



November 30, 2018

c/o Heather Lysynski
City Clerk's Office
City of London
300 Dufferin Avenue
PO BOX 5035
London, ON N6A 4L9

Attention: Heather Lysynski, City Clerk

Re: Delegation Status Before Planning Committee to Obtain a Section 45(1.4) Council Resolution. Related Files: Zoning Bylaw Amendment File No. Z-1-172625, Consent File No. B.047-17, LPAT File No. PL180521. 2533430 Ontario Inc. 6188 Colonel Talbot Road.

Mainline Planning Services Inc. is retained as the owner's agent with respect to the above referenced applications.

Delegation Request:

On behalf of the owner of the subject property ('2533430 Ontario Inc. '), kindly accept this letter as his formal request that we are scheduled as a delegation before the Planning and Environmental Committee on December 10, 2019

Request for Council Resolution:

The owner requires a Council Resolution pursuant to Section 45(1.4) of the Planning Act. The purpose of the proposed resolution is to:

- Facilitate the creation of 2 lots that conform to the bylaw as required by conditional consent approval granted.
- Direct the City Clerk to accept a minor variance application to amend the Zoning Bylaw as necessary to ensure that both the severed and retained lots comply.

Reason for the Resolution

The resolution will allow staff to accept an application to amend the zoning bylaw and fulfill a condition of Consent Approval recently granted (City file no. 'B.047-17'). The matter is before the Local Planning Appeal Tribunal ('LPAT'), however, with the support of Council, the owner will be able to comply with the zoning condition avoiding costly litigation which is in the interest of all concerned. The severance is needed to convey a 4 Ha parcel to the existing hydroponic farm tenant to make the business viable avoiding the need to relocate.

Section 45(1.4):

A Council resolution is required under Section 45 (1.4) of the Planning Act, if section 45 (1.3) applies. Section 45 (1.3) states, "*Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended*". Section 45 (1.4) states, "*Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally*". City of London Zoning staff informed that since a zoning by-law amendment for the subject site was passed on November 16, 2017, Section 45 (1.3) applies and a minor variance application cannot be submitted without the resolution of council (Section 45(1.4)) which makes the condition of consent approval unobtainable.

Background

In June of 2016, a building permit was issued to construct a 5-million-dollar farm building used to

hydroponically grow a rare maitake mushroom crop. The current farm operation utilizes a small fraction of the existing 18.3 Ha lot ('subject property') leaving nearly 16 Ha of land fallow and underutilized. In order to obtain financing, the Shogun Maitake Canada Co., Ltd. ('tenant' / 'Maitake') agreed with his investor(s) to purchase the land necessary for his farm operation. In order to keep the tenant, the owner agreed to sever the land into 2 lots and sell a 4.04 Ha lot to Maitake. The tenant has plans to expand the indoor farm operation and must own the parcel to obtain the millions of dollars investment capital to operate the business and remain in London.

In February of 2017, Mainline attended a pre-application consultation prior to submitting a consent application. At this meeting, staff from The City of London reported that "... a Zoning By-law amendment [is required to support the consent] if the severed or retained parcels do not conform to the existing Zoning requirements".

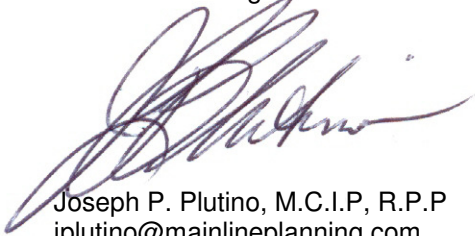
In response to staff advice, applications for zoning by-law amendment and consent were submitted in June of 2017. Both applications requested the creation of two lots from the subject property and consideration for reduced frontage and lot area for both the severed and retained parcels. Despite the clarity of both our application and a staff report to council acknowledging our request ([excerpt] "**FROM Agricultural (AG2) Zone, which permits agricultural uses and includes a minimum lot area of 40 ha and a minimum lot frontage of 300m, TO a Holding Agricultural Special Provision (h-18 • AG2(_)) Zone, which permits the same agricultural uses but also permits two parcels having a lot area of 4.04 ha and 14.29 ha, and a lot frontage of 100m and 36.3**") the By-law amendment approved by Council on November 16, 2017 (see attached pdf) failed to provide an area reduction for the retained lot.

The Consent application (City file no. 'B.047-17') was reactivated in November 2017 and provisionally approved on May 3, 2018. The provisional approval includes a condition requiring both the severed and retained parcels to comply with the by-law. The consent approval was appealed to LPAT as the zoning condition appeared unattainable. In considering legal advice concerning the condition, the owner is requesting relief under Section 45(1.4) to Section 45(1.3) of the Planning Act. A Council Resolution would allow the owner to comply with the Zoning Bylaw and obtain final consent approval.

Our Professional Opinion

A Section 45 (1.4) exception by Council Resolution is appropriate because without it the consent approval is unattainable. The consent was approved to facilitate the creation of two lots in accordance with zoning bylaw amendment **Z-1-172625** so that a 4 Ha parcel of land would be conveyed to the Maitake Corporation. The conveyance is necessary to keep a newly constructed \$5 million-dollar indoor hydroponic farm business economically viable so that it can remain in the City of London. The only way that zoning compliance can occur is by amendment to the bylaw. I trust that Council will provide this necessary relief so that we may submit a minor variance application and avoid litigation as it is in the best interest of all parties concerned.

Sincerely,
Mainline Planning Services Inc.



Joseph P. Plutino, M.C.I.P., R.P.P
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cc. Members of Council
City Clerk
Aynsley Anderson, City Solicitor
client