

MEMORANDUM

SUBJECT: NOTICE OF COMPLETE APPLICATION-OFFICIAL PLAN AMENDMENT AND ZONING BY-LAW AMENDMENT ON PARLIAMENT OAK SITE and Notice of Intent to Demolish Files #s OPA-01-2023 AND ZBA-01-2023 (the “Notice of Complete Application” or “Application” and Notice of Intent to Demolish”, respectively)

The Town Clerk has issued the above Notice of Complete Application for the Project and in furtherance thereof has received the Applicant’s Notice of Intent to Demolish

It invites dialogue.

Customarily the invited dialogue would review the appropriateness of the Project and the specifics of the accompanying zoning amendments to realize the concept envisioned in the Application and in that context the appropriateness of the Notice of Intent to Demolish and whether it is ill-conceived or at least premature

But

This assumes the Town is correct in assessing the Application as complete in the first instance, WHICH IT IS MANIFESTLY NOT AND IS THEREFORE LACKING THE AUTHORITY TO RECEIVE OR ADDRESS THE NOTICE OF INTENT TO DEMOLISH

Let’s be clear:

It is not complete for it is either an improper subject matter for such an application or is incomplete and misleading on its face.

Either because:

(A) the Project is not in fact the proper subject matter of an Official Plan amendment.

Just because an applicant fills out and completes the required steps prescribed for an Official Plan amendment does not in fact qualify the matter in and of itself as the proper subject matter of an Official Plan amendment.

It might look like an Official Plan amendment but is in fact something more and far in excess of what an Official Plan amendment is intended by law and regulation to encompass.

When an applicant is suggesting changes to an Official Plan that are so far beyond or in conflict with the Official Plan it seeks to change due to conflicts with the underlying principles and purposes of that Plan—it is not seeking to change something within the four corners of that Plan but to change the compass and orientation and direction of that Plan.

That would not be an amendment but an attempt to introduce policy that if accepted will establish new guidelines and principles overall of the Plan that are antithetical to the Plan itself.

The appropriate place to do so is in the prescribed overall review of the Official Plan at the time or times prescribed by the Planning Act.

So, the Notice of Complete Application should be revoked.

OR

(B) the Town has erred in its review of the Application and should not have issued the Notice of Complete Application as it is patent on its face to be either misleading or in error.

In this regard, reference is made to page 3 Section 11 “Official Plan Information” of the Application and, in particular, the responses to a number of the substantive questions posed therein as follows:

“DOES THIS APPLICATION CONFORM TO THE NIAGARA REGIONAL OFFICIAL PLAN”

The Applicant’s response is inadequate and does not state how or in what manner it conforms and to what provisions of the said plan it conforms. It is a “boiler plate” response without critical detail.

“DOES APPLICATION PROPOSE TO CHANGE OR REPLACE A DESIGNATION IN THE OFFICIAL PLAN? IF YES (THE APPLICANT HERE CONFIRMS IT DOES) WHAT IS THE OFFICIAL PLAN DESIGNATION THAT THE AMENDMENT IS PROPOSING TO CHANGE OR REPLACE?”

The Applicant’s response is inadequate and does not address the question at all.

“DOES THE PROPOSED AMENDMENT CHANGE, REPLACE OR DELETE A POLICY IN THE OFFICIAL PLAN? (THE APPLICANT HERE CONFIRMS IT DOES) IF YES, WHICH OFFICIAL PLAN POLICY IS TO BE CHANGED, REPLACED OR DELETED.

The Applicant’s response is inadequate and simply sites land use changes it is seeking but with no reference to the contextual policies that will be affected or curtailed and how so and why and what are the policy implications of doing so.

DOES THE PROPOSED AMENDMENT ADD A POLICY TO THE OFFICIAL PLAN. (THE APPLICANT HERE CONFIRMS IT DOES) IF YES, WHAT IS THE NATURE AND EXTENT OF THE OFFICIAL PLAN POLICY THAT THE AMENDMENT IS PROPOSING TO ADD?

Again, the Applicant's response is inadequate not addressing the question put.

In these instances, the Application is flawed and should be returned to the Applicant to provide relevant information necessary for the public and the Town and its Council to better reflect on its appropriateness.

ACCORDINGLY

This Notice of Complete Application is either premature or inappropriate and if the rectifications are made it may well be that the Town will reject the revised Application as revealing material matters that cause it to reject the Application as not appropriate or premature and better to be assessed after the next review of the Official Plan as prescribed by the Planning Act.

Accordingly, the Applicant's Notice of Intent to Demolish must fail.

ACTION REQUIRED

Revoke the Notice of Complete Application and return to the Applicant its Application and deny the Notice of Intent to Demolish and any other ancillary proceedings associated with 325 King Street Niagara-on-the-lake proposed by the Applicant until such time as it is appropriate to issue a Notice of Complete Application

Peter Howe

Niagara-on-the-lake

phowe@sympatico.ca

