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ADMINISTRATION

PL060915

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Janice Wood
Subject: By-law No. 079-2006
Municipality: City of Brockville
OMB Case No.: PL060915
OMB File No.: R060215

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Janice Wood
Subject: Proposed Official Plan Amendment No. 76
Municipality: City of Brockville
OMB Case No.: PL060915
OMB File No.: O060171

APPEARANCES:

Parties

Corporation of the City of Brockville

The Fuller Group Ltd.

Janice Wood

Counsel

J. P. Simpson

D. Silverson

Participants

P. and G. Gellrich
E. Wesley
R. Cirne
F. and B. Lunman
K. Pelton
B. Darling
B. Defalco
J. Maase
A. Purcell
R. Hunter
R. Pearce
C. Amelotte

F. Dunn
S. Paterson
M. Libbos

**DECISION OF THE BOARD DELIVERED BY C. HEFFERON AND
D. BARBIR AND ORDER OF THE BOARD**

The Fuller Group (Fuller) has optioned a 1.43 ha (3.531 acre) prime waterfront site in downtown Brockville. The site includes both a land component of approximately 1.01 ha (2.49 acres) and a water lot component of approximately 0.42 ha (1.04 acres).

Fuller proposes to develop approximately 130 condominium apartment units in two towers – one of 16-storeys with a 2-storey mixed use podium and the other of 11-storeys with a 1-storey podium. A 4-storey “cottage-inium”, which will have 36 units and 48 parking spaces, is also proposed. The development will include a total of 235 enclosed, above-grade parking spaces located primarily in the podia; approximately 120 public and visitor boat docking slips with retail fuel facilities and a 4-storey Maritime Discovery Centre/Nautical Learning Centre with approximately 1,000 square metres of floor area.

The proposed Maritime Discovery Centre/Nautical Learning Centre will comprise a restaurant and marine-related retail shops as well as a number of interactive attractions documenting the area’s important maritime past and present including information on the UNESCO-designated Thousand Islands Frontenac Arch Biosphere Reserve.

The 3-phase development proposes a total gross floor area (GFA) of 391,863 square feet, including the above grade enclosed parking noted above.

The Board was told the subject brownfields site had in the early part of the last century been used by the St. Lawrence Engine Company for marine-related manufacturing and warehousing. The original buildings were demolished in 1990 but the site wasn’t re-habilitated and remains severely contaminated. A recent Class 1 environmental assessment turned up a number of buried, rusting fuel tanks and other hazardous materials.

More recently the site has been used for open storage and for re-fueling local and visiting watercraft. However, it has been vacant and/or much underutilized for 15 years. The Board was informed that although a number of prospective purchasers had looked at the site, its contaminated condition finally dissuaded all of them. The cost of clean-up is estimated to be in the \$2.3 million range.

The City of Brockville had been urged in the past by various citizens groups to acquire the site as a public park or similar but had declined. The Board was told the City preferred the site to remain in private hands whence it could be developed with improvements that would generate much needed tax revenues. The Board was also informed that generating tax revenues has assumed even greater urgency of late since some 5,000 manufacturing-type fulltime jobs had left town in the past few years.

The matter before the Board concerns a decision of the Brockville City Council to approve Official Plan Amendment (OPA) 76 and site-specific By-law Amendment (ZBA) 079-2006, which would have the effect of allowing the site to be developed with the uses proposed by the Fuller Group.

Council's decision is being appealed to the Board by Ms Janice Wood.

Fifteen participants - including several residents of the two condominium towers closest to the subject site - passionately expressed their feelings both for and against the proposal at the hearing. Those participants who indicated they spoke for the residents of the two condominium towers - the Harbourview and the Boardwalk - appeared to be primarily concerned that their views of the water and Block House Island would be negatively impacted.

Statements were received from the local Chamber of Commerce - supported by a 700 plus signature petition - and similar business associations expressing support for the Fuller proposal.

One of the participants, a businessman who owns three commercial condominium units in the Boardwalk building expressed his concern that the proposal will reduce or eliminate on-street parking on Broad Street. The Board learned that on-street parking in this area of the waterfront is also a concern of the wider community.

The Brock Trail (particularly those portions passing closest to the waterfront) is a major concern for some of the participants. The Board was informed that the trail is several kilometres in length. The section of the trail that will be impacted by the proposed development - the existing section along Flint Street - appears to be no more than 150 metres in length. Some people indicated they wanted the Flint Street section moved further south so that it traverses the subject site along the water's edge.

Other expressions of concern pertained to established waterfront festivals like the annual Poker Run, which some participants' feel would be jeopardized by the proposed development.

However, what seemed to concern the majority of people present who were in opposition to the proposal as portrayed by the media were its height and massing. A number of the people opposed wore buttons indicating they thought the proposed development was "Too Darn Big" (for Brockville). In their statements, several of the participants said the development would not only block out views of the historic and architecturally-significant buildings in downtown Brockville (especially the views from Block House Island) but would also block views of the water from some of the suites in the nearby Harbourview and Boardwalk condominium towers.

Issues and/or Concerns Raised

In the course of the hearing, the following issues/concerns emerged:

1. Should the site remain open space?
2. Is the subject site the best location for the proposed project?
3. Will the proposed project destroy the water view of some residents of the adjacent Harbourview condominium?
4. Is it "too darn big" for Brockville?
5. Will the project have a negative impact on waterfront festivals?
6. Will it destroy any possibility of relocating the Flint Street portion of the Brock Trail closer to the water's edge?

7. Will it negatively impact on-street parking currently enjoyed by the clients of some of the Boardwalk businesses?
8. Was the decision *ultra vires* the current City Council?

Findings

Issue #1: Should the site remain open space?

In their testimony, a number of the participants opined that because the subject site has been vacant for at least the past 15 years, it should remain so.

Ms Pascoe-Merkley, a qualified land use planner and planning director for the City of Brockville gave expert opinion evidence in support of both the proposal and of the Official Plan and Zoning By-law Amendments required. She explained that although the site's current designation in the Official Plan is "Open Space" this is a temporary classification since the site is privately owned. This opinion is supported by subsection 6.8.2.4 of the Official Plan, which states the Official Plan does not intend that private lands designated "Open Space" will necessarily remain so indefinitely. This section also states that an application to re-designate such lands will be given due consideration by Council if either the City, the Conservation Authority or other public agency does not wish to purchase these lands to maintain them as open space. Since none of these public bodies has indicated a desire to acquire the lands, their redevelopment is therefore appropriate.

She also presented written evidence (Exhibit 21) that compared the open space or parklands required under Official Plan policy 6.8.2 with the actual open space area. The assessment of available inventory confirms the City of Brockville exceeds those goals set out in the Official Plan.

The Board therefore adopts and relies on Ms Pascoe-Merkley's opinion in this matter.

Issue #2: Is the subject site the best location for the proposed project?

In their testimony, some of the participants suggested the project might fit better on a particular City-owned waterfront lot somewhat to the east of the subject site since

“far fewer people would have their water views impacted” and the parking spaces on Broad Street (used by some of the commercial tenants of the Boardwalk condominium) could be retained.

In her testimony, Ms Pascoe-Merkley explained that the City-owned site in question is so highly contaminated at present that the public is prevented by a chain link fence from using it for any purpose. While no figure was mentioned, she stated that the clean-up cost alone would be several millions of dollars. She indicated the City simply does not have such a sum available for that purpose.

In his testimony, Mr Fuller, vice president of the Fuller Group (the applicant) indicated that he had considered that City-owned site but determined it would not be suitable for the development he envisions. He re-affirmed that the subject site is the only one in Brockville that fits with his company’s plans.

The Board adopts and relies on the opinions of Ms Pascoe-Merkley and Mr. Fuller in this matter.

Issue #3: Will the proposed project destroy the water view of some of the residents?

A number of the participants claimed that the water view of some of the residents of the Harbourview condominium will be negatively impacted by the proposed development (at least as it - the development - had been portrayed in the local media).

In the course of the hearing, it became obvious some people present had been confusing the Fuller proposal with the earlier concept drawings created by Miguel Escobar, an architect hired by the City to develop some design options for the site for discussion purposes.

In his testimony, Mr. Fuller indicated that the design of his company's proposal differed significantly from the Miguel Escobar concepts and that Vincent P. Colizza, the Fuller architect, had not only located the towers on the site to maximize the views of those Harbourview residents potentially most impacted but had also stepped down the western edge of the 4-storey cottage-inium to further reduce the impact on sightlines. (Exhibit “38”)

Mr. Fuller explained that while a 4-storey building covering the entire site would be permitted as-of-right under the Official Plan and Zoning By-law of the City of Brockville, he believes a “point block” structure would not only be more attractive when viewed from the water but would actually have far less impact on the view corridors of people (including the Harbourview residents) looking from the city towards the water and Block House Island.

In their testimony, both Ms Pascoe-Merkley and Ms Sweet, the planner retained by the Fuller Group, also indicated that the project would be designed to minimize the impact on both the water views the Harbourview residents have enjoyed for the 20-plus years their building has been up and on the water (and island) views currently enjoyed by other city residents and visitors.

The Board adopts and relies on the expert opinion evidence of Ms Pascoe-Merkley and Ms Sweet with respect to this issue.

Issue #4: Is the proposed structure “too darn big” (for Brockville)?

Many of the people opposed to the Fuller proposal sported hand drawn buttons and signs indicating they thought the structure was “too darn big”. Mr. Fuller indicated that as a gesture of conciliation, he ordered the proposal to be reduced in both height and density over what is permitted as-of-right in the Official Plan and the Zoning By-law. He also cautioned that reducing the size (i.e., the height and density) below a critical number would jeopardize the economic viability of the project. He cited the Boardwalk as an example of a building that had been reduced in size to placate local residents. The result was it has never, he claimed, been economically viable.

Ms Pascoe-Merkley and Ms Sweet both confirmed that the proposal is of a size contemplated by successive city councils, one that is generally allowed by the in-force Official Plan and Zoning By-law. They both testified it is appropriate for the site.

The Board acknowledges the concerns of these residents and others but adopts and relies on the expert opinion of the two planners and Mr. Fuller. In doing so, the Board is secure in its understanding based on the testimony of the key witnesses that neither Mr. Fuller nor City of Brockville officials would knowingly do anything to jeopardize the historic character and beauty of Brockville.

Issue #5: Will the proposed development negatively impact Brockville's waterfront festivals?

The Board heard evidence from both a number of participants and from the planners, Ms Sweet and Ms Pascoe-Merkley that waterfront festivals (such as the mind-boggling Poker Run) have a long and successful history in Brockville.

The planners testified that in their opinion the Fuller development would add to rather than detract from the festivals and would provide additional attractions for people to visit when they come to Brockville. It was suggested that the proposed development would contribute to turning Brockville into a "destination" attraction and would complement already successful attractions like the historic railway tunnel.

Opposing this view were several of the participants and Ms Wood who said that the 1,000 horsepower Cigarette-type ocean racing boats that throng to Brockville's harbour during the Poker Run would be squeezed out of docking space and re-fueling opportunities (especially if the 110 foot "Fair Jeanne" tall ship were moored in front of the project as proposed by the developer). However, they were not able to offer any expert evidence to support their contentions.

Offering his perspective on this issue, Mr. Fuller who is himself a world-class sailor and founder of a successful sailing school stated that on the contrary, the development would actually provide additional docking space for visiting boats as well as more permanent mooring spots for locals than currently exists.

In this case, too, the Board finds the weight of the evidence favours the proponents.

Issue #6: Will the proposed development spell *finis* to the idea of aligning the Flint Street portion of the Brock Trail closer to the water?

The planners testified that the plan to align the Flint Street portion of the Brock Trail to the water's edge made sense if and only if the two water lots comprising approximately 30% of the subject site were to be filled in as had occasionally been suggested over the years. However, filling in the water lots would mean that the city would lose more than 100 permanent moorings, which would be unacceptable to almost everyone in the community.

The other option suggested was to relocate the Flint Street portion of the Brock Trail in such a way that it ran through the project. Mr. Fuller indicated that his architects and designers had considered this but found it to be impractical.

On this issue too, the Board favours the evidence provided by the proponents.

Issue # 7: Will the proposed development negatively impact the on-street parking currently enjoyed by clients of Boardwalk businesses?

A participant, Mr. Maase, testified that he owns several of the commercial condominium spaces in the adjacent Boardwalk building and that since the building was allowed to be constructed with insufficient on-site parking spaces for both the residents and the commercial tenants, it had long been assumed that they would be allowed to use the 17 spaces on Broad Street in the vicinity of the Boardwalk.

Counsel for the developer, Mr. Silverson, objected to Mr. Maase's even raising the issue of on-street parking since it had nothing to do with the appeal before the Board.

Ms Pascoe-Merkley pointed to the city-owned parking lots in the immediate vicinity of the Boardwalk and testified that they provided sufficient parking spaces for all the existing and proposed uses. She also re-iterated that the proposed Fuller development would provide 100% of the parking spaces on-site that it requires for its residents and visitors and pointed to a parking study submitted along with the application for the OPA and ZBA.

The Board adopts and relies on the opinion of Ms Pascoe-Merkley in this regard.

Issue # 8: Was the decision *ultra vires* the current City Council?

One of the participants expressed her extreme displeasure not only with the speed with which staff processed the Fuller OPA and ZBA applications (reportedly fewer than 35 working days) and the alacrity with which Council approved them.

The Fuller proposal was considered by both the outgoing city council prior to the last civic election and by the incoming city council – the one currently sitting. The project

was also a major issue in the election. Both councils voted 100% in favour of proceeding with the proposal.

The Board learned from the planners' testimony that prior to Mr. Fuller's submitting his proposal to the city, two major studies - the Anchor Attraction Report and the Community Improvement Plan - concerning that portion of the waterfront and the subject site itself had been commissioned and subsequently adopted by the council then sitting. Mr. Fuller's proposal, the Board was informed, merely responded to these studies and to the City's well-known policy for the subject site. According to Ms Pascoe-Merkley, the OPA and the ZBA simply slightly modified the Official Plan and the Zoning By-law so as to accommodate the Fuller proposal. This process is discussed in the next section.

The Board finds the weight of the evidence again favours the proponents.

Summing up, on every single one of the issues and/or concerns raised at the Hearing, the Board found the overwhelming weight of evidence favours the proponents.

Planning Evidence

Ms Pascoe-Merkley informed the Board that in order to accommodate the Fuller proposal, the City had decided to amend the City of Brockville Official Plan to include a new land use designation - Commercial Waterfront Mixed Use with associated policies to be inserted in Section VI Land Use Policies and to re-designate the subject lands on Schedule "A" Future Land Use from Commercial Downtown to Commercial Waterfront Mixed Use.

Concurrent with the application filed for amendment to the Official Plan, the application for amendment to City of Brockville Zoning By-law 194-94 sought to create a new site-specific Waterfront Commercial Zone to replace the C3A-2 Waterfront Commercial Zone in place on the subject site. The new zone would reflect the proposed mixed use planned unit development of three residential buildings and one mixed use building with commercial, institutional and recreational uses.

The Board was told that the existing legislation allows for approximately 360,000 square feet of development on the subject site. Fuller proposes to construct approximately 391,000 square feet.

A set of drawings showing the height and massing of the four proposed buildings on the site (prepared by Vincent P. Colliza, the Fuller Group's architect) was included in the witness statement of Ms Pascoe-Merkley. (Exhibit 3)

At the urging of the Board, Ms Pamela Sweet, a qualified land use planner representing the Applicant explained in detail the planning hierarchy in Ontario. She also pointed out that both the Provincial Planning Statement 2005 (PPS), which outlines overall provincial planning policy and the City of Brockville Official Plan, which implements provincial planning policy on the local level are statutory documents. They are not therefore optional. The Official Plan must be consistent with the overall provincial policy as outlined in the PPS. She went on further to explain that any amendments to the City of Brockville Zoning By-law must then conform to the Brockville Official Plan.

She pointed out that in her opinion the Fuller proposal conforms to key sections of the Provincial Policy Statement 2005 (PPS) particularly those sections dealing with brownfields development, infilling and intensification.

The Appellant, Ms Wood, represented herself at the hearing, which lasted three full days. She was attended during most of the hearing by a substantial contingent of supporters from the community.

An equally large number of people on the other side of the room seemed to be in agreement of Council's decision to support the proposal.

The Board was told that in the months between the time the proposal was made public and the Hearing date, the specifics of the project had been modified to take account of both the concerns of local residents and public agencies such as the Conservation Authority and the (federal) Department of Fisheries and Oceans. The Board learned during the hearing that many of the participants who appeared in opposition to the amendments had not been aware of these contacts and subsequent

substantial modifications to the Fuller proposal. Even the Appellant, Ms Wood, allowed that the Colizza designs presented at the Hearing would have far less negative impact on the adjacent buildings than she had originally feared.

In opposition, Ms Wood did not present any evidence the Board was able to construe to be planning evidence, nor did she call any expert witnesses. This is not to say she did not prepare for the Hearing. In fact, it was clear to the Board that she had worked very hard on her presentation. The problem facing the Board was, however, her presentation consisted almost exclusively of a very detailed, though ultimately irrelevant de-construction of the design and massing of what she had understood to be the Fuller proposal.

Ms Pascoe-Merkley, the City's planner gave expert opinion evidence in support of the proposal and testified that it conforms not only to the purpose and basis of the Official Plan of the City of Brockville but also responds to a number of business development and civic improvement initiatives undertaken by both the current and the past City Councils.

She also offered her assurance that the details of the final design were still to be negotiated at the site plan approval stage and would be the subject of a Site Plan Agreement between the developer and the City.

The Board was not unmoved by the concerns of the residents but after hearing from Mr. Simon Fuller who is the developer and from the two expert witnesses (Ms Sweet and Ms Pascoe-Merkley) finds most if not all of the residents' fears to be misplaced. The Board also finds the City officials have acted in a manner consistent with their fiduciary obligations.

Findings

The Board relies on and adopts the opinion of the two planners (Ms Sweet and Ms Pascoe-Merkley) that the proposal conforms to both the Provincial Policy Statement 2005 and the City of Brockville Official Plan. The Board also relies on and adopts the opinion of Ms Sweet and Ms Pascoe-Merkley that the proposed development is in the public interest, is appropriate for Brockville and for the rehabilitation of the subject brownfields site and represents good planning.

Decision

The Board dismisses the Appeal and orders both Official Plan Amendment No. 76 and Zoning By-law Amendment 079-2006 as amended by Exhibit 15 be adopted.

"C. Hefferon"

C. HEFFERON
MEMBER

"D. Barbir"

D. BARBIR
MEMBER

