recommended that the request to partially release the Settlement Agreement be approved, subject to conditions.

Approving the partial release to the Agreement simply permits the Springer Group of Companies to further a potential development opportunity. The partial release would allow the owners to submit the necessary applications for Official Plan and Zoning By-Law amendments but in no way should be construed as a decision to allow the applications. The owner must still go through the normal planning process, including filing the appropriate applications, public consultation, submitting all required supporting studies/reports and meeting the Official Plan criteria for re-designating employment lands in order to attempt to convince Council that the proposal is appropriate and represents good land use planning. As part of the planning process, the applicant will be required to conduct a "comprehensive review" which will look at a number of things including the supply of employment lands, the characteristics and impacts of the proposed use, the demand for the proposed use, current land availability for the proposed use, etc. Following consideration of the merits of the applications, Council may or may not agree to amend the Official Plan and Zoning By-Law.

In addition to transferring the restrictions on filing applications for commercial designations, policies and/or zoning permissions to other lands owned by the Springer Group of Companies, the partial release of the Agreement is also to be subject to successful negotiations for the City to purchase other lands owned by the Springer Group of Companies located at 1316 Princess Street at "fair" market value. This vacant parcel of land is intended to be acquired for housing purposes as part of the City's affordable housing strategy.

On June 7th Council adopted its strategic priorities by resolution. Included in those priorities are such things as: "Enable economic development" and "Facilitate affordable housing". Under "Enable economic development", the priorities include stimulating job creation, encouraging investment in housing supply and commercial and industrial development, and building an "open for business" culture. Under "Facilitate affordable housing", the priorities include pursuing incentives for strategic affordable housing initiatives, including land banks, and develop land banks for municipal contributions for the development of affordable housing. Therefore, the proposal before Council could help achieve a number of Council's priorities.

EXISTING POLICY/BY LAW:

Agreement Dated October 14, 2009 Between Lowe's Companies Canada, ULC, Shalbron Corp., 317544 Ontario Limited, Kingston Terminal Properties Limited and the Corporation of the City of Kingston

"4.2 Subject to sections 4.3, 4.4, and 4.5, Lowe's, the Gardiners Land Owners and the Midland Land Owner agree, for five (5) years commencing on August 4, 2009:

- (a) not to apply for commercial designations, policies and/or zoning permissions relative to the Gardiners Land or the Midland Lands;

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(b) not to support others, directly or indirectly, in seeking municipal approvals for commercial designations, policies and/or zoning permissions relative to the Gardiners Lands, the Midland Land or any of the Parcel "D" Lands;"

Subsection 4.2 (c) provided that the Agreement be registered on title, binding the existing or future owners to abide by the conditions in (a) and (b). Also, at the expiration of the 5 years, the Agreement will lapse and can be deleted from the title to the Gardiners Lands and Midland Land. Sections 4.3 and 4.4 include provisions that the Agreement would not prevent the parties from appealing the new Official Plan to secure certain permissions or designations for their respective holdings. Section 4.5, provided that the Agreement would not prevent the parties from applying for minor variances or seeking zoning permissions for retail or ancillary retail uses contemplated as permitted uses under the Official Plan.

Kingston's Strategic Plan, 2011-2014

Enabling Economic Development – "Kingston is open for business and is committed to expanding the tax base through intensification for greater economic resiliency. During its term, Council will:

- 2.2 Review and update policies and practices to emphasize economic development
- 2.3 Stimulate job creation
- 2.4 Encourage investment in housing supply and commercial and industrial development
- 2.13 Build an "open for business" culture and enhance service by streamlining the development process".

Corporate Commitment to Council Priority

"The corporation will set conditions for growth in residential, commercial and industrial development. Working with KEDCO and others to promote and attract business investment and opportunities for job growth, innovation, research and tourism. With an open for business philosophy, we will respect legislative requirements, bylaws and standards. We will create flexibility in our practices, where possible, to optimize service to the customer to expand our tax base and achieve economic results."

Facilitating Affordable Housing – "Kingston will be a community of mixed-use, mixed income neighbourhoods with a goal of increasing the supply of affordable housing and increasing housing vacancy rates. During its term Council will:

- 4.1 Facilitate the creation of affordable, sustainable and social housing
- 4.2 Pursue incentives for strategic affordable housing initiatives including land banks
- 4.3 Change policies and bylaws to enable an increase in the supply of affordable housing
- 4.4 Develop land banks for municipal contributions for the development of affordable housing".

Corporate Commitment to Council Priority

"The corporation will encourage investment in affordable housing, maintain existing social housing and help ensure a sufficient level of housing in relation to community needs. The corporation will work with community partners to provide incentives for the development of affordable housing to increase vacancy rates in Kingston. Grants and Brownfields redevelopment are important to support these types of projects. Expanded housing will have a

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positive impact on social housing waiting lists, student housing and quality of life in neighbourhoods.”

Corporate focus areas include completing the municipal housing strategy and implementing its recommendations, preparing an inventory of City-owned land suitable for affordable housing, and investing in programs and solutions to increase the supply of housing.

Municipal Housing Strategy

The City recently endorsed the Municipal Housing Strategy for the City of Kingston and County of Frontenac. One of the key findings in terms of the housing supply analysis was that the rental housing stock in Kingston and Frontenac County is decreasing. In Kingston, the number of rental dwellings decreased from 19,545 (44.0%) in 1996 to 18,475 (37.8%) in 2006. The Municipal Housing Strategy established an annual average housing production target for the next ten years of 680 new residential units per year. Of those 680 units, 204 per year were to be rental units and 170 per year were to be affordable.

Official Plan

Section 3.6.5 sets out the following criteria to be used when assessing proposals to redesignate employment lands:

“Proposals for the redesignation of lands for uses other than those permitted in *areas of employment*, or to add a range of uses to an *area of employment* that are primarily permitted in another land use designation, will not be approved unless it has been demonstrated to the satisfaction of Council that the land is not required for *employment area* uses over the long term, and that there is a need for the redesignation. The following criteria will be considered as part of the assessment of whether the proposed redesignation is appropriate:

- a. the proposal will only be considered in conjunction with a *comprehensive review* that addresses the following matters to the satisfaction of Council:
 - the proposal will not detrimentally affect the short and long term *employment area* land supply of the City, the supply of serviced land, or jeopardize the City’s capacity to meet its long term requirements for *areas of employment*;
 - the intensity, characteristics and impacts associated with the proposed use will not detrimentally impact the viability, desirability, or the proper servicing of existing and future surrounding land uses;
 - the site’s physical and natural characteristics, *development* constraints, and location will justify the consideration of non-employment uses on the subject lands; and
 - redesignation of *areas of employment* abutting major transportation corridors, including railways, highways and major arterial roads is discouraged; and,
- b. in addition to subsection a. above, the proposed redesignation must meet the following conditions:
 - the amount of land affected is minor in area based on the projected

- *employment area* land requirements within the planning horizon of this Plan;
- the *development* of the subject lands is demonstrated to the satisfaction of Council not to be feasible for *employment area* uses within the planning horizon of this Plan;
- there are no alternative sites, designated and approved for the proposed use elsewhere in the City;
- the proposal will have a beneficial impact on the surrounding uses and broader community; and,
- the *development* of the subject lands for non-employment uses will meet a public need identified by Council resolution.

NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

N/A

FINANCIAL CONSIDERATIONS:

N/A

CONTACTS:

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George Wallace, Senior Special Projects Manager, Sustainability & Growth Group (613-546-4291, ext. 1864).

OTHER CITY OF KINGSTON STAFF CONSULTED:

n/a

EXHIBITS ATTACHED:

None