

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. (23) 14-93.1803
Your File/V/Réf.

DATE 08 November 1996

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

FROM/EXP. Planning and Development Approvals Commissioner

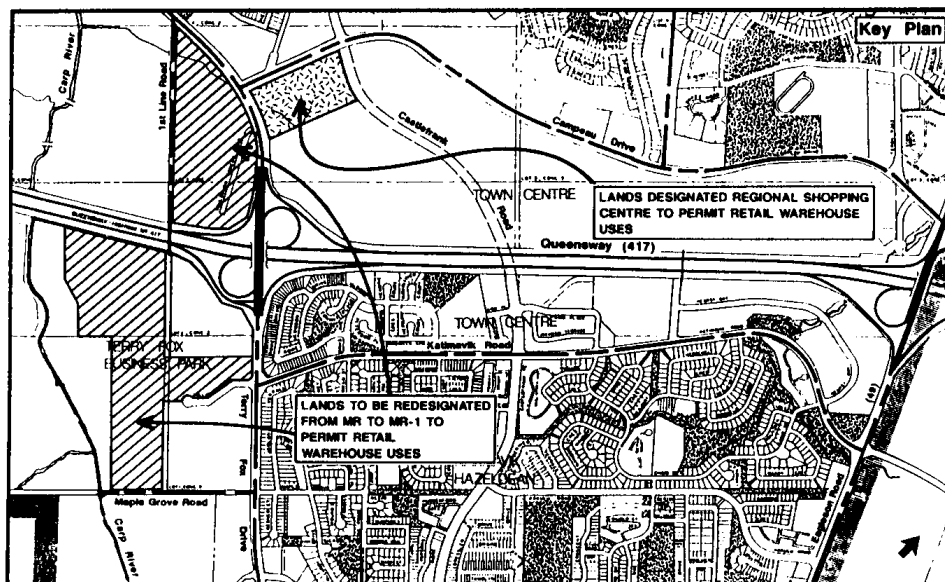
SUBJECT/OBJET **LOCAL OFFICIAL PLAN AMENDMENT NO. 32
CITY OF KANATA
ONTARIO MUNICIPAL BOARD REFERRAL REQUEST**

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend Council refer Amendment No. 32 to the Ontario Municipal Board pursuant to the request of IPCF Properties Inc. and the Loblaws Group of Companies as outlined on the Approval Page appended as Annex I.

BACKGROUND

The City of Kanata adopted Amendment No. 32 to its Official Plan on October 25, 1994 and subsequently submitted same to the Region for approval under Section 17 of the Planning Act, 1990. Amendment No. 32 was received by the Regional Clerk's Dept. on December 28, 1994 and circulated by Regional Planning staff to internal Departments and external agencies for comment.



On January 6, 1995, Regional staff received a request from Aird & Berlis on behalf of IPCF Properties Inc. and the Loblaws Group of Companies, to refer Amendment No. 32 to the Ontario Municipal Board (OMB) [see Annex III]. Following the filing of IPCF et al.'s OMB referral request, Kanata staff attempted to resolve the referrers' concerns. Notwithstanding Kanata staff's efforts, IPCF et al. did not withdraw its OMB referral request. As a result, Kanata Council passed a resolution on July 4, 1995 requesting the Region to process IPCF et al.'s OMB referral request expeditiously and without further mediation. Shortly after receiving Kanata Council's resolution, Kanata staff again asked Regional staff to suspend processing of Amendment No. 32 to give them more time to broker a withdrawal of the IPCF et al.'s OMB referral request.

In order to bring closure to the processing of Amendment No. 32, Regional Planning staff gave Kanata staff until October 31, 1996 to negotiate the withdrawal of IPCF et al.'s OMB referral request. As of November 1, 1996, IPCF et al. has yet to withdraw their OMB referral request and as such, Amendment No. 32 is now being put before Planning and Environment Committee (PEC) for a decision. It should be noted that the zoning by-law amendment (ZBLA) Kanata Council passed to implement Amendment No. 32 (i.e., ZBLA 33/95) has been appealed to the OMB by IPCF et al.

As Amendment No. 32 was adopted by Kanata Council on October 25, 1994, it is being processed under the policies and procedures of the Planning Act, 1990.

THE AMENDMENT

The purpose of Amendment No. 32 is essentially threefold as follows:

1. to amend Schedule 'B' of Kanata's Official Plan to permit retail warehousing in the Terry Fox Business Park subject to certain traffic and land use controls;
2. to amend Schedule 'B' of Kanata's Official Plan to permit retail warehousing in the northwest corner of the "Regional Shopping Centre" site in Kanata's Town Centre subject to certain traffic and land use controls; and
3. to introduce policies to Sections 5, 6, 10 and 11 of Kanata's Official Plan to manage the development of retail warehouse uses.

The lands impacted by Amendment No. 32 are located in Lots 1 and 2, Concession I and Lots 1, 2, and 3, Concession II of the City of Kanata and are in the vicinity of the Highway 417 Terry Fox Dr. interchange (see Annex II).

AGENCY COMMENTS

Amendment No. 32 was circulated to a number of external agencies including the Ministry of Natural Resources, the Mississippi Valley Conservation Authority and the Ministry of Transportation (MTO). Further, Amendment No. 32 was circulated to the Regional Environment and Transportation Dept. None of the circulated agencies had any objections to the approval of Amendment No. 32. However, the MTO and the Regional Environment and Transportation Dept. had comments and these are summarised below.

Ministry of Transportation

MTO staff indicated that prior to any development on the subject lands, the owner will be required to submit the traffic impact study required by PART B - THE AMENDMENT, Section a) of Amendment No. 32 for review and approval by the MTO. This traffic impact study shall assess the impact of any development of the subject lands on the operational characteristics of the adjacent interchange at Highway 417 and Terry Fox Dr. Further, should this study conclude that improvements are required to the Highway 417 Terry Fox Dr. interchange to support the development proposed, the cost for such improvements would be borne by the development proponent(s).

Comment

The request of the MTO should be incorporated as a modification to Amendment No. 32.

Regional Environment and Transportation Dept.

Regional Environment and Transportation Dept. (ETD) staff noted that the traffic impact study required by PART B - THE AMENDMENT, Section a) should assume that no direct vehicular access points to Terry Fox Dr. will be granted by the Region for development on the subject lands. Moreover, ETD staff request that owners of the land impacted by Amendment No. 32 enter into agreements with the Region to ensure that direct vehicular access from these lands to Terry Fox Dr. will not be applied for now or in the future.

Comment

The request of the ETD should be incorporated as a modification to Amendment No. 32.

OMB REFERRAL REQUEST

The IPCF et al. request to refer Amendment No. 32 to the OMB under Section 17(11) of the Planning Act, 1990 is based on three reasons as follows:

1. Amendment No. 32 does not propose to provide any limitation with respect to the density of development and could result in retail warehouse development considerably in excess of the “Primary and Secondary Employment Centre” designations as well as the “Regional Shopping Centre” designation in the Regional Official Plan (ROP) all of which would be contrary to the ROP.
2. The policies of Section 6.10 of Kanata’s Official Plan implement the policies contained in the ROP and permit “accessory commercial uses” as part of the “Restricted Industrial” designation. Permitting retail warehouses by way of a special policy designation as part of Kanata’s industrial policies fails to recognise the true nature of retail warehousing and is an inappropriate policy change that does not fully recognise the retail nature of these uses. This is contrary to both the Region’s and Kanata’s Official Plans.

3. Contrary to the recommendations of Kanata's "Commercial Uses Policy Study", Amendment No. 32 would permit membership warehouse clubs and similar retailers of large food volumes without market studies to demonstrate that such development will not adversely impact on the planned function of Kanata's other retail facilities.

STAFF COMMENT

The lands affected by Amendment No. 32 are designated "Extensive Employment Area" (EEA) in the ROP. The EEA designation permits a mix of uses including retail uses at densities lower than those permitted on lands designated "Primary or Secondary Employment Centre" in the ROP. As retail warehouse uses are typically constructed as low density single storey structures, these uses have been deemed to conform with the policies of the EEA designation. Examples of where retail warehousing has been permitted in the EEA designation include the Price Clubs located at Cyrville and Innes Rds. in the City of Gloucester and West Hunt Club and Merivale Rds. in the City of Nepean.

Insofar as IPCF et al.'s reasons for requesting an OMB referral of Amendment No. 32, Regional staff notes the following:

- There are no maximum gross leasable area (GLA) limitations on retail warehousing beyond that implied by the "sale of products stored and displayed in a warehouse format" and the determination of the structural footprint through Kanata's site plan and zoning provisions. However, the policies of Section 3.1.3.4 of the ROP do not require any GLA limitations on retail warehousing in the EEA designation.
- Amendment No. 32 seeks to change Kanata's existing Official Plan policies to accommodate retail warehousing only on lands in the vicinity of the Highway 417 Terry Fox Dr. interchange. The purpose of Amendment No. 32 is consistent with recommendations of Kanata's "Commercial Uses Policy Study" that attempt to direct retail warehouse uses to sites in close proximity to the Highway 417 Terry Fox Dr. interchange. Given the proposed policies articulated by Amendment No. 32 as well as the EEA policies of ROP, it is difficult to conclude that either Regional Council or Kanata Council believes that retail warehousing on the lands impacted by Amendment No. 32 is inappropriate. Regional staff submits that this issue is market related and at present not supported by the positions taken by Regional and Kanata Council.
- Regional staff agree with IPCF et al. that Amendment No. 32 does not implement the recommendation of Kanata's "Commercial Uses Policy Study" that retail warehouse development be justified on the basis of market studies. Kanata Council elected not to include a requirement for a market study to support each retail warehouse proposal in the interest of avoiding lengthy, expensive and unnecessary OMB hearings on the strengths and weaknesses of market studies.

Given Section 17(11) of the Planning Act, 1990, Regional Council may refer all or part of Amendment No. 32 to the OMB unless in Regional Council's opinion, the referral request is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay. While Regional staff has not found good reasons to support two of the three arguments offered by IPCF et al. in support of its OMB referral request, Regional staff cannot conclude that IPCF et al.'s OMB referral request has been made in bad faith or is frivolous or vexatious. Moreover, as Kanata's ZBLA 33/95 has already been appealed to the OMB, Regional staff believes it would be prudent to have all pending planning applications before the OMB concurrently. Accordingly, Regional staff recommends that PEC and Council refer Amendment No. 32 to the OMB pursuant to the request of IPCF et al.

PUBLIC CONSULTATION

The public notice and meeting requirements of the Planning Act, 1990 were satisfied by the process adhered to by Kanata Council for Amendment No. 32. Nevertheless, Kanata staff were advised of the November 26, 1996 date of the PEC meeting to consider Amendment No. 32. No further public consultation is required to consider Amendment No. 32 in light of the IPCF et al. OMB referral request.

FINANCIAL IMPLICATIONS

Should Amendment No. 32 be referred to the OMB, Regional staff would be required to prepare and give evidence on Regional Council's decision as well as on matters of planning and engineering opinion. Any costs incurred as a result of Regional staff's participation in an OMB hearing on Amendment No. 32 would be absorbed by the Legal and Planning and Development Approvals Depts. budgets.

*Approved by
N. Tunnacliffe, MCIP, RPP*

APPROVAL PAGE

AMENDMENT NO. 32 TO THE OFFICIAL PLAN
OF THE CITY OF KANATA

I hereby certify that Amendment No. 32 to the Official Plan of the City of Kanata, which has been adopted by the Council of the City of Kanata, was referred to the Ontario Municipal Board by Council of the Regional Municipality of Ottawa-Carleton on _____ under Section 17 of the Planning Act, 1990, as follows:

Referral No. 1

Amendment No. 32, in its entirety, is referred to the Ontario Municipal Board.

Dated this _____ day of _____ 1996

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Deputy 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 Schedule "A", constitutes Amendment No. 32 to The Official Plan of the City of Kanata, as amended by Official Plan Amendment No. 24.

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

PART A - THE PREAMBLE1. Purpose

The purpose of this Amendment is as follows:

- a) To permit Retail Warehousing into the Terry Fox Business Park subject to certain traffic and land use controls;
- b) To permit Retail Warehousing into the north-west side of the Regional Shopping Centre site in the City's Town Centre subject to certain traffic and land use controls.

2. Location

The lands affected by this Amendment are located in Part of Lots 1 and 2, Concession 1; and in Part of Lots 1, 2 and 3, Concession II of the former Township of March, now part of the City of Kanata. These lands are referred to as the Terry Fox Business Park and the Town Centre lands.

Supplementary policies applying to the lands affected by this Amendment will be added by changes to Section 5.7.5.3 "Regional Shopping Centre", as amended by Official Plan Amendment No. 24; by changes to Section 10.2.4 regarding the use of a holding provision; by changes to Section 11.3 "Glossary"; by the addition of a new Section 6.10.4 entitled Special Policy Area (MR-1).

3. Basis

In 1993, the City of Kanata commissioned the "Commercial Uses Policy Study". The three primary objectives of the study are as follows:

- i) To complete a Market Impact analysis of proposed retail warehouse uses in the City of Kanata and make recommendations, as to the appropriateness of locating these uses in the City. The study is to assess the impact on both the existing and planned retail centres in the City particularly the Regional Shopping Centre.
- ii) To provide, if appropriate, Official Plan policies that will fit within the context of Kanata's Official Plan. These policies will be used to govern and evaluate retail warehouse uses in the City of Kanata.

The Study should comment on how the recommended Official Plan policies for retail warehouse uses will comply with the commercial policies contained in RMOC Official Plan.

- iii) To review the City's hierarchy of commercial land use policies and bring them into conformity with the Commercial Policies contained in the Region's Official Plan.

The Study and these objective have now been completed and the City would like to implement a policy framework recommended in the Study that will permit Retail

Warehousing into the two locations illustrated and described in Schedule "A" and the "Location" Section of this Amendment.

The Study was commenced in 1993 and included open invitations to landowners to express their views on the prospect of Retail Warehousing in the City. Upon the completion of the Study in March 1994, the public were invited to express their views on the Study's recommendations before Council. The final Study was also circulated for public input and a public meeting on an Official Plan Amendment for Retail Warehousing was advertised and held on September 20th 1994.

PART B - THE AMENDMENT

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. 32 (Urban Area Land Use) constitutes Amendment No. 32 to the Official Plan of the City of Kanata.

Details

The following changes are hereby made to the Official Plan for the City of Kanata:

- a) Add the following in Section 5.7.5.3 as amended by Official Plan Amendment No. 24:

Add in paragraph 5 after the words "arriving by automobile", the following sentence: "As well Retail Warehouse operations as defined in Section 11.3 Glossary are permitted subject to the holding provisions described in Section 10.2.4."

Add in paragraph 1 of "Permitted Uses" after the words "shall be permitted." the following sentence: "As well, Retail Warehouse operations as defined in Section 11.3 Glossary are permitted subject to the holding provisions described in Section 10.2.4."

- b) Add the following after subsection 4 of Section 10.2.4:

"5. In the areas designated MR-1 and RSC on Schedule "A", a traffic impact study demonstrates that the impact of traffic generated by a proposed retail warehouse will not exceed the traffic volume standard for any street affected by the proposed development."

- c) Add the following after Section 6.10.3:

"6.10.4 Special Policy Area (MR-1)

For the lands designated MR-1 on Schedule "A", in addition to the permitted uses outlined in Section 6.10.2, a Retail Warehouse operation as defined in Section 11.3 may also be permitted and may serve the retail/wholesale trade both in the Terry Fox Business Park and areas beyond. Retail warehouse operations in this location will be subject to the holding provision outlined in Section 10.2.4.

So as to preserve the City's existing and Planned Retail Structure, lands which are designated MR-1 will not be permitted to be used for a supermarket, department store, shopping centre or small retail operation of less than 3,000m² (30,000ft²). Retail warehouse operations will

component of their operations. As the Terry Fox Business park is a prominent entrance into the City of Kanata, extra design attention will be required to be implemented at the Site Plan and Subdivision stages of approval for Retail Warehouse uses.

- d) Add the following definitions in alphabetical order into Section 11.3:

"Retail Warehouse: A building or structure occupied by a single user having a minimum gross floor area of 5000 square metres, where the predominant use is the sale of products stored and displayed in a warehouse format and where the maximum gross floor area devoted to the display, storage, preparation and sale of food, household paper products, health and beauty aids, household chemicals is limited to 45% of the gross floor area of the building or structure. This requirement will ensure a retail warehouse will not undermine the food retailing functions in other existing commercial designations.

Supermarket: A building or structure occupied by a single user having a minimum gross floor area of 3000 square metres, where the predominant use is the preparation and sale of food, the sale of household paper products, health and beauty aids, household chemicals, plants and gardening supplies.

Department Store: A building or structure occupied by a single user having a minimum gross floor area of 5000 square metres which is engaged in general merchandising at retail of a wide range of commodities. At least three main lines, namely apparel, hardware and home furnishings should be carried and other commodities normally carried by such establishments, including dry goods, home appliances."

Implementation

The Implementation and Interpretation of this Amendment shall be in accordance with the definition's provided and the respective policies of the Kanata Official Plan.

PART C - THE APPENDIX

APPENDIX 1 - PUBLIC MEETING

In accordance with the requirements of Sections 17 and 21 of the Planning Act, as amended from time to time, the City provided notice of this Amendment in the Kanata Kourier Standard, a local newspaper with general circulation in the area.

Three notices were published on this Amendment and its implementing zoning - these notices are attached and are as follows:

1. Aug. 12/94 - Notice of a Public Meeting to be held on September 20, 1994. This notice was incorrect and was republished on August 19, 1994.
2. Aug. 19/94 - Notice of a Public Meeting to be held on September 20, 1994. Council deferred their consideration of this matter to the October 18th, 1994 meeting.
3. Oct. 14/94 - Notice of an Oct. 18th Council meeting where City Council is to discuss the Retail Warehouse matter and a revised staff Report.

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19-93-1803

ANNEX III

AIRD & BERLIS

Barristers and Solicitors

BCE Place
Suite 1800, Box 754
181 Bay Street
Toronto, Canada
M5J 2T9

Steven A. Zakem
Direct Line: 865-3440

Telephone: (416) 364-1241
Fax: (416) 364-4916
Telex: 06-22702

VIA TELECOPY #613-560-1380 AND REGULAR MAIL

January 3, 1995

Regional Chairman and Members of Council
c/o Ms. Mary Jo Woollam, Regional Clerk
Regional Municipality of Ottawa-Carleton
Cartier Square
111 Lisgar Street
Ottawa, Ontario
K2P 2L7

Our File #51858

OTTAWA CARLETON REGIONAL CLERK DEPT.	
JAN 06 1995	
Received	
FILE #	08-95-0046
DOC I.D. #	95-0049
ACTION	is Planning
TAKEN	DEPT. + LOU MAL
TO	B.O.G. / D.W.B.

Dear Ms. Woollam:

**Re: City of Kanata Official Plan Amendment No. 32 ("OPA 32")
(adopted by By-law No. 135-94)**

We are the solicitors for IPCF Properties Inc. and the Loblaw's Group of Companies which owns and operates a number of supermarket facilities in the area of the City of Kanata. On behalf of our client, we hereby request referral of the above-noted Official Plan Amendment to the Ontario Municipal Board for a number of reasons including the following:

1. The subject lands are designated "Extensive Employment Area" in the Regional Municipality of Ottawa-Carleton Official Plan ("Regional OP") and are adjacent to the "Regional Shopping Centre" designation. The "Extensive Employment Area" designation in the Regional Official Plan permits retail uses "provided that the density of development is relatively low as compared to "Primary and Secondary Employment Areas". OPA 32 would not propose to provide any limitation with respect to the density of development and could result in retail warehouse development considerably in excess of the "Primary and Secondary Employment Areas" and, indeed, in excess of those permitted in the "Regional Shopping Centre" designation, all of which would be contrary to the Regional OP.

2. The industrial policies of the City of Kanata Official Plan (s.6.10) implement the policies contained in the Ottawa-Carleton Official Plan and permit "accessory commercial uses" as part of a "Restricted Industrial" designation which is the designation that applies to the subject properties. Permitting retail warehouses by way of "Special Policy" designation as part of the industrial policies fails to recognize the true nature of big box retailing and is an inappropriate policy change that does not fully recognize the retail nature of these uses. This is contrary to both the Regional OP and City of Kanata Official Plan.
3. The policies of the City of Kanata Official Plan, including policies 2.1.5, 2.2.4, 5.7.4.2, 5.7.5.1, 5.7.5.3, 6.6.3, 9.1.8 all speak to the careful approach that the City of Kanata takes with respect to additional commercial development including the requirement for market studies to be undertaken in order to ensure that an oversupply of commercial facilities does not exist in the City. In this respect, the City retained John Winter Associates Limited to undertake a "Commercial Uses Policy Study on Retail Warehouses - Kanata, 1993", which report is dated March, 1994 and forms the basis for OPA 32.

Mr. Winter specifically noted that Kanata was "very well-served by supermarket - oriented plazas. In almost every other area, Mr. Winter noted that Kanata was deficient in facilities resulting in outflow of expenditures from the City of almost \$200 million in sales each year to other municipalities. Mr. Winter went on to recommend a retail park of approximately 100 acres which would allow large big box retailers to locate in the City of Kanata. However, Mr. Winter went on to note that supermarkets, department stores and membership warehouse clubs should not be permitted unless supported by a positive impact statement prepared by an independent consultant and not one hired by the proponent. He also recommended that retailers under 5,000 ft² in size not be permitted to locate in such a retail park so as to ensure that the plaza based to consumer of commerce planned for the City would not be adversely impacted.

Contrary to the recommendations of Mr. Winter, the City of Kanata in OPA 32 would permit membership warehouse clubs and similar retailers of large food volumes. This could result in adverse impact on the planned function of retail facilities.

In conclusion, OPA 32 fails to conform with the Official Plan for the Regional Municipality of Ottawa-Carleton, the Official Plan for the City of Kanata and risks upsetting or impacting the commercial hierarchy or a part thereof within the City, such that the planned function of one or more facilities could be adversely affected.

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AIRD & BERLIS

Regional Chairman and Members of Council
January 3, 1995
Page 3

Once we have had an opportunity to retain professional consultants with respect to this matter, we may have additional reasons and grounds for such a referral. Please acknowledge receipt of this correspondence and advise us of when the Regional Council will be considering the matter.

Yours very truly,

AIRD & BERLIS



Steven A. Zakem

SAZ/mn

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AIRD & BERLIS