

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. 14-00-0018
Your File/V/Réf.

DATE 25 July 2000

TO/DEST. Co-ordinator, Planning & Environment Committee

FROM/EXP. Planning and Development Approvals Commissioner

SUBJECT/OBJET **LOCAL OFFICIAL PLAN AMENDMENT 8**
CITY OF NEPEAN (BARRHAVEN TOWN-CENTRE)

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend that Council approve Local Official Plan Amendment 8 to the City of Nepean Official Plan and that the Clerk issue the notice of decision attached as Annex 1.

BACKGROUND

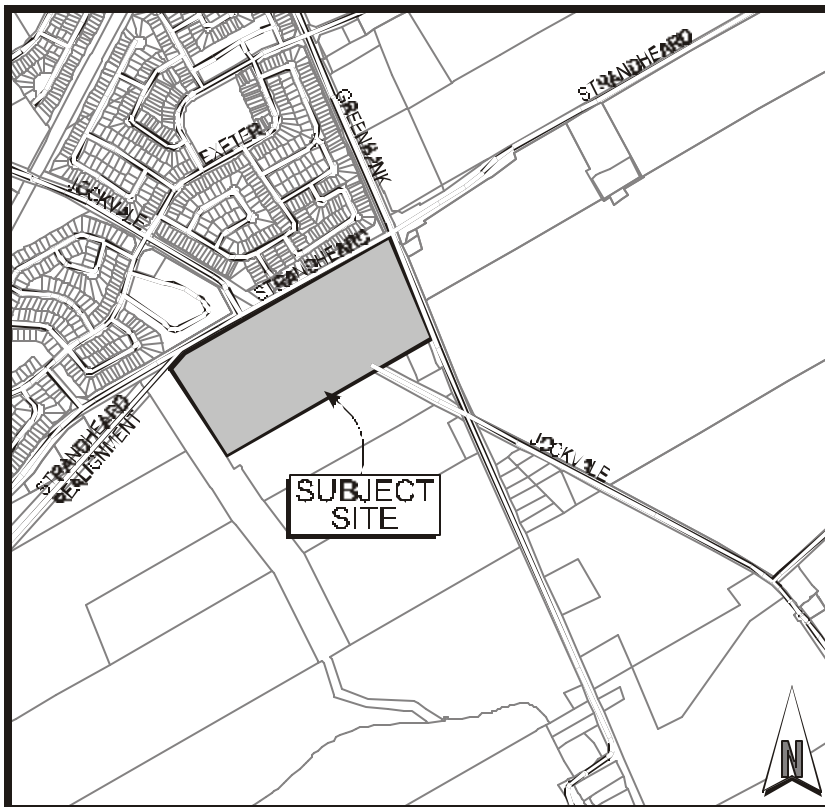
The City of Nepean adopted local Official Plan Amendment (LOPA) 8 on 04 May 2000 and subsequently submitted same to the Region for approval under Section 17 of the Planning Act, 1990 (i.e., the Bill 20 version) on 17 May 2000. LOPA 8, including relevant attachments, is attached as Annex 2. Nepean also approved a zoning by-law amendment for the subject lands which has been appealed to the Ontario Municipal Board by Alan Cohen (solicitor), on behalf of South Nepean Development Corporation (SNDC) - a land owner with land holdings in immediate proximity to the subject property and by Jeffrey Goldenberg (solicitor) on behalf of Trinity Development Group Inc. - a company interested in retail development on SNDC's property. Mr. Cohen, has also put the Region on notice that he intends to object to the passage of LOPA 8 by the Region.

Because of these objections, this application is deemed disputed and therefore is brought forward for the consideration of Planning and Environment Committee.

THE AMENDMENT

Location

Nepean's LOPA 8 applies to approximately 14 hectares of land located on the southwest corner of Strandherd Drive and Greenbank Road. (see location plan below). The subject lands are south of Barrhaven (an established residential community) and are located in lands designated "Town Centre" in the Region's Official Plan and as "South Nepean Activity Centre" in the Nepean Official Plan. The eastern portion of the site is currently developed with approximately 10,000 m² of retail space. It is designated to permit up to 21,900m² of retail based development.



Purpose

The purpose of LOPA 8 is to amend the restrictions on the maximum size of retail based development imposed by LOPA 7, an earlier amendment to the Nepean Official Plan. The current cap on retail development is 21,900 m² whereas the applicant is seeking to expand to 35,000m².

Basis

The subject property is located within the lands designated South Nepean Activity Centre. The Activity Centre is contemplated, in the long-term, to serve as a traditional downtown for South Nepean.

Policies associated with the Activity Centre designation encourage mixed use development and include urban design guidelines intended to promote a more compact, urban form of development.

The current restriction of 21,900m² of retail development was imposed as a result of a design study conducted in 1994. Nepean staff now believe that the overall level of interest in retail space was underestimated and that current market analysis provides that additional retail space is warranted. Nepean concludes that the existing lack of retail facilities coupled with stronger than predicted employment growth have led to an accelerated demand for additional retail opportunities in South Nepean.

The applicant was required to submit a detailed market analysis to justify the additional retail space being proposed on the subject lands. The City contracted an independent marketing consultant to review the market analysis submitted by the applicant. This peer review supported the applicant's position - Nepean concluded that the proposed increase in retail permissions "would not undermine the planned commercial structure of South Nepean."

The applicant was also required to submit a transportation analysis in support of the proposed amendment. No problems were identified with respect to the transportation analysis, although a more detailed submission would be required in support of a final site plan.

EXTERNAL AGENCY AND PUBLIC COMMENTS

Nepean circulated LOPA 8 to the standard agencies and utilities. No objections were received from any of the circulated agencies. No letters or comments from local ratepayers were received. Copies of letters submitted by the applicant and appellant are included in Annex 3.

Regional staff attempted to broker a meeting between the applicant and the appellant to resolve issues and propose appropriate modifications. It was however the position of the parties that it was unlikely that such a meeting would assist in resolving the dispute.

OBJECTION AND STAFF COMMENT

No issues were raised regarding conformity with the Region's Official Plan. The objections submitted in respect to the proposed by-law amendment and, indirectly to the proposed LOPA, are primarily concerned with the adequacy of the transportation and market analysis submitted in support of the proposed by-law amendment. Nepean, in addition to having the benefit of its own market studies conducted in 1997, and 1999, contends that the studies submitted by the applicant are sufficient to recommend approval of the proposed amendments. Nepean also provides that appropriate updates to these studies will be required prior to the lifting of the holding zone proposed in the disputed by-law. The appellant disputes the legitimacy of this process and has provided contrary market analysis evidence in support of their appeal.

The issue, in its essence, is one of competition between the applicant and the appellant. Both are commercial landlords seeking to secure their share of the rapidly expanding retail development in South

Nepean, both are attempting to secure key anchor tenants (possibly the same tenants), and both have appealed each others applications on the basis of their own market analysis. A separate report dealing with the disputed SNDC/ Trinity application (LOPA 24) is included on this agenda.

The issues and the staff response are summarized below.

1. Issue: The appellant contends that the approach of utilizing a holding zone violates the provisions of the Nepean Official Plan and that satisfactory transportation and market studies are required to be provided in support of a by-law amendment application.

Nepean responds that the transportation and market studies, which the applicant has provided in support of the application, are appropriate and that the proposed 2-tier holding zone will require that the applicant provide necessary updates at the time it chooses to pursue the lifting of the holding zone and proceed with approval of a final site plan.

Regional staff are satisfied that Nepean has respected the provisions of their Official Plan in processing the by-law amendment and LOPA and find no grounds on which to dispute the transportation study or market evidence which Nepean has relied upon. Indeed, Nepean supplementing its own market studies with an independent peer review of the applicants market analysis to confirmed that it was appropriate.

2. Issue: The appellant contends that the proposed zoning by-law amendment will slow down the commercial development on his client's property, which, in his opinion is prioritized in Nepean's Official Plan, and as such the subject amendment undermines the planned function of his clients property.

Nepean and the applicant respond that they dispute the notion that one site (or designation) is prioritized over the others, but rather that the intent of the Activity Centre policies is that the whole of the area function in the long-term as a "downtown" for South Nepean. Nepean also disputes the market analysis upon which the appellant bases this argument. Indeed the peer review conducted by the Corporate Research Group for Nepean concluded that "the additional amount of retail space being requested would not undermine the planned commercial structure of South Nepean, and would appropriately support the intensification of the primary commercial area, the Activity Centre." Nepean acknowledges that there may be some issues related to the short-term competing development interests, but that these matters are more appropriately left to the open market and that there was limited risk to the long-term planned function of either site.

Regional staff cannot concur with the appellant that his client's site has primacy over the subject lands. Regional staff are also not in a position to dispute the independent market analysis provided to Nepean and therefore cannot find appropriate grounds on which to recommend against the decision of Nepean to approve the proposed amendments.

It is the responsibility of the Region, as Minister, to ensure that Nepean follows the provisions of their Official Plan. Nepean staff (staff report) and the applicant's consultant have demonstrated that the proposed development is consistent with the provisions of the Nepean Official Plan. The required

transportation and market studies have been submitted and endorsed as appropriate by Nepean. Nepean suggests that the use of the 2-tier holding zone was recommended primarily because it could be some time before the actual development of the site occurred and Nepean wanted to ensure that transportation and market reflect the conditions at that time.

CONSULTATION

Nepean held a public meeting on 20 April 1999, and 02 May 2000 as required by Section 17(15) of the Planning Act, 1990.

FINANCIAL IMPACT

Not applicable.

CONCLUSION

Regional staff find that the proposal conforms to the Regional and Nepean Official Plans. The proposed use is permitted in the Nepean Official Plan and Nepean has confirmed that it meets the criteria set out for assessing the appropriateness of new commercial uses. Nepean, in support of the rezoning application, requested and received appropriate transportation and market analysis studies to aid in assessing impact of proposed development.

Regional staff do not concur with the appellant that Nepean staff have erred in respecting the provisions of their Official Plan in processing the application and assessing the appropriateness of the proposed use. It is clearly the responsibility of Nepean to determine the compatibility of adjacent land uses (zoning) and to administer site plan control approval. It is staffs position that there are no reasonable grounds under which to use the powers delegated by the Province to deny the LOPA, nor was it appropriate to object to the passing of the zoning by-law.

Approved by
N. Tunnacliffe, MCIP, RPP

ANNEX 1

Date:
 Regional File: 14-00-0018
 Contact: Michael Boucher, Regional Planner

Applicable Planning Act: **Bill 20**

John LeMaistre, City Clerk
 City of Nepean
 101 Centrepointe Drive
 Nepean, ON K2G 5K7

Dear Mr. LeMaistre:

**Re: Barrhaven Town Centre Inc.
 Local Official Plan Amendment (LOPA) 8
 City of Nepean**

In accordance with Section 17(35) of the Planning Act, you are hereby notified of the Regional Council's decision to approve, under authority assigned to Regional Council by the Ministry of Municipal Affairs and Housing, Amendment 8 to the Official Plan of the City of Nepean.

PURPOSE OF THE AMENDMENT

The purpose of the amendment is to increase the restriction on maximum retail based development on the subject property. The current restriction is 21,900 m² - the application is to increase this to 35,000 m².

INFORMATION

Information on LOPA 8 can be obtained from the Regional Planning and Development Approvals Department at the above-noted address (attention: Michael Boucher at 560-6058, extension 1584) or the City of Nepean Planning Department at 101 Centrepointe Drive [attention: Dana Collings, MCIP, RPP at 727-6700 extension 337].

NOTICE OF APPEAL

Pursuant to Section 17(36) of the Planning Act, any person or public body may, not later than 4:30 p.m. on (date - 20 days after the giving of notice), appeal the decision by filing a notice of appeal to Amendment 8 with the Regional Planning and Development Approvals Department. Such appeal must identify, in writing, which section(s) is/are being appealed and the reasons for doing so. All appeals

must also be accompanied by a certified cheque in the amount of \$125.00 (to the Minister of Finance, Province of Ontario) to cover the Ontario Municipal Board's prescribed fee.

If no notice of appeal is received before or on (date - 20 days after giving of notice), the decision of Regional Council is final and Amendment 8 will come into effect on (date - the day after the last day for appeal).

Please note that only individuals, corporations or public bodies may appeal a decision of the approval authority to the Ontario Municipal Board. A notice of appeal may not be made by an unincorporated association or group. However, a notice of appeal may be made in the name of an individual who is a member of the association or group on its behalf.

RELATED PLANNING APPLICATIONS

The lands to which LOPA 8 applies are also the subject of 2 rezoning applications, both of which have been appealed to the Ontario Municipal Board.

Dated dd/mm/yyyy.

Sincerely

Mary Jo Woollam
Clerk

c.c.: Dana Collings, MCIP, RPP - City of Nepean Planning Department
Alan Cohen, Soloway Wright
Jeffrey Goldenberg, Fogler Rubinoff

AMENDMENT NO. 8

to the
Official Plan
of the
City of Nepean

THE CORPORATION OF THE CITY OF NEPEAN

BY-LAW NO. 037- 2000

Being a by-law of The Corporation of the City of Nepean to adopt Amendment No. 8 to the Official Plan of the City of Nepean

WHEREAS the Council of the Corporation of the City of Nepean, in accordance with the provision under Section 17 of the Planning Act, hereby enacts as follows:

1. Amendment No. 8 to the Official Plan of the City of Nepean, consisting of the attached explanatory text is hereby adopted.
2. That the City Clerk is hereby authorized and directed to make application to the Regional Municipality of Ottawa-Carleton for approval of Amendment No. 8 to the Official Plan of the City of Nepean.
3. This by-law shall not come into force or take effect until approved by the Regional Municipality of Ottawa-Carleton.

PASSED AND GIVEN under the Hands of the Mayor and City Clerk and the Corporate Seal of the Corporation of the City of Nepean this 4th day of May, 2000.

original signed by _____
John LeMaistre, City Clerk

original signed by _____
Mary Pitt, Mayor

CERTIFIED TRUE COPY

JOHN LEMAISTRE
City Clerk

AMENDMENT NO. 8
OFFICIAL PLAN OF THE
CITY OF NEPEAN

PURPOSE:

The purpose of Amendment No. 8 is to amend Section 4.4 of the Secondary Plan for Area 7 of the Nepean Official Plan to increase the amount of retail based development which can occur within the Major Commercial Designation of the subject lands only.

The affected lands are shown for information purposes on Schedule "A" to this Amendment.

BASIS:

The subject lands are situated within the City of Nepean's Activity Centre for the South Nepean area. The site is presently developed with approximately 10,000 square metres of space and was developed at a time prior to the adoption of detailed land use and urban design policies for the overall Activity Centre. Current Official Plan policies permit up to 21,900 square metres of retail based development for the Major Commercial designation within the Activity Centre. This development limitation was originally based on a 1994 design study and was formally incorporated into the City's Official Plan by the adoption of Official Plan Amendment No. 7 in 1997.

Since the adoption of the Activity Centre policies, the overall level of retail interest within and adjacent to the Activity Centre appears to have been underestimated. Included in this interest is a new Canadian Tire soon to be located north of the Activity Centre as well as significant interest in securing development approvals for both the subject lands and the District Retail designation located to the east of the subject lands. The existing lack of retail facilities within South Nepean as well as strong residential and employment growth rates have served to foster this interest.

Subsection 4.4 of the Secondary Plan for Area 7 requires the completion of a Market Study for any amendments to the retail limitations in the current policy. A detailed market analysis was prepared by the applicant to justify the additional retail space being proposed for the Activity Centre.

This review was also critiqued by an independent marketing consultant retained by the City. Key findings of importance to the City were that the proposed additional space fits within the long term warrants for South Nepean and that the increased permissions would not undermine the planned commercial structure of South Nepean.

A transportation analysis was also undertaken to support the application to increase the retail permissions. It was found that the planned network of streets within the overall South Nepean area would be able to accommodate the increase in levels.

THE AMENDMENT:

1. That Section 4.4 of the Secondary Plan for Area 7 be amended as follows:

By replacing "21,900 square metres" with "35,000 square metres" where it appears in Subsection 4.4.4.3 1.) of Section 4.4.



SCHEDULE 'A' TO AMENDMENT No. 8

LANDS AFFECTED BY
AMENDMENT No. 8



SCALE 1:10 000

100 0 100 200 300



METRES



ANNEX 5

SOLOWAY, WRIGHT LLP
BARRISTERS AND SOLICITORS

427 LAU

SUITE 200
OTTAWA, ONTARIO
K1R 7Y2

ALAN K. COHEN

DIRECT LINE: (613) 782-3217
EMAIL ADDRESS: cohen@soloways.com

TELEPHONE: (613) 236-0111
FAX: (613) 238-8507

FILE NO: 28268-1023

BY FACSIMILE

May 29, 2000

Mary Jo Woollam, Clerk
Regional Municipality of Ottawa-Carleton
111 Lisgar Street
Ottawa, ON K2P 2L7

Dear Ms. Woollam:

Re: Amendment No. 8 to the Official Plan of the City of Nepean

We are solicitors for South Nepean Development Corporation, the owner of extensive holdings in South Nepean and, more specifically, the owner of lands south of Strandherd Drive and east of Greenbank Road. These secondly described lands form the district retail portion of the Activity Centre of South Nepean.

Would you please be so kind as to accept this letter as a formal request pursuant to subsection 17(35) of the Planning Act, RSO, 1990 c. P.13 for Notice of the Decision made by your municipality respecting OPA No. 8 of the City of Nepean under subsection 17(34) of the Planning Act.

Would you please ensure that we receive written acknowledgment of this formal request.

Thank you for your kind attention to this matter.

Yours truly,


Alan K. Cohen
AKC/bc

cc: ✓ Nick Tunnacliffe, Planning Commissioner, R.M.O.C.
Jack Sterling, Commissioner Planning, City of Nepean
Jeffrey B. Goldenberg, Fogler, Rubinoff LLP
Dan Paquette, S.N.D.C.

Fogler, Rubinoﬀ LLP
Suite 4400, P.O. Box 95, Royal Trust Tower
Toronto-Dominion Centre
Toronto, Ontario, Canada M5K 1G8
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www.foglerubinoﬀ.com



Reply To: Jeffrey B. Goldenberg
Direct Dial: 416-941-8814
E-mail: jbg@foglerubinoﬀ.com

May 26, 2000
99/3656 -- BY FAX ONLY (613-560-6006)

**Regional Municipality of
Ottawa-Carleton**
Planning and Development
Approvals Branch
111 Lisgar Street
Ottawa, Ontario
K2P 2L7

Dear Sirs:

**Re: Amendment No. 8 to the Official Plan
of the City of Nepean**

We are the solicitors for Trinity Development Group Inc., the purchaser of lands located in the southeast quadrant of Strandherd Drive and Greenbank Drive, being the lands designated "District Retail" and the activity centre pursuant to the Official Plan of the City of Nepean.

We are in hand with a copy of the notice of adoption of amendment No. 8 to the Official Plan of the City of Nepean which has been forwarded to the Region for approval by the said City.

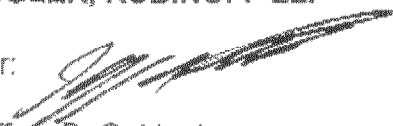
Would you kindly ensure that the writer is given notice of the decision made by the Region pursuant to Section 17(34) of the Planning Act in respect of Amendment No. 8 of the Official Plan of the City of Nepean. Kindly consider this a request for notice pursuant to subsection 17(35) of the Planning Act.

Would you kindly acknowledge receipt of this letter.

Yours very truly,

FOGLER, RUBINOFF LLP

Per:



Jeffrey B. Goldenberg
JBG/tmn

- cc by fax: Stefan Savelli (Trinity Development Group Inc.)
- cc by fax: John Ruddy (Trinity Development Group Inc.)
- cc by fax: Alan K. Cohen (Soloway, Wright LLP)
- cc by fax: Bill Holzman (Holzman Consultants Inc.)

ONTARIO MUNICIPAL BOARD

**IN THE MATTER OF SUBSECTION 34(19) of the
Planning Act, RSO 1990, c. P.13, as amended;**

**AND IN THE MATTER OF an Appeal by South
Nepean Development Corporation against Zoning
By-Law 029-2000, adopted by the Corporation of the
City of Nepean on May 4th, 2000.**

NOTICE OF APPEAL

1. South Nepean Development Corporation (the,"Appellant") is the owner of approximately 1,000 acres in that portion of the City of Nepean known as South Nepean.
2. Among the 1,000 acres owned by the Appellant are approximately 37 acres recently designated commercial by the City of Nepean. These 37 acres form a part of a larger commercial area known as the "Activity Centre".
3. By-Law 029-2000 rezones another part of the Activity Centre which is owned by Barrhaven Town Centre Inc.(the "Lands") and which is located across the street from the commercial lands owned by the Appellant.
4. The City of Nepean adopted By-Law 008-2000 on February 10th, 2000. This Zoning By-Law Amendment was designed to rezone the Lands. That By-Law was appealed by the Appellant and is in the hands of the Ontario Municipal Board.
5. The Appellant alleges and the fact is that Zoning By-Law 008-2000 was and is premature and this can also be said of By-Law 029-2000. Indeed, there is a holding zone in By-Law 029-2000 which is not to be lifted until updated transportation and market studies have been filed with Nepean. This method of approving the zoning prohibits the Appellant from dealing with or challenging the studies when filed and precludes the possibility of an Appeal to the Ontario Municipal Board at that time.
6. Nepean's Official Plan contemplates such a rezoning as set out in By-Law 029-2000, only upon the provision of satisfactory transportation and market studies. As indicated, such updated studies , though required by Nepean, are not yet filed with Nepean.
7. The Appellant alleges all facts and grounds set out in its Appeal to By-Law 008-2000, as if contained herein, and asserts that they apply as well to By-Law 029-2000.
8. The Appellant alleges and the fact is that By-Law 029-2000 fails to comply with the Official Plan of the City of Nepean in that appropriate studies have not yet been filed and the best market evidence available to the City of Nepean is that the proposed Zoning By-Law Amendment 029-2000 will slow down the commercial development on the east side of Greenbank Road and south of Strandherd, which is the district

retail portion of the activity centre of South Nepean, which is prioritized. As such, By-Law 029-2000 undermines the planned function of the district retail portion of the Activity Centre on the east side of Greenbank Road, owned by the Appellant. The city of Nepean staff has admitted that this is the case and proposes to deal with the issue by the use of the holding by-law mechanism and has adopted an amendment to its official plan to allow for the growth of the retail component on the Lands. As a consequence of the foregoing, By-Law 029-2000, in addition to its being premature, is inappropriate, constitutes bad land use planning and is not in the public interest.

9. For such other reasons as Counsel may determine and the Board may permit.

All being respectfully submitted this 30th day of May, 2000.

SOLOWAY, WRIGHT LLP
Solicitors for the Appellant
South Nepean Development Corporation

Per: 
Alan K. Cohen

TO: John LeMaistre, Clerk
City of Nepean

AND TO: Ontario Municipal Board

AND TO: Jack Stirling, Planning Commissioner
City of Nepean

AND TO: Daniel Paquette, Senior Planner
South Nepean Development Corporation