

Our File/N/Réf. (25) 14-98.0038
Your File/V/Réf.

DATE 15 February 1999

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

FROM/EXP. Planning & Development Approvals Commissioner

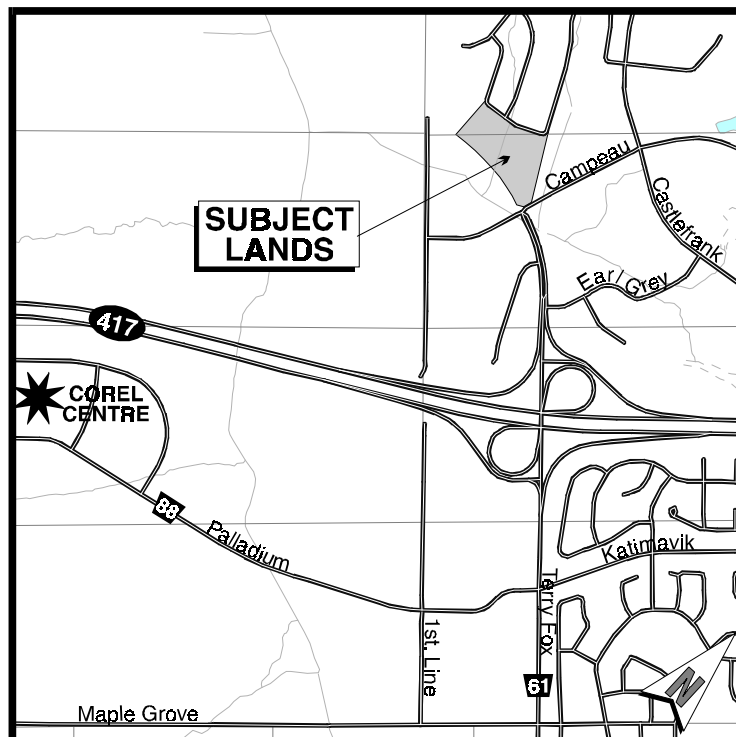
SUBJECT/OBJET **TAGGART REALTY MANAGEMENT INC.
LOCAL OFFICIAL PLAN AMENDMENT 45
CITY OF KANATA**

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend that Council support the approval of Amendment 45 to the City of Kanata's Official Plan by the Ontario Municipal Board.

BACKGROUND

The City of Kanata adopted local Official Plan Amendment (LOPA) 45 on 8 Dec. 1998 and subsequently submitted same to the Region for approval under Section 17 of the Planning Act, 1990 on 29 Dec. 1998 (Annex 1).



The subject site is a 4.6 ha (11.6 ac.) parcel of land at the northeast corner of Campeau and Terry Fox Drs described as Block 120 on Registered Plan 4M-789. Taggart Realty Management Inc. (Taggart) is the applicant for Kanata's LOPA 45. Aselford-Martin's proposed LOPA to redesignate and rezone the subject lands for a "Neighbourhood Shopping Centre" (i.e., Kanata's LOPA 5 and ZBLA 167-93) were referred and appealed to the Ontario Municipal Board (OMB) in 1991. In the OMB's 25 Jan. 1993 decision on Kanata's LOPA 5 and ZBLA 167-93, retail development on the subject site was restricted to 2,800 sq. m of GLA overall with limits of 950 sq. m and 475 sq. m placed on a food store and any other single retail use. Kanata's LOPA 45 proposes to lift these restrictions and bring the retail GLA limit imposed on the subject site in line with the policies of Section 4.7 of the Regional Official Plan (ROP).

Prior to the public meeting to consider Kanata's LOPA 45, Penex Kanata Ltd. (Penex), owners of the third phase of the "Regional Shopping Centre" site, asked Kanata Council not to adopt LOPA 45 as it will fundamentally alter Kanata's commercial structure by permitting retail uses on the subject site that would more appropriately be located within the "Regional Shopping Centre" designation. Related concerns were expressed by Sun Life Assurance Co. (Sun Life), owners of the Hazeldean Mall and Loblaws Properties Ltd. Penex, Sun Life and Loblaws are all parties to OMB referrals involving Kanata's LOPAs 32 and 36, an appeal on an unapproved LOPA application made by Penex as well as appeals on Kanata's ZBLAs 33-95, 34-95, 73-96 and a proposed ZBLA by Loblaws.

As Kanata's LOPA 45 and related ZBLA 151-98 have now been appealed to the OMB by Taggart, this report is to establish the position of Planning and Environment Committee and Council so that staff have direction in the preparation and giving of evidence before the OMB on this matter.

THE AMENDMENT

The purpose of Kanata's LOPA 45 is essentially threefold:

1. to add a new policy in Subsection 6.5.4, Special Policy Areas, to allow a shopping centre of 10,000 sq. m of gross leasable area (GLA) but limited to 930 sq. m GLA for single retail or service commercial use, two anchor stores at a maximum of 4,650 sq. m and a food store restricted to 1,400 sq. m, at the northeast corner of Campeau Dr. and Terry Fox Dr.
2. to delete the policies under "Special Policy Areas, Terry Fox Drive Neighbourhood Commercial Special Policy Area 4" (i.e., those outlined in Subsection 6.6.4);
3. to amend Schedule 'B', Urban Area Land Use, by deleting the "Neighbourhood Commercial Special Policy Area (CN-4)" designation and replacing it with the "Community Commercial (CC-3)" designation.

These changes to Kanata's Official Plan designations and policies will relax the development restrictions placed on the site by the OMB in 1993 and allow the proponent to develop a

“Community Commercial” centre of no more than 10,000 sq. m consistent with the policies of Section 4.7 of the Regional Official Plan (ROP).

AGENCY COMMENTS

Kanata’s LOPA 45 was circulated to a number of external agencies by Kanata staff. As a result of this external circulation Mississippi Valley Conservation reported that they had no objection to the proposed “Community Commercial” centre provided it does not compromise the stormwater management plan of the Kanata Town Centre lands. Two supportive responses were received from Genstar Development Corp. and DCR Phoenix Group of Cos. In addition two objections were received from Penex and Loblaws and an expression of concern from Sun Life. While the Penex and Loblaws objections are dealt under the “OBJECTION” heading, Sun Life’s concerns are noted below. In the interests of streamlining, Kanata’s external circulation was not repeated by Regional staff but an internal circulation to Regional departments/divisions was undertaken. No objections to Kanata’s LOPA 45 were received as a result of this internal circulation.

Sun Life

Kanata Council was apprised of Sun Life’s position with respect to LOPA 45 in a 1 Dec. 1998 letter from Michael Polowin, a solicitor with McCarthy Tetrault (Annex 2). In this letter, Sun Life noted their reservations regarding the enormous amount of additional retail development which Kanata Council is prepared to permit on the Taggart property and within the Terry Fox Business Park. Sun Life believes that there should be a controlled approach to the release of additional lands for retail development based on an assessment of the impact of the proposed development on the existing retail development before releasing additional lands for this purpose. Sun Life is concerned that uncontrolled retail development will make development of the “Regional Shopping Centre” impossible and will impact negatively on Kanata’s existing retail development including Sun Life’s Hazeldean Mall.

OBJECTIONS

In the course of Kanata’s circulation of LOPA 45, two objections were received from Penex (Annexes 3&4) and Loblaws (Annex 5). A summary of these objections follows.

Penex

In letters dated 1 Dec. 1998 (Annex 3) and 20 Oct. 1998 (Annex 4), Roslyn Houser, a solicitor with Goodman Phillips & Vineberg, outlined Penex’s concerns with LOPA 45. These concerns centre on the market justification for LOPA 45 and LOPA 45’s impact on Kanata’s commercial hierarchy. In particular, Penex believes that the market study submitted in support of LOPA 45 is flawed in that:

- the trade area is out of scale with the type of retail facility proposed;
- the analysis does not examine specific retail categories that are typically found in “Neighbourhood Shopping Centres”;

- the per capita department store type merchandise (DSTM) expenditure assumptions are twice the provincial average;
- the trade area analysis assumes unrealistically high “capture rates” of expenditures given Kanata’s experience with retail sales leakage;
- there is no examination of supermarket demand and supply sufficient to conclude that the primary trade area can support an additional supermarket;
- emphasis is placed on a shortage of DSTM space in Kanata notwithstanding that “Neighbourhood Shopping Centres” typically serve the convenience needs; and
- the report does not recommend any size restrictions on individual stores thereby enabling the proponent to develop retail warehousing on the site and in so doing directly undermine the development on the “Regional Shopping Centre” site and Kanata’s Main Street.

Penex urged Kanata Council to ensure that the development of the Taggart site does not disrupt Kanata’s retail hierarchy. Moreover, Penex argued that permitting a “Neighbourhood Shopping Centre” to compete with Penex’s “Regional Shopping Centre” for regional-scale tenants would not serve the public interest as it could delay the development of the third phase of Penex’s “Regional Shopping Centre” site. Finally, given that the proposed text of LOPA 45 did not address Penex’s concerns, Penex asked Kanata Council to refuse to adopt LOPA 45.

Loblaws

On 20 Oct. 1998, Loblaws objected to Kanata’s LOPA 45 in a letter prepared by Steve Zakem, a solicitor with Aird & Berlis (Annex 5). The reasons for Loblaws objection are summarised as follows:

- 1) Numerous studies prepared for Kanata have demonstrated that Kanata lacks retail space in a number of product categories with the exception of food. This rationale is used to justify the expansion of the retail development on the Taggart site to 10,000 sq. m. Notwithstanding this situation, LOPA 45 places the most stringent restriction on the size of those stores which are under represented in Kanata (i.e., 930 sq. m) and permits the largest single store to be food oriented (i.e., 3,700 sq. m but changed to 1,400 sq. m in the adopted version of LOPA 45) when there is no market justification for it.
- 2) The policies of Kanata’s LOPA 24 restrict the development of retail space on Phases 1 and 2 of the “Regional Shopping Centre” site to approximately 25,000 sq. m. This restriction is to allow the third phase of the “Regional Shopping Centre” site to get established. To allow a substantial amount of additional retail space on the Taggart lands which would not be allowed on Phases 1 & 2 of the “Regional Shopping Centre” site is contradictory and cannot be justified.

- 3) Permitting 10,000 sq. m of retail GLA on the Taggart lands in the absence of a comprehensive review of Kanata's existing retail hierarchy is premature. Such comprehensive review is ongoing through Kanata's Official Plan review and this process should be completed before any decision is made with respect to the Taggart lands.
- 4) The study submitted in support of LOPA 45 is fatally flawed and cannot be relied on to form the basis of any decision of Kanata Council. The most glaring flaws include:
 - The study did not undertake surveys of similar existing retail centres elsewhere in Kanata to establish the trade area for the proposed development.
 - Despite the size of the proposed "Neighbourhood Shopping Centre" and its attendant function to serve a population of at least 5,000 people, the study assumes a trade area population of 189,000 people. This trade area population has no relevance to a "Neighbourhood Shopping Centre".
 - The calculation of demand for DSTM includes per capita expenditures on motor vehicles, recreational vehicles and other automotive parts and accessories thereby overestimating the future demand for DSTM by more than 100%.
 - No consumer survey was conducted to determine the directional expenditure patterns of the people in the target market area.
 - As the study did not make any site specific assumptions about proposed tenants or tenant types no meaningful assessment could be made of the impact on existing retail development or zoned but undeveloped retail projects. Equally important, the study does not deal with the question of why the zoned but undeveloped retail projects could not also satisfy any underserved market demand.
- 5) Kanata staff have noted that the Taggart lands are "grossly oversized to suit its planned function". Loblaws has a real concern that LOPA 45 represents the "thin edge of the wedge" and that Taggart will be seeking an even greater amount of development to fully develop their property.
- 6) Loblaws believes that consideration of LOPA 45 is premature until the OMB addresses the question of what the appropriate extent and nature of retail development is in the Terry Fox Business Park and Kanata Council deals with Penex's LOPA application.

Loblaws also has concerns about the rapidly increasing amount of traffic utilising the road system in the immediate vicinity of their supermarket. At the time Loblaws wrote their letter of objection, they were awaiting a copy of a traffic impact analysis from Taggart. In view of the foregoing, Loblaws recommended that Kanata Council refuse LOPA 45 or defer its adoption until such time as the OMB has considered the referrals of Kanata's LOPAs 32 and 36 and associated zoning appeals currently before it.

STAFF COMMENT

The objections to Kanata's LOPA 45 filed by Penex and Loblaws highlight the debate over what are appropriate retail uses on the Taggart lands. This debate is not limited to Penex and Loblaws however, as it is clear that Sun Life also has an interest. Regional staff recognise that there are widely differing opinions on the direction of Kanata's Official Plan retail designations and policies as well as Kanata's LOPA 45. Whereas some of these issues involve Regional interests, Regional staff submits that resolution of the issue of appropriate retail unit scale and mix on the Taggart lands hinges on conflicting market information which falls within Kanata's purview because of the scale of the proposed facility (i.e., under 10,000 sq. m GLA).

It should be noted that on 19 Oct. 1994, Penex entered into an agreement with the previous owners of the Taggart lands (i.e., Garford Ltd., Notlaw Ltd., Aselford-Martin Ltd. & Burnford Realty Ltd.) that, among other things, committed Penex not to "directly or indirectly object, oppose, hinder or otherwise interfere" with the proponent's attempt to obtain a land use designation or zoning for the subject lands upon receipt of a copy of a retail market study prepared by a qualified market research firm demonstrating the need for the proposed development. Penex's 20 Oct. 1998 letter and attached memorandum from their retail consultant indicates that Penex is not satisfied that Taggart's retail consultant has demonstrated the need for the types of uses to be accommodated in the proposed "Community Commercial" centre.

The Region's interest in Kanata's LOPA 45 revolves around the designations and policies of the 1997 and 1988 ROPs. To this end, the subject lands are designated "General Urban Area" on Schedule B of both ROPs. While Section 4.7.2, Policy 1 of the 1997 ROP permits retail stores and commercial services anywhere in the urban area, Section 4.7.3, Policy 7 limits concentrations of such retail development to 10,000 sq. m GLA in the suburban centres until such time as the "Regional Scale Retail Facility" in the respective town centre achieves 50,000 sq. m. GLA. As Section 4.7.3, has been appealed to the OMB by North American Realty Acquisition Corp., the prevailing ROP policy in this regard is Section 3.2.3.1, Policy 7 of the 1988 ROP which holds that "Community Shopping Centres" (i.e., those between 10,000 and 35,000 sq. m of GLA) may only be permitted when a "Regional Shopping Centre" of at least 50,000 sq. m of GLA exists in the town centre of the respective urban centre". As the first component of the third phase of Penex's "Regional Shopping Centre" is only now under construction [i.e., the approximately 10,000 sq. m (100,000 sq. ft.) 24 screen AMC theatre complex], the 10,000 sq. m GLA limit on the Taggart "Community Commercial" centre must be respected. As the 10,000 sq. m GLA limit on the Taggart lands is not at issue, LOPA 45 generally conforms to the ROP.

While the conformity of Kanata's LOPA 45 with the ROP is not at issue, it is clear that Penex and Loblaws question the appropriateness of permitting a "Community Commercial" centre in the immediate vicinity of Penex's "Regional Shopping Centre" that could include a retail mix that does not provide traditional "neighbourhood" goods and services. Regional staff's preoccupation remains the protection of the retail primacy of Kanata's "Regional Shopping Centre" and assembling a critical development mass that will support the Region's planned investment in a transitway terminus and park and ride lot at this location. However, if it can be conclusively demonstrated that Taggart's "Community Commercial" centre will compete with Penex's "Regional Shopping Centre" for regional scale retail tenants, the OMB should use the opportunity

of the appeal on Kanata's LOPA 45 to alter the retail mix of the Taggart "Community Commercial" centre so that it does not encroach on the tenant market of the "Regional Shopping Centre" and amend Kanata's ZBLA 151-98 to explicitly prohibit retail warehousing as a permitted use and delete the words "with the exception of two anchor stores which may have a combined net leasable area of not more than 4,650 sq. m". These matters will be most appropriately addressed by the OMB in conjunction with Kanata's other LOPAs and ZBLAs currently before them.

In conclusion, Kanata Council has jurisdiction over the supply and distribution of neighbourhood oriented retail facilities within Kanata. Kanata's LOPA 45 proposes to permit a "Community Commercial" centre that is generally consistent with the prevailing ROP policies. Given these circumstances, Regional staff support the approval of Kanata's LOPA 45.

CONSULTATION

The required public meeting under Section 17(15) of the Planning Act, 1990 was held on 1 Dec. 1998. Various representatives of the retail development community and public spoke in favour and in opposition to Kanata's LOPA 45. These parties have been informed of the date and time that Planning and Environment Committee will deal with Kanata's LOPA 45.

FINANCIAL IMPLICATIONS

The approval of Kanata's LOPA 45 will facilitate the development of a "Community Commercial" centre on the Taggart lands with all the attendant development charge and property tax revenue accruing to the Region. However, given the other retail planning applications in Kanata currently before the OMB, Kanata's LOPA 45 is likely to be appealed by one or more of the objecting parties. Should this situation occur, Regional staff time will be required to give evidence on Kanata's LOPA 45. Funding for such evidence presently cannot be found in the Legal and Planning and Development Approvals Depts. budgets.

Approved by

N. Tunnacliffe, MCIP, RPP

**APPROVAL PAGE
AMENDMENT NO. 45 TO THE OFFICIAL PLAN
OF THE CITY OF KANATA**

I hereby certify that Amendment No. 45 to the Official Plan of the City of Kanata, which has been adopted by the Council of the City of Kanata, was approved by the Council of the Regional Municipality of Ottawa-Carleton on _____ 1999, under Sections 17 and 21 of the Planning Act, 1990.

Dated this _____ day of February 1999.

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Clerk, Regional Municipality of Ottawa-Carleton

COMPONENTS

Part A - The Preamble does not constitute part of this amendment.

Part B - The Amendment, consisting of the following text and map (designated Schedule "A"), constitutes Amendment No. 45 to the Official Plan of the City of Kanata.

Also attached is Part C - The Appendices which does not constitute part of this amendment.

PART A - THE PREAMBLE

1. Purpose

The purpose of this Amendment is first to amend Subsection 6.6 - **NEIGHBOURHOOD COMMERCIAL** of the Official Plan of the City of Kanata by deleting the existing policy statement under Special Policy Area 4 of Subsection 6.6.4, and secondly to amend Subsection 6.5 - **Community Commercial** of the Official Plan by adding a new policy statement, Special Policy Area 3, under Subsection 6.5.4, thereby amending restrictions on uses and retail and service commercial floor space currently in effect on a specific vacant commercially-designated site within the Marchwood Community.

2. Location

The lands affected by this Amendment are within the Marchwood community, and are located on the northwest corner of the intersection of Campeau Drive and Terry Fox Drive, as it is proposed to be extended northward, within part of Lots 3 and 4, Concession 2 of the former Township of March, now in the City of Kanata, more particularly described as Block 120 on Registered Plan 4M-789.

The lands affected by the Amendment are highlighted on Schedule "A" to this Amendment which is a portion of Schedule "B", URBAN AREA - Land Use, to the Official Plan of the City of Kanata.

3. Basis

In January 1993, the Ontario Municipal Board approved Amendment No. 5 to the Official Plan of the City of Kanata, designating the subject site as "Neighbourhood Commercial - Special Policy Area 4 (CN-4) and putting into effect several restrictions on retail and service commercial floor space and uses. Furthermore, in the Minutes of Settlement between the parties, it was agreed that there would be no further Official Plan or Zoning By-law amendment applications filed with the City related to retail commercial uses on the subject site before the earlier of 4 February, 1998 or when the Regional Shopping Centre reaches a floor area of 35,000 square metres. With the lapsing of the five-year development "freeze" earlier this year, it is now prudent to re-evaluate the necessity for the continued application of the development restrictions imposed on the subject site in 1993 through Amendment No. 5 to the Official Plan.

The subject site is designated as "Neighbourhood Commercial" and is therefore subordinate in functional hierarchy to the "Community Commercial" core planned for the heart of the Marchwood Community. However, the conclusions of several recently conducted market studies, including the *Retail Market Analysis, Neighbourhood Shopping Centre, Terry Fox Drive - Campeau Drive, Kanata* prepared by Market Research Corporation, dated April 1998, the *Study of Retail Land Uses in Employment Areas, City of Kanata*, prepared by Coopers and Lybrand and Lloyd Phillips and Associates, dated March 1998, and the *Employment and Commercial Land Use Study*, prepared by Malone Given Parsons Ltd. in association

with FoTenn Consultants Inc., dated November 1998, suggest that the City of Kanata is significantly under-stored and there exists an immediate need for additional warranted retail and service commercial floor space within the City. It is also acknowledged that the subject site is ideally located within the marketplace and is a highly desirable site for retail development, and that there is evidence to suggest that the subject site could support up to 10,000 square metres of the additional warranted retail space. However, the development potential of the subject site is currently restricted by the existing commercial policies.

It is therefore appropriate at this time to amend the existing development restrictions in effect on the subject site to allow development to proceed beyond 2,800 square metres of net retail floor area. Furthermore, in an effort to respect the functional commercial hierarchy policies outlined in Subsections 6.5 to 6.7 of the Official Plan, the scale of commercial development on the subject site should be more consistent with the intent of the "Community Commercial" land use designation, that is, to serve more than the daily and weekly requirements of the residents of the Marchwood Community and other neighbouring communities. However, in order to remain in conformity with the commercial policies of Subsection 4.7.3 of the Regional Official Plan, it is appropriate to limit the allowable retail floor area of the site to a maximum of 10,000 square metres. In addition, it is reasonable to allow more flexibility of uses within such limitation by relaxing the existing restrictions on the floor area of specific uses, such that no single retail and service commercial use on the site may exceed 930 square metres (10,000 sq.ft.) of net floor area, with the exception of two anchor stores having a maximum combined retail floor area of 4,650 square metres (50,000 sq.ft.), and a single food store having a maximum retail floor area of 1,400 square metres (15,000 sq.ft.). This amendment to the existing policies would have the effect of maximizing the potential retail development of the subject site under the current policies of the City's and Region's Official Plans.

PART B - THE AMENDMENT

1. Introduction

All of this part of this document entitled Part B - The Amendment, consisting of the following text and attached map designated Schedule "A" to Amendment No. 45 (Urban Area Land Use) constitutes Amendment No. 45 to the Official Plan of the City of Kanata.

2. Details

The following changes are hereby made to the Official Plan of the City of Kanata, as amended from time to time:

1. That Policy 5 of Subsection 6.5.3 - **Policies** is hereby amended by inserting the following clause immediately after the word "Marchwood" in the first line: "...located at the intersection of Castlefrank Road and Goulbourn Forced Road, as shown on Schedule "B",..."
2. That Subsection 6.5.4 - **Special Policy Areas** is hereby amended by adding the following new special policy area and related policies to the said Subsection:

"3. **Marchwood Special Policy Area (CC-3)**

Notwithstanding Section 6.5.1 of this Plan, the Marchwood Special Policy Area (CC-3) located on Terry Fox Drive, west of Campeau Drive, as shown on Schedule "B", shall not comprise the core area of the community.

Notwithstanding Section 6.5.2 of this Plan, retail and service commercial uses within the Marchwood Special Policy Area (CC-3) designation shall be restricted to not more than 10,000 m² of gross leasable area. Any single retail or service commercial use shall be limited to 930 m² of gross leasable area, with the exception of two anchor stores having a combined gross leasable area of not more than 4,650 m², and a single food store having a gross leasable area of not more than 1,400 m². Furthermore, residential uses shall be prohibited within the CC-3 designation."

3. That Subsection 6.6.4 - **Special Policy Areas**, "Terry Fox Drive Neighbourhood Commercial Special Policy Area 4", is hereby deleted in its entirety.
4. That Schedule "B" - **URBAN AREA Land Use**, is hereby amended by deleting the designation "CN-4" on said Schedule "B" insofar as it applies to the lands identified on Schedule "A" to this Amendment, and substituting therefore the designation "CC-3" as shown on Schedule "A" to this Amendment.

3. Implementation

The implementation of this Amendment to the Official Plan shall be in accordance with the respective policies of the Official Plan of the City of Kanata, and with the provisions of By-law 167-93, being the Zoning By-law for the Marchwood Community, as amended.

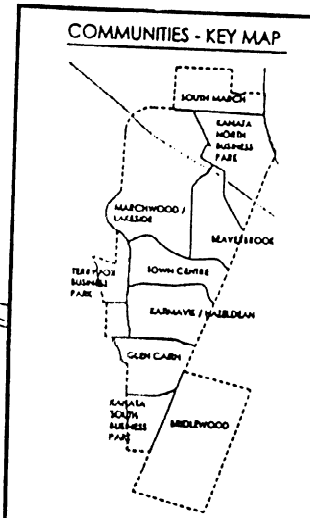
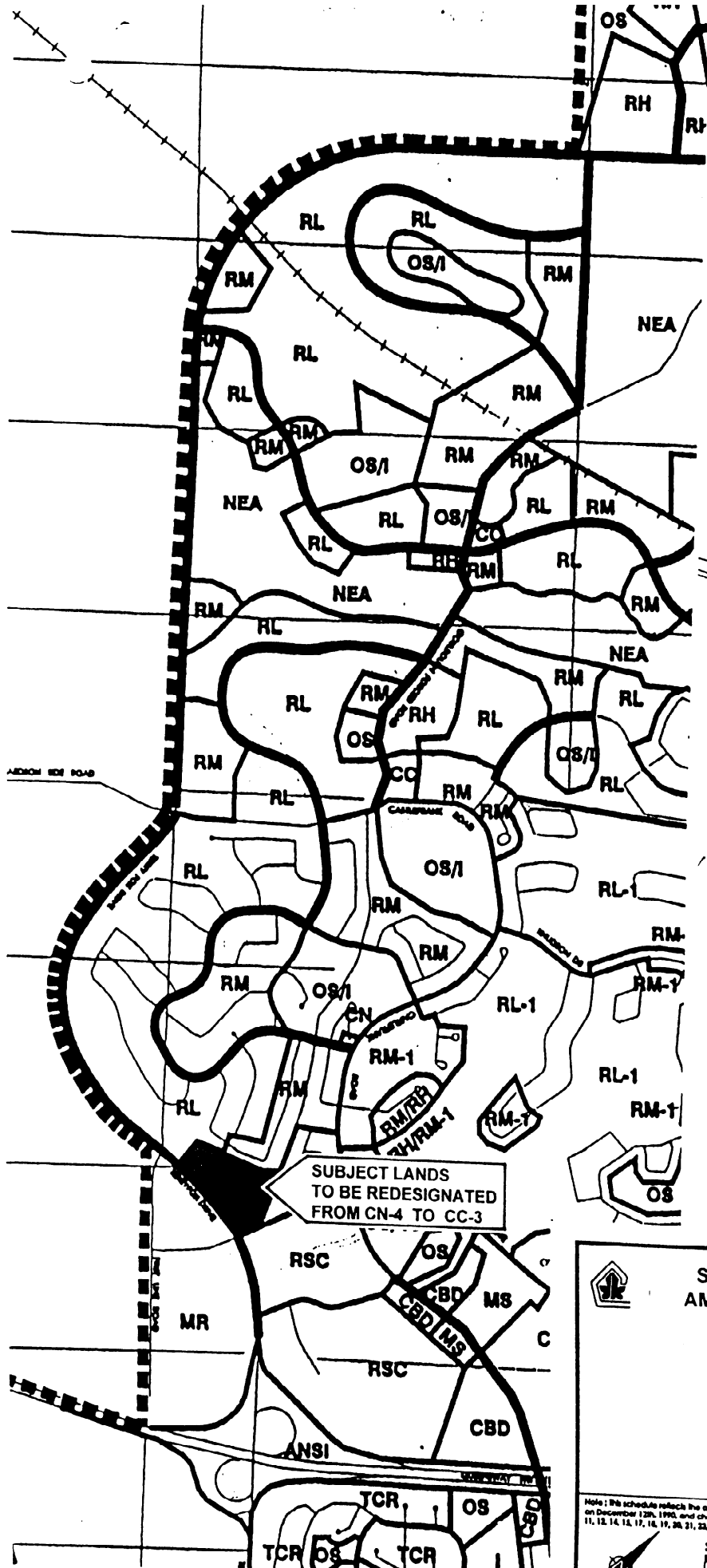
PART C - THE APPENDICES

1. Appendix 1 - Public Notice

In accordance with the requirements of Section 17 and 21 of the Planning Act, R.S.O. 1990, as amended from time to time, the City provided notices of the public meetings to consider this Amendment in the 25th of September 1998 and 6th of November 1998 editions of the Kanata Courier-Standard. Copies of these notices are attached as Appendix 1 to this document.

2. Appendix 2 - Public Meeting

Two public meetings were held as part of the regular Council Meetings of the 20th of October 1998 and 1st of December 1998. Relevant excerpts of the minutes from the meetings are attached as Appendix 2 to this document.



URBAN LAND USE DESIGNATIONS

RL	Low Density Residential
RM	Medium Density Residential
RH	High Density Residential
OS	Park & Open Space
TC	Town Centre
CC	Community Commercial
CO	Office Commercial
CH	Neighbourhood Commercial
CHY	Highway Commercial
I	Institutional
MG	General Industrial
MR	Restricted Industrial
RU	Rural
-1	Special Policy Area
-2	Special Policy Area
H	Hazard Lands
NEA	Natural Environment Area
CBD	Central Business Centre
RSC	Regional Shopping Centre
TCR	Town Centre Residential
LDE	Low Density Employment
NS	Neighbourhood Service
NC	Neighbourhood Commercial
ANSI	Area of Natural & Scientific Interest
MS	Main Street
●	Storm Water Pond

Legend:

- Zone Boundaries
- Local Roads
- Proposed Roads
- Urban Area Boundary

SCHEDULE "A" to AMENDMENT NO. 45

City of Kanata
OFFICIAL PLAN
SCHEDULE B

URBAN AREA
Land Use

Note: This schedule reflects the approval, deletion and modifications made by Regional Council on December 12th, 1980, and changes made through Official Plan Amendments 1, 4, 6 & 7, 14, 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 24, 24, 27, 28, 30, 31, 32, 37, and 38.

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Produced by the City of Kanata, OLC/CAS Group

McCarthy Tétrault

BARRISTERS & SOLICITORS-PATENT & TRADE-MARK AGENTS

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December 1, 1998

**VIA COURIER and
VIA FACSIMILE**

City of Kanata
580 Terry Fox Drive
Kanata, ON K2L 4C2

Attention: Her Worship Mayor Merle Nicholds

Dear Mayor Nicholds and Members of Council,

Re: Report 275-12-98 Proposed Official Plan and Zoning By-law amendments to permit up to 10,000 m² of retail development - Northwest corner of Campeau Drive and Terry Fox Drive, Kanata Lakes

We are the solicitors for Sun Life Assurance Company, owners of the Hazeldean Mall, with respect to the Official Plan and Zoning By-law Amendments referred to above. We are aware of the report referred to above to be heard by Council at its meeting of December 1, 1998.

Our client has concerns regarding the content of this report. Together with the resolutions of Council at its meeting of November 17, 1998, an enormous amount of additional retail development will be allowed, both on the subject property and in the Terry Fox Business Park. Our client is of the view that there should be a controlled approach to the release of additional retail space, which gives the City the opportunity to consider impact on proposed and existing retail, before releasing additional lands.

We are concerned that uncontrolled development will make development of the Regional Shopping centre impossible, and will damage existing retail in the City. Our client, which operates the only enclosed mall in the City is concerned that its interests will be prejudiced by uncontrolled retail development. Kindly take consider these views as you deliberate on this report.

Yours very truly,



Michael S. Polowin
MSP/abh

GOODMAN PHILLIPS & VINEBERG

BARRISTERS & SOLICITORS

250 YONGE STREET • SUITE 2400 • TORONTO ONTARIO CANADA M5B 2M6
TELEPHONE (416) 979 2211 • TELECOPIER (416) 979 1234

DIRECT LINE: (416) 597-4119

December 1, 1998

Our File No.: 98-2226

Mayor and Members of Council
City of Kanata
580 Terry Fox Drive
Kanata, ON K2L 4C2

Dear Sirs:

Re: **City Manager Report #275-12-98 for Council Meeting of December 1, 1998**
Taggart Development Corporation, Proposed Retail Development
Northwest corner of Campeau Drive and Terry Fox Drive

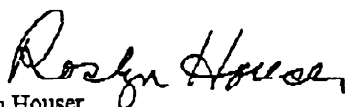
On behalf of Penex Kanata Ltd., we submitted a letter on October 20, 1998 advising of our client's concerns with the staff recommendation to amend OPA 5 and By-law 167-93 to increase the size of the Neighbourhood Commercial centre currently permitted on the above property (the "Taggart Lands").

In accordance with Council's direction at the meeting of October 20th, staff have prepared draft amendments which would designate the Taggart Lands "Community Commercial" and would permit a 10,000 m² centre with up to two retail anchors having a total maximum gross leasable area of 4,650 m² and a food store of up to 1,400 m² of gross leasable area.

The proposed amendments would fundamentally alter the City's approved commercial structure and would permit retail uses on the Taggart Lands which are more appropriately located within the "Regional Shopping Centre" designation. We therefore ask that Council not enact the draft documents included in Report #275-12-98.

Yours very truly,
GOODMAN PHILLIPS & VINEBERG

Per:


Roslyn Houser

RH/rdh

cc: Rick Ottenhof
David Krjacfski
Robin MacKay

G26HOWFRM4731232

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GOODMAN PHILLIPS & VINEBERG

BARRISTERS & SOLICITORS

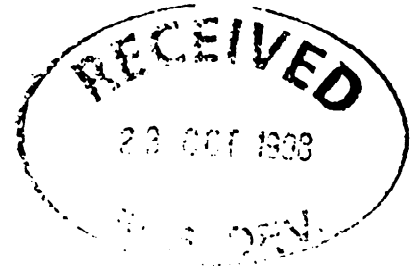
350 YORK STREET • SUITE 2400 • TORONTO ONTARIO CANADA M5B 2M6
TELEPHONE (416) 979 2211 • TELECOPIER (416) 979 1234

DIRECT LINE: (416) 597-4119

October 20, 1998

Our File No.: 98-2226

Mayor and Members of Council
City of Kanata
580 Terry Fox Drive
Kanata, ON K2L 4C2



Dear Sirs:

**Re: City Manager Report No. 239-10-98 for Council Meeting of October 20, 1998
Proposed Amendments to OPA 5 and By-law 167-93**

We are the solicitors for Penex Kanata Ltd., the owner of a property of approximately 45 acres which is designated "Regional Shopping Centre" within the Town Centre community.

Our client is very concerned by staff recommendation to amend OPA 5 and By-law 167-93 to increase the size of the Neighbourhood Commercial centre to 10,000 m² and to allow individual retail stores of up to 929 m² of net leasable space. We do not consider that the proposal would constitute a Neighbourhood Commercial centre as it seems that it is intended to serve more than daily and weekly shopping needs and as the proposed size would make it larger than any of the City's Neighbourhood Commercial centres.

In general terms, our concern is that the market justification for the amendments is inadequate and that the amendments would undermine the City's planned commercial hierarchy. More specifically, our concerns are as follows:

Market Study is Inadequate

1. The market study submitted in support of the applications by Taggart Realty Management is severely flawed and therefore provides no basis for an informed decision on the proposal. We enclose a memorandum by our client's market consultant, Robin Dee & Associates, which outlines the deficiencies of the report prepared by Market Research Corporation.

Premature Unlil Implications for Commercial Structure Considered

1. The staff report does not provide a complete history of the events that led to the approval of a Neighbourhood Commercial designation on the Taggart site. Council should recall that City staff did not support the original proposal in 1990 to change the designation of the subject site from residential to facilitate a commercial development of 10,000 m². Staff were concerned that the

proposal would alter the commercial focus of the community and could delay or replace the development of sites already designated. Although staff concluded that the site was not appropriate for commercial use, Council endorsed the development of a Neighbourhood Commercial centre and the current planning controls were approved by the OMB in 1993.

Given the previous concerns about commercial use on the Taggart site and its role in the City's hierarchy, we believe that care must be taken to ensure that any amendments do not disrupt the planned commercial hierarchy. If there is an inconsistency between the commercial policies of the official plan and current retail market forces (as staff suggest in Report 239-10-98) and a comprehensive OP review is required, that review should be undertaken before Council considers an amendment which could disrupt its commercial structure.

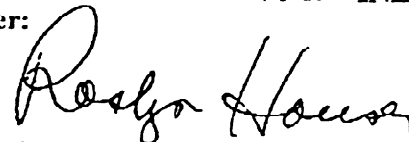
The staff report notes that the Taggart site "is at present highly attractive to a wide range of retailers wanting to capitalize on its prime location and its proximity to other competing commercial sites" (page 4). In our view, this highlights the risk that the Taggart proposal presents for the Regional Shopping Centre site. It would not be in the public interest for a Neighbourhood Commercial centre to secure regional-scale tenants (which can locate in spaces of less than 929 m²) and thereby delay development of Phase III of the Regional Shopping Centre site.

We urge Council to reject the recommendations of Report 239-10-98.

Yours very truly,

GOODMAN PHILLIPS & VINEBERG

Per:



Roslyn Houser

RJF:mr
encl.

cc: Rick Ottenhof
David Krajaefski
Robin MacKay

MEMORANDUM

To : Roslyn Houser
Goodman Phillips & Vineberg

From : Robin Dee

Date : October 3, 1998.

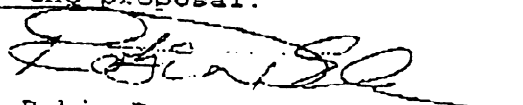
Subject : Retail Market Analysis
Neighbourhood Shopping Centre
Terry Fox Dr. - Campeau Dr.
Kanata, Ontario.

As requested, I have completed an initial review of the above cited report prepared by Market Research Corporation (MRC) dated April 1998 and offer the following preliminary remarks:

1. The trade area is completely out of scale for the type of shopping centre proposed, i.e. neighbourhood shopping centre, the function of which is "to provide for the daily and weekly shopping needs of the neighbourhoods in which they are located (MRC Report Pg. 21, Par.3b).
2. The analysis is too general. It does not examine specific retail categories, such as, supermarket, specialty food, drug store, durables/semi durables, personal services, etc., the types of uses typically found in a neighbourhood shopping centre. Instead, the study deals with retail/service groups, such as, FCTM, DSTM, and Services in the aggregate: many of the components of these groups would not be candidates for a neighbourhood shopping centre.
3. I have not examined the various inputs employed in the analysis in any detail. One thing I did notice was the per capita DSTM expenditure estimates for the PTA and the STA. Never have I come across per capita DSTM expenditures in the \$5,300 to \$5,500 range. The 1997 Ontario per capita DSTM expenditure was in the order of \$2,600!
4. Much is made of the apparent retail/service dollar leakage out of the PTA and yet no empirical evidence is offered of the amount of the leakage (absolute or relative) with respect to the retail categories that are candidates for a neighbourhood shopping centre.

- Notwithstanding the discussion of leakage, in calculating retail spending potential in the PTA the capture rate for the PTA is taken at 100%. Moreover, an inflow equivalent to 15% of STA potential is added to the PTA potential as assumption with no empirical support as a basis for that estimate.
6. There is no analytical support in the study for the conclusion that "in terms of the FCTM category, the primary trade area can support one additional supermarket plus other convenience stores" in 1997 (MCR Report, Pg. 32 Par.D.5). The study does not examine supermarket demand and supply in any detail in order to offer such a conclusion.
 7. The report emphasizes that "there is presently a shortage of retail facilities, especially DSTM stores, and this is expected to get worse in the future unless significant additional retail development is attracted" (MCR Report, Pg. 34, B. Par. 2). A Neighbourhood Shopping Centre is focused on serving convenience needs and is not the retail development format for addressing any major deficiency in DSTM service levels across the length and breadth of the PTA.
 8. The recommendation that "no unit size or use restrictions be placed on the subject site, other than general retail uses for a total of approximately 107,000 sq. ft." (MCR Report, Pg.36) is completely out of keeping with the role of a Neighbourhood Shopping Centre. There is no guarantee that the developer will not attempt to place a series of "big box" stores on the site thereby directly undermining the buildout and role of the Kanata Centrum. Such development would also impact on the support base for and therefore the timing of the approved Regional Shopping Centre and the proposed Main Street retail in the Kanata Town Centre.

I trust that these few comments will serve to show you that the MCR Report falls far short of justifying the proposal and certainly is no basis for an informed decision on the merits of the proposal.


 Robin Dee



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VIA FACSIMILE #(613) 592-8183 AND DELIVERED

October 20, 1998

Ms. Anna Lapointe
Clerk
City of Kanata
580 Terry Fox Drive
Kanata, Ontario
K2L 4C2

Our File #51858

Dear Ms. Lapointe:

**Re: Taggart Realty Management
Official Plan and Zoning By-law Amendments
Marchwood Community Northwest Corner of Campeau Drive
and the future extension of Terry Fox Drive, City of Kanata**

We represent Loblaw Properties Limited which owns and operates a Loblaws supermarket of approximately 60,000 ft² in size located immediately to the east of the subject site across Campeau Drive. We have been monitoring the above-noted application for some time and have provided written comments previously to Planning staff.

We are writing at this time to object to the proposed Official Plan Amendment and Zoning By-law and to comment on the application. Our comments and concerns and reasons for objection are preliminary as a copy of the Planning staff report was only released to us yesterday (October 19, 1998). At this time, our comments and concerns are as follows:

1. Our client's supermarket is located in the "Regional Shopping Centre" designation ("RSC") of the Official Plan which forms part of the Town Centre. In Section 5.7.5.3, the policies with respect to the RSC designation are set out. Of particular relevance to the Loblaws site is the following policy:

A portion of the Regional Shopping Centre site may be developed partly for community commercial and partly as a cluster of large, independent stores which cater primarily to customers arriving by automobile. Because this form of development is not compatible with the transportation and design goals for Main Street, it will be limited to the westerly half of the site and will be phased and limited to a size and form which will not preclude the achievement of the other policies for this designation.

... However, in order to ensure that the Regional Shopping Centre is developed in the east half of the site, not more than about 25,000 m² of community shopping or other retail uses will be permitted before 30,000 m² of the Regional Shopping Centre has been built...

2. Our client's site was developed pursuant to this property together with a number of other commercial uses in the same and general vicinity. It is important, when attempting to ascertain the function of our client's facility, to note that this development is referred to as "community shopping or other retail uses".
3. The "Community Commercial" policies are set out in Section 6.5 of the Official Plan. Section 6.5.1 notes that lands within this designation are "...intended to provide retail and service commercial areas for a community or group of communities, thereby meeting more than the daily or weekly requirements of the residents of the community or communities". A broad range of retail and other uses are permitted. Our client's supermarket, together with the other uses in the vicinity do serve a community commercial function. If the area is developing an even greater function, it is as a result of unplanned and unintended commercial uses locating within the Terry Fox Business Park ("TFBP") and not as a result of any unanticipated development in the RSC site.
4. Our client's supermarket serves the day-to-day food shopping needs of residents in the surrounding residential areas including the Marchwood Community. Numerous studies prepared by the municipality clearly demonstrate that while Kanata lacks retail commercial facilities in a number of product categories, food shopping is not one of those categories. In fact, numerous retail commercial studies demonstrate a great deal of satisfaction by Kanata residents with respect to the opportunities for



food shopping available to them and no discernable outflow of food shopping dollars to competing facilities in other municipalities. It is therefore interesting to note how planning staff deal with the issue of need on page 3 of the Planning Staff Report. The "substantially under-stored" situation in Kanata is used as a basis to permit an additional amount of retail and service commercial floor space within the City generally. This rationale is used to permit an expansion of the overall gross floor area for the neighbourhood commercial centre to 10,000 m². However, when one looks at the restrictions proposed to be placed on various retail uses on the subject property, the most stringent restrictions are placed on those uses in categories which are under-stored. Conversely, the largest single use permitted is a food store which is permitted to a maximum of 3,700 m² (40,000 ft²).

5. The Town Centre polices also restrict an expansion of the community shopping facilities permitted on the east half of the regional shopping centre site to approximately 25,000 m². This restriction is to allow additional opportunity for the development of the Regional Shopping Centre. To now allow a substantial amount of additional retail commercial floor area on the subject site, which would not be allowed on the east half of the regional shopping centre site, is contradictory and cannot be justified.
6. The Planning Staff Report notes that the "Community Commercial" core site in the Marchwood community is restricted to a commercial floor area of 2,790 m². Your staff question on page 7 of the Report whether the "neighbourhood commercial" site should be of a similar or smaller size in order to reflect the hierarchy set out in the Official Plan. We believe that this is an appropriate inquiry and one that has implications beyond the subject site. The staff report notes that the development potential of the site is being "handcuffed" by the current community focused commercial policies. This is tantamount to an admission that to permit the subject site to develop to a size of 10,000 m² is contrary to these community focused commercial polices and should be the subject of a more comprehensive review. Staff note on page 5 of their report that this "inconsistency" is "...being felt throughout the City..." and must be examined thoroughly. They go on to note the appropriate means to conduct this examination is through the ongoing and comprehensive Official Plan review process. We could not agree more. This proposal is premature until this comprehensive Official Plan review process is concluded. We note that this review is ongoing and can be completed in the near future.



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7. We have received and reviewed the "retail market analysis, neighbourhood shopping centre, Terry Fox Drive, Campeau Drive, Kanata, Ontario" prepared by Market Research Corporation and dated April 19, 1998. This report is fatally flawed and cannot be relied upon to form the basis of any decision that Council must make. The most glaring flaws are as follows:
- (a) In order to establish the geographic area of influence for the proposed development, thorough surveys at similar existing centres in the same community are required to be undertaken. No such surveys were conducted by Market Research Corporation to test the extent of their delineated trade area;
 - (b) Despite the relatively smaller size of neighbourhood centres throughout Kanata and despite the proposed gross floor area limitation of 10,000 m² for the subject proposal, the analyst bases calculations on a trade area having a 1996 population base of 189,000 people (table 3.1). This is despite the function of neighbourhood shopping centres which is to serve a population base of at least 5,000 residents. The trade area of 189,000 people may have application to the regional shopping centre but there is no relationship to the defined neighbourhood shopping centre. It is therefore obvious that the analyst used an inappropriate trade area to justify the development potential for a neighbourhood shopping centre;
 - (c) When calculating demand for department store type merchandise ("DSTM"), as shown on table 6.4, per capita, DSTM expenditures per capita was specified at \$5,543.00. However, as is evident from table 6.1 of the Report, this estimate includes expenditures on motor vehicles and recreational vehicles, gasoline service station and automotive parts and accessories, none of which can be considered DSTM. This leads to an over-estimating of future demand for DSTM's base by more than 100%. As such, the demand forecast developed by Market Research Corporation is wholly unreliable;
 - (d) In order to assess impact, it is essential that the analyst has a clear understanding of directional expenditure patterns in a specific market area. This information is usually obtained through a



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consumer survey. No such survey was conducted by Market Research Corporation and therefore any comments pertaining to potential impacts are purely speculative and not based on any facts or empirical support;

- (e) A meaningful impact assessment can only be prepared once site specific assumptions about proposed tenants or tenant types are made. No proposed tenants are identified nor is there a proposed break-down of space by product line or type. For these reasons, no reliable impact assessment can be made; and
- (f) The report does not deal with why existing zoned but unbilled projects could not equally satisfy any unserved market potential.

The market report prepared by Market Research Corporation is flawed and cannot form the basis for a meaningful impact analysis as required by various sections of the Official Plan.

- 8. The staff report correctly notes on page 6 that the site is "grossly oversized to suit its plant function". We have a very real concern that this application forms the thin edge of the wedge and that the applicant will be returned to seek an even greater amount of floor space in order to fully develop the available property.
- 9. The entire consideration of this application is premature pending the conclusion of the upcoming Ontario Municipal Board hearing to consider the extent and nature of retail commercial uses permitted by the TFBP. In addition, Penex Kanata Ltd. has filed an application for Official Plan Amendment to permit additional retail commercial uses to locate in the regional shopping centre designation. Until these issues have been dealt with, the application is premature and should be refused or deferred by Council.

In view of the foregoing comments, we believe the application should be refused or at a minimum deferred indefinitely pending the outcome of the Penex application and the reconsideration of Official Plan Amendment Nos. 32 and 36 with respect to retail commercial uses in the TFBP.



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Our client also has concerns with respect to the rapidly increased amount of traffic utilizing the road system adjacent to its facility. We may have further additional concerns in this regard once we have had an opportunity to review any traffic impact analysis prepared by the applicant and the final form of any site plan which may be filed. Would you kindly provide us with this documentation should the application proceed forward and should this information become available.

Kindly place this correspondence before the members of Council for their review. I will be in attendance at this evening's meeting to briefly review the contents of this letter and to answer any questions Council may have.

We remain prepared to discuss any of the foregoing comments with Planning staff or representatives of the applicant in an effort to answer any outstanding questions.

Yours very truly,

AIRD & BERLIS



Steven A. Zakem

SAZ/kn

cc: Gavin Goebel
Michael Boughton
David Silversen

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