



David R. Donnelly, MES LLB
david@donnellylaw.ca

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Sent via email to Tony Fleming: tfleming@cswan.com

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

**Re: Information Report to Council – Report Number 20-050
Update on Local Planning Appeal Tribunal (LPAT) Appeals, Request
for Review: 51-57 Queen St. & 18 Queen Street / 282 Ontario Street**

Dear Mayor and Council,

Donnelly Law (“we” or “the Firm”) represents the Frontenac Heritage Foundation (“FHF”) in respect of the above-noted matter.

It is our understanding that tonight, Council will be considering an Information Report to Council that could lead the City of Kingston to embrace the December 23, 2020 decision of the Local Planning Appeal Tribunal (“LPAT”), being the Section 35 Request for Review (“Request for Review”) commenced under the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, submitted by Homestead Land Holdings Ltd. (“Homestead”) on September 6, 2019.

We write on behalf of the FHF to strongly recommend that Council refuse the Staff Report for being incomplete, ill-informed and, with respect, misleading. The invitation to make a decision regarding the Request for Review decision at this time should be rejected, for the following reasons:

We are not familiar with how Kingston calculates and reports on its “financial considerations” in reports to Council. In the dozens of municipalities with which we are familiar, standard practice would be to include the following:

1. The anticipated cost to Kingston residents of proceeding to another LPAT hearing. If the cost miraculously is “nil”, that should be explained.

2. The cost of the previous Homestead LPAT hearing, which consumed considerable staff time and the expensive engagement of outside counsel; and
3. The financial ramifications to the City if the project was ever approved: this includes finishing and operation expenses of the proposed art gallery, and, as noted in our correspondence of November 4, 2019, the true costs of leasing the proposed art gallery space from Homestead was to be nearly double the \$300,000 subsidy proposed by Homestead and agreed to by the City, creating a significant financial liability.

The costs of all this likely runs into the millions of dollars. Inexplicably, Staff Report 20-050 is silent with respect to Financial Considerations. This is entirely inappropriate. With respect, the absence of any detail with regards to potential costs is egregious, casts doubt on the objectivity of the author(s) and warrants a re-consideration and re-submission before Council is asked to make a decision.

In addition, it is premature and inappropriate for Staff to be recommending anything, at this point.

First, a highly skilled LPAT Member, M. Valiante, found the proposed Homestead towers' design did not conform to the Kingston Official Plan. This finding was based on evidence from three technical experts, including from Mr. George Baird (who wrote the *Urban Design Guidelines for the North Block*). Mr. Baird is internationally renowned in the fields of architecture and urban design. Mr. Bruce Downey is Kingston's pre-eminent heritage architect, and Dr. Carl Bray is one of Kingston's foremost cultural heritage experts. All witnesses opposed the towers. So, based on all that, what did Staff learn about the design, and possible errors in their support for the project? Nothing? In a professional, best practice context, this is highly unlikely or profoundly disconcerting, and warrants explanation.

Second, given that the LPAT turned down the Homestead application once, it is highly possible the same design would meet the same fate, or be modified. Ms. Hubbard's decision ignored all FHF's arguments, is obviously mistaken, and leads to a reasonable conclusion a re-hearing will render the same result.

For example, the City submitted a 145-page Witness Statement ("WS") at the LPAT hearing, and Ms. P. Agnew was given great latitude to testify to the whole of her WS. Ms. Hubbard is simply wrong in her finding the City's decision was not considered. Similarly, since when are all policies in an Official Plan to be given equal weight, or the benefit of a weighing calculus? As we submitted to the Associate Chair Ms. Hubbard, in a hypothetical situation, all the relevant intensification, housing, transit, etc. policies would be engaged if the Homestead project was proposed in a wetland but would obviously be rejected. The City should

think carefully about its position on this re-hearing, lest it lose control of the best, most important elements of its own Official Plan – this sword cuts two ways.

Third, before leaping into another costly and lengthy hearing, engaging many members of the community as Participants, shouldn't Council convene some sort of public consultation? Since the City will be expending considerable time and resources on a second hearing, shouldn't the people who will pay for this journey have a say on this expense, once quantified?

Finally, in March 2019, Kingston declared a Climate Emergency. I have spoken to many schoolchildren about the hypocrisy of elected officials who profess a commitment to action, and then do nothing or worse. The Staff Report is notably silent on how these two enormous towers and structures will reduce or minimize Kingston's carbon footprint. Tall buildings are not the solution to climate change. The City recently sponsored Ms. J. Keesmaat, who echoed this sentiment. Council needs to know how this project could be made better, as it is likely, from our experience, that the proponent will be making modifications to the design anyway e.g. IN8 Capital recent re-design and re-submission. Council's support for the Settlement does not automatically extend to a future re-design i.e. is Council to remain silent regardless of the re-design shape? What if it gets worse from a climate change and design perspective? The Staff Report, and future Staff Reports, should no longer remain silent on the question of climate change: please add "Climate Change" to the template as a "Consideration".

In conclusion, it is the desire of FHF that Council make a thoughtful decision regarding the Homestead proposal. This discussion starts with a proper consideration of the costs and implications of once again aligning the City's considerable resources and prestige behind a private development application. It has not escaped notice amongst neighbours of the project that some projects (usually based on scale) are treated preferentially over others – why is that?

Please do not hesitate to contact me at 416-572-0464, or by email should you have any questions or comments concerning this correspondence.

Yours Truly,



David R. Donnelly

cc: Client
Clerk