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August 7, 2020

Sent by e-mail to: cityclerk@cityofkingston.ca

Mayor and Council
The Corporation of the City of Kingston
216 Ontario Street
Kingston, ON K7L 2Z3

Re: July 16 Planning Committee Meeting Decision
Proposed Official Plan Amendment and Zoning By-law Amendment
2285 and 3211 Battersea Road Development
City File No. D35-003-2019

Dear Mayor Paterson and Council,

Donnelly Law ("we" or "the Firm") represents Glenburnie Residents' Association ("GRA" or the "Client").

I spoke on behalf of the GRA at the July 16 Planning Committee Meeting regarding the above-noted matter, and am very concerned about a number of points raised by Staff and Committee members throughout the evening.

Several members of the Planning Committee referred to themselves as member of a "quasi-judicial body" and therefore were bound to follow the evidence presented. May GRA know the source for this statement?

Declaring the powers of a municipal committee to be "quasi-judicial" is both wrong in law, and dangerous. This applies equally to Council decisions - you are not a quasi-judicial body.

A Planning Committee is constituted to solely make a recommendation to Council – it does not have the authority to make decisions, as would a quasi-judicial Tribunal or Board. In addition, there is no appeal of the Committee's recommendation, and its recommendation are not subject to judicial review. Appeal rights of a quasi-judicial decision are a cornerstone of administrative tribunals and other quasi-judicial bodies. Quasi-judicial decision makers are to be independent, and not

bound by political allegiance. The Planning Committee is composed entirely of politicians, with allegiances and constituents to whom they've made promises – in a democracy a politician is the opposite of an adjudicator. Finally, a hallmark of quasi-judicial decision-making is procedural fairness. With respect, the Kingston Planning Committee allowed the proponent to make the final presentation, with no right of GRA or the public to make a reply. In addition, the proponent was allowed to address a number of questions of the Committee, without reference to Mr. Clark for answers, a senior planner, engineer and agrologist. While the Committee does its best to be fair, with respect, the Committee Members did most of the talking, which is the opposite of quasi-judicial tribunal's role.

Please do not take this brief list to be exhaustive, there are numerous other reasons the Kingston Planning Committee and Council is not a quasi-judicial body.

First, this kind of thinking by Councillors is dangerous because it means they fundamentally misunderstand their role on the Committee. They are not bound by the evidence presented, they are elected to act in the best interests of their constituents and the public interest. Planning is highly subjective exercise that requires the good judgement of Councillors to review and yes, second guess Planning Staff. When judging what is in residents' best interests, they are just as prone to be wrong as residents. For example, in both the IN8 Capital (PL161069) and Homestead (PL170714) case, Staff (and Council) were judged to have erred by the Local Planning Appeal Tribunal ("LPAT").

With respect, only Councillor Onsic actually voted using the correct criteria – being what does your experience, conscience and judgement tell you?

Second, the statement is dangerous because it could easily mislead the public into thinking the Committee, and Planning Staff, possess power they do not. The Committee does not make a decision – that is Council's job, and Council is in no way bound by the Committee's recommendation.

With respect, GRA is asking the Planning Committee to issue a letter to the public that retracts the mis-statement that the Committee is a quasi-judicial body.

Mr. James Barr stated on multiple occasions that changes to the Provincial Policy Statement ("PPS") now encourage commercial growth in rural areas of Ontario, such as the proposed spa, brewery, winery, hotel, cabins, event centre, etc. This is not the case.

PPS Policy 1.1.5.2 states that:

> "On rural lands located in municipalities, permitted uses are:

d) agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices, in accordance with provincial standards

No one will argue a hotel, spa, conference centre, etc. is an agricultural use or an agricultural-related use.

Staff claimed it had studied carefully similar spas in Ontario, specifically the St. Anne's Spa in Grafton Ontario and the Grail Springs Spa in Bancroft. With respect, these spas are nothing like what is being proposed. St. Anne's is a 400 acre property, with a (300 acre working farm with cattle and horses that are part of the program). Ste. Annes is also located next to a water bottling plant which had functioned without impact for several years prior to the location of the spa and continued to operate without impact after the spa was established. Unlike the proposed facility, Grail Springs is focused around a lake, an important recreational amenity.

The proposed development's agricultural activity is restricted by the size of the property to 4 ha (10 acres) of vineyards, on very poor soil, which is not enough land to make a viable vinery.

The staff recommendation relies on Section 1.1.5.3 of the PPS that promotes recreation and tourism. We note that this ignores section 1.1.5.4 thru 1.1.5.8 which requires:

- Compatibility with the rural landscape
- Appropriate infrastructure
- Retaining opportunities for expansion of other uses
- Protection of agriculture and other resource-related uses and minimizing constraints
- Complying with MDS

We also note that recreational, tourism and other economic opportunities are not listed as permitted uses in Section 1.1.5.2. Furthermore we do not accept the proposition that these uses can be included as "other rural land uses."

The interpretation of Guideline #40 is not consistent with experience in the application of this Guideline. The Guideline states that the measurement of the MDS Setback is to be measured as "the shortest distance between the area proposed to be rezoned or redesignated to permit development". The guideline does not refer to the actual building but rather the use. It also states: "This shall include areas proposed to be zoned or re-designated with site-specific exceptions that add non-agricultural uses or residential uses to the list of agricultural uses already

permitted on a lot." The applicant has used this provision to include exceptions to meet the separation distance to the buildings rather than the actual use of the property. As explained at the Public Meeting the standard interpretation of this Guideline has been to the area including the building not the buildings themselves. This recognizes that the guest experience is not limited to the building but also includes the site. Impacts and complaints due to incompatibility relate to the area available to the guests and their experience being promoted to attract these guests to the property. Therefore it is our opinion that this Guideline has been misinterpreted and does not reflect the intent of the MDS separation distance.

Most importantly, the proposed facility will impose a massive constraint on future agricultural production in the vicinity, contrary to the PPS.

Finally, Council should not be persuaded that the proposed development is compliant with Council's pledge to take action pursuant to its March 5, 2019 declaration of a Climate Emergency.

The proponent advised the Committee that cabin roofs will be "wired for solar" and that the project will be a "closed loop" geothermal facility. With respect, this tells GRA and the public nothing about the facility's carbon footprint. Where is the energy audit regarding building design and energy consumption? If Planning Staff possess such a study, please disclose it immediately.

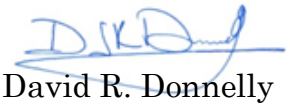
If, in the likely event no such study exists, then Council should be very mindful that on March 5, 2019 it sent out a press release promising, "urgency and a strategic response". Despite making the points in our correspondence and during our presentation that the proposed development is clearly inconsistent with Provincial Policy Statement section 1.8.1, neither Staff nor the proponent addressed the issue. It is obvious this is a car dependent, major commercial, employment and travel-intensive land use, which should be served by public transit or is to be served by transit in the future. Staff and the Committee have improperly ignored this important policy – Council cannot.

We are similarly mindful that the estimates for water taking at 46,000 l/day are extremely close to the limit of 50,000 l/day that triggers the need for a Director's permit under the *Ontario Water Resources Act*. In the present circumstances, there is no margin for error. Council should adopt the precautionary approach and ask Staff for a recommendation concerning how the application and approval would be different, as presented to Council, if a simple assumption that the facility would require 50,000 l/day was assumed?

For these reasons, we respectful submit that Council should take a close look at the Planning Committee recommendation and deny approval.

Please do not hesitate to contact me at 416-572-0464, or by email at david@donnellylaw.ca, cc'ing alexandra@donnellylaw.ca and morgan@donnellylaw.ca should you have any questions or comments concerning this correspondence.

Yours Truly,



David R. Donnelly

cc: Client