



**City of Kingston
Information Report to Council
Report Number 17-258**

To: Mayor and Members of Council
From: Lanie Hurdle, Commissioner, Community Services
Resource Staff: Paige Agnew, Director, Planning, Building & Licensing Services
Date of Meeting: September 19, 2017
Subject: Official Plan Update – Appeals to Ontario Municipal Board

Executive Summary:

On March 7, 2017, Council adopted Official Plan Amendment Number 50 (OPA 50), being the comprehensive, five-year update to the 2010 City of Kingston Official Plan. On August 8, 2017, the Ministry of Municipal Affairs and the Ministry of Housing posted notice of their decision to approve OPA 50, with modifications. The 20 day appeal period associated with the Ministry's decision ended on August 28, 2017.

The Ministry of Municipal Affairs and the Ministry of Housing have received five (5) appeals regarding OPA 50. Pursuant to Section 17(38) of the *Planning Act*, amendments to the Plan, which are not the subject of an appeal to the Ontario Municipal Board (OMB), came into effect on August 29, 2017, being the day after the last day for filing a notice of appeal. Amendments that have been appealed will be decided upon by the OMB, unless the appeals are withdrawn.

The purpose of this report is to provide Council with an overview of the appeals.

Recommendation:

This report is for information purposes only.

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Options/Discussion:**Ministry Decision**

On March 7, 2017, Council adopted Official Plan Amendment Number 50 (OPA 50), being the comprehensive, five-year update to the 2010 City of Kingston Official Plan (OP). On August 8, 2017, the Ministry of Municipal Affairs and the Ministry of Housing (the Ministry) posted notice of their decision to approve OPA 50, with modifications. The 20 day appeal period associated with the Ministry's decision ended on August 28, 2017.

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Kingston Waterfront Development Inc. (KWDI)

Lands subject to appeal: 1102, 1106 & 1110 King Street West (Elevator Bay)

The lands subject to this appeal were designated Residential and Environmental Protection Area (EPA) in the 2010 OP; no changes to the designation of these lands were proposed through the City's comprehensive update to its OP. It is noted that these lands are zoned a site-specific Multiple Family Zone 'B3.216' in Zoning By-Law Number 8499. The site-specific zone permits a maximum of three buildings containing up to a maximum of 343 dwelling units, in addition to the existing townhouse units on the property.

Amendments to the OP, now subject to this appeal, permit the land uses of another land use designation applicable to the property (being Residential in this case) to the area on the property designated Environmental Protection Area (EPA), but only where the EPA designation is solely tied to a "riparian corridor" (Policy 3.10.2.1); this policy would have City-wide application.

The appeal by KWDI seeks to establish broad and unencumbered residential land use permissions within the entirety of the subject property, being the location of the former Kingston Grain Elevator. The appellants have proposed new policy language that would appear to support relief from "any other policy or Schedule" of the OP that could limit residential use permissions within an EPA designation, again being limited to where such a designation is solely tied to a "riparian corridor" shown on Schedule 7-A. The proposed alternative policy language appears to exempt the appellants from having to demonstrate conformity to the natural hazard policies of Section 5 and the "ribbon of life" policies of Section 3.9 of the OP when subjected to a *Planning Act* process.

Collins Bay Marina (CBM)

Lands subject to appeal: 1270 Coverdale Drive

The appeal by CBM cites concerns regarding policy amendments that reportedly have the potential to limit the land use permissions available to the property and asks that additional use

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permissions be established by the OMB. Specifically, the appeal requests that the list of permitted uses within the Marina Area designation (Section 3.9.B) be expanded to include “existing tourist, hospitality, recreational and campground uses”. The appeal also proposes that the Environmental Protection Area (EPA) designation should not apply to the property and that subjecting the marina to the “ribbon of life” policies (Section 3.9.2) is both “inappropriate and discriminatory”.

For clarity, it should be noted that the designation of the property was changed through the comprehensive OP update from EPA and Open Space to Marina Area. This land use designation change was justified as a way to recognize the existing operation of marinas throughout the City. Changes to the “ribbon of life” policies followed a concerted effort by staff to engage the public on what is considered to be an especially important section of the OP. The “ribbon of life” (ROL) policies were amended to clarify the intent of protecting a 30 metre naturalized buffer along the water’s edge, being to: enhance water quality, minimize soil erosion, provide for plant and animal habitat, establish connectivity and wildlife corridors and contribute to the health of shoreline ecosystems, particularly fish habitat. Policy amendments in Section 3.9.5, clarify that the ROL policies do not apply to uses that, by necessity, need to be located in close proximity to the water; “marinas” are explicitly listed as a use that is exempted from the ROL policies.

The appeal by CBM also pertains to issues regarding the operation of the Norman Rogers Airport and claims that the City is in a conflict of interest as the owner/operator of both the airport and several marinas which compete with CBM. Amendments to Section 3.7 (Airport) have accordingly been appealed in their entirety. Generally, the submission by CBM raises concerns about the method used by the City’s consultant in preparing Noise Exposure Forecast (NEF) contours, which are illustrated in Schedule 11-A to the OP.

Tamarack (Rideau) Corporation (Tamarack)

Address subject to appeal: 1232 Kingston Road 15 and the quarry to the south

The appeal by Tamarack pertains specifically to Section 10B.2.6 of the OP, which applies to the Rideau Community Secondary Plan. The amended section reads as follows:

“Collector Road

- 10B.2.6.** It is the intent of this Plan that, subject to the submission of an *environmental impact assessment* which supports such an undertaking, residential *development* located between the Great Cataraqui River/**Rideau Canal** and **Kingston Road** ~~Highway~~ 15, north of Gore Road, is to provide a single-loaded residential street along the Environmental Protection Area. **This road is intended to support opportunities for universal public access to, and views of, the waterfront.”**

The text with strikethroughs above is to be deleted while the text in **bold** has been added to the policy. The focus of the appeal is on the new text added at the end of the policy. The purpose of this addition was to clarify the intent of establishing a single-loaded residential street within the secondary planned community. The appellants provide that the policy is a remnant of the former

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Pittsburgh Township OP that the City has never substantially updated. Further, the appellants question whether the originally-envisioned road is practical, given the location of Environmental Protection Area lands, physical constraints associated with the former quarry lands and existing (approved) residential development. The appellants provide that there may be other means by which to achieve the desired intent.

It should be noted that Tamarack inquired whether Alternative Dispute Resolution (ADR) could be used as a means of resolving identified concerns. If ADR were to be used, all other appeals would have been put on hold pending the results of such. Recognizing the fact that several appeals pertain to substantive sections of the OP, which are not likely to be resolved through ADR, it was decided that delaying the scheduling of a hearing for the purposes of dispute resolution would be counterproductive, particularly recognizing that appealed policy sections are ultimately frozen pending the decision of the Board.

JSM Corporation (Ontario) Ltd. (JSM)**Address subject to appeal:** 725-801 Sir John A. Macdonald Boulevard & 993 Princess Street

The appeal by JSM recognizes the efforts of the City to accommodate, through policy amendments, the gradual transition of this former industrial property to one that will ultimately support the planned vision contemplated by the OP's Business Park Industrial designation. The submission by JSM; however, does not cite specific policy sections subject to their appeal. Staff will reach out to the appellants to better-understand the nature of their appeal so as to better understand the issues that may be presented to the Board.

Homestead Land Holdings Limited (Homestead)**Address subject to appeal:** City-wide

The appeal by Homestead provides that certain amendments have led to a policy framework that is, in some instances, too restrictive and overly prescriptive while in other instances unclear and potentially misleading. The appeal acknowledges policy sections that are thought to be too subjective and therefore difficult to implement. Sections subject to the Homestead appeal have broad application and include the following:

- Section 2.2.5 Housing Districts;
- Section 2.2.7 Centres and Corridors;
- Section 2.4.4 Minimum Residential Density;
- Section 2.6.3 Stable Areas;
- Section 2.6.5 Avoid Destabilization;
- Section 3.3.8 Intensification;
- Section 3.3.C High Density Residential; and
- Definitions: "Walking Distance".

Amendments to the aforementioned sections were intended to support the strategic growth objectives of the City by lessening policy ambiguity and clarifying policy intent. Through the amendments, Housing Districts were explicitly identified as areas planned to remain stable while Centres and Corridors were identified as the areas within which intensification would be

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focused. A series of policy tests were established in Section 2.6.3 (Stable Areas) to support specific types of intensification (i.e. compatible infill, second residential units, conversions, etc.). Section 2.6.5 (Avoid Destabilization) was amended to require that potentially destabilizing development be subject to an OP amendment and the demonstration of how specific land use matters could be addressed by a proposal.

Some of the policies appealed by Homestead were positively highlighted in the staff report related to Council's consideration of an Interim Control By-Law, [Report Number 17-139](#), at the May 2, 2017 Council meeting, for their ability to add greater rigour to the review of future development applications. Until such time as the OMB renders a decision on the Homestead appeals, amendments made to the policy sections noted above are not available for use in the review of new *Planning Act* applications (i.e. Plans of Subdivision, zoning by-law amendments, minor variances, etc.).

Next Steps

Staff will be working with the Ontario Municipal Board (OMB) case officer to schedule a pre-hearing so as to identify the issues to be considered by the Board. Furthermore, the pre-hearing will allow for the identification of those wishing "participant" or "party" status. It is anticipated that up to two weeks will be required to address the appeals filed against OPA 50. In advance of the hearing, staff is prepared to work with appellants to identify opportunities to narrow the scope of issues to be considered by the Board.

Existing Policy/By-Law:**Provincial***Planning Act***Municipal**

City of Kingston Official Plan

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

Not applicable

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Other City of Kingston Staff Consulted:

Mary Rae, Senior Legal Counsel, Legal Services

Exhibits Attached:

Not applicable