

"Inspiring a Healthy Environment"

August 23, 2013

The Corporation of the City of London Council
P.O. Box 5035
300 Dufferin Avenue
London, Ontario N6A 4L9

Attention: His Worship, Mayor Joe Fontana and Members of Council

Dear Mayor Fontana and Members of Council:

Re: File No. OZ-8120 – UTRCA Comments on the Planning & Environment Committee's Recommendation
Applicant: PenEquity Realty Corporation
3130 & 3260 Dingman Drive and the rear portion of 4397/4407 Wellington Road South, London, Ontario

The Upper Thames River Conservation Authority (UTRCA) has previously provided technical comments on this application. This correspondence is intended to briefly summarize the Authority's technical comments but also to provide comments about process and procedures. We feel it is necessary to provide these additional comments based on the discussion at the August 20, 2013 Planning and Environment Committee (PEC) meeting and the resolution that was passed by PEC. Based on the technical comments that the UTRCA has provided and the point that this application is at in the planning process, we recommend that London City Council defer approval of the application to allow the outstanding technical matters to be resolved. It is our opinion that it would be premature for Council to approve this application based on the incomplete information that is available and we must object to the approach that was proposed at the PEC meeting where these important decisions regarding the principle of development would be deferred to the Site Plan Approval process and the Conservation Authorities Act permit stages.

Existing Designation & Zoning

Application OZ-8120 includes an unevaluated vegetation patch from Schedule B-1 of the City's Official Plan (OP). The City Official Plan requires that a Subject Land Status Report (SLSR) be prepared for these unevaluated patches prior to development of the lands. These patches were identified on Schedule B-1 of the OP as unevaluated patches because an evaluation of the features was not available to make a determination their significance at the time that the Official Plan was updated. It is acknowledged that the subject property has a development designation but it must also be clarified that the designation and zoning that exists are remnants of the former Town of Westminster Planning documents (pre-1993). The OP designation and Zoning for this woodland that existed at the time of annexation were maintained and the UTRCA concurred with this approach because it included the identification of unevaluated patches on Schedule B-1 as a means to ensure that an evaluation of such patches would occur prior to development. Any suggestion that the existing Official Plan Designation and Zoning in some way represents a conscious decision by the City that development is imminent is

not accurate as it fails to recognize the history of the land uses on the subject property and the identification of the patch on Schedule B-1. Confusion around the designation and zoning of this patch and the expectations that they create serves to highlight the importance of having the technical information determined before a decision on land use is made. The current designation and zone with the reference to Schedule B-1 was a practical solution for the City to deal with the extensive areas that were annexed in 1993 but this approach clearly can cause confusion and expectations to be developed.

Woodland & Wetland

The SLSR prepared by AECOM (May, 2012) for the property is a requirement of City policy and it confirmed that the woodland that is located on the property is significant. The report is based on one season of inventory. While this is a limited inventory because it is only representative of one season of data collection, it does confirm that the woodland meets the City's test for woodland significance and also that there is a wetland. The additional seasons of data are needed to identify all of the species, especially wetland species. Based on the one season inventory, there are 20 tree, 47 herbaceous and seven shrub species. There are seven vegetation communities including a lowland white elm forest and a bur oak forest. The bur oak forest (FOD 9-3) has very healthy bur oak and shagbark hickory specimens, despite the dead ash and buckthorn. Three wetland communities (sedge marsh, silver maple swamp and gray dogwood swamp) were identified and the gray dogwood swamp is uncommon in this area.

In correspondence dated August 12, 2013, the applicant advised PEC and City Council that they had retained an arborist to evaluate the woodland. The submission which is titled ***Summary of Tree Species within Patch 101002*** only considered trees with a DBH of 15 centimetres and is comprised of a table and some notes. No opinion is provided by the arborist that the woodland is not significant. As indicated at the PEC meeting, the UTRCA has not reviewed this report however we can advise that we are focusing on this area because it is a woodland ecosystem which includes a wetland and not because it is a stand of trees with DBH of 15 cm and greater.

Based on the available information, the UTRCA is of the opinion that the woodland that is located on the property is significant. Provincial Policy 2.1.4 states that development and site alteration shall not be permitted in significant woodlands unless it can be demonstrated that there will be no negative impacts on the natural feature or their ecological function.

With regard to the wetland, the UTRCA is satisfied that the area contains a wetland as concluded by the proponent's own consultant. As we have noted, the UTRCA does not support development of wetlands. The question of whether or not the wetland is Provincially Significant remains unresolved. While the "Provincially Significant" status of the wetland is not of direct consequence to the UTRCA position on the wetland, we do feel that the resolution of the significance of the wetland is critical for the City in fulfilling their obligation "to be consistent with" the policies of the PPS. This role of the decision maker is to be exercised when making decisions on Planning Act applications. To defer this decision to future implementation stages based on a lack of complete information is inappropriate as it has the effect of establishing that the principle of development exists when in fact, the information to make this determination is incomplete. Furthermore, the MNR does not have a permitting authority like the UTRCA. Therefore the MNR will not be in a position to represent the City's interests on the wetland and other provincial legislation at the "next stage" as there is no requirement for the MNR to be involved beyond the land use planning application. Council should be aware that a decision to proceed to the next stage without satisfying MNR's concerns may effectively eliminate the further consideration of the provincial interest from this planning process.

PLANNING PROCESS

As indicated, the technical requirements for this development application are incomplete. Key information that should have been submitted as part of a complete application rather than at the PEC's reconsideration of the matter as a Consent item on the August 20, 2013 agenda has not yet been peer reviewed by the City's or the UTRCA's professional staff. The UTRCA contends that it is premature to make this planning decision without having the technical reports reviewed and accepted. Furthermore, we believe that it is inappropriate to establish the principle of development for this site on the basis of partial information.

The deferral of the wetland and woodland decisions to the Site Plan and the UTRCA's Section 28 permit stage does not represent good planning. This approach is not consistent with the practice of the City or Provincial Planning Procedures. The decision about the appropriate extent of the development limit needs to be established at the land use planning decision stage. A decision by Council to defer the determination of the principle of development to the implementation stage not only creates expectations for the developer, it can also limit the opportunity for meaningful involvement in the decision by the public and other agencies and it can limit the scope of the decision process. For example, the Site Plan process typically does not provide for public input and is not appealable. The UTRCA's permit process, like a building permit process, is also not a public process. These implementation processes do not include public input because this input is meant to be obtained at the land use planning stage. The relatively narrow scope of the implementation processes can also be problematic. For example, while we are confident that there is a wetland on the site and that the UTRCA regulation applies, the proponent may challenge the UTRCA's jurisdiction. Also, the UTRCA regulatory authority applies to the wetland and it is not directly applicable to the protection of the ecological significance of the significant woodland. These few examples point to limitations with the deferral of the principle of development decision to the implementation stage and point to the importance of the City having all of the information before approving the current applications.

The City has an obligation to ensure that it has the necessary information to make a decision at the point when the decision is made. In our opinion it is inappropriate for the decision maker to knowingly make the decision on the PenEquity application in the absence of important information, such as whether or not the property contains provincially significant features or can meet the requirements of other applicable legislation.

CONCLUSION

The UTRCA strongly recommends that the City fulfill their obligation to obtain all of the necessary information before making their decision on this planning matter, consistent with the PPS. A pause to get all of the information would, in our opinion, only improve the quality of the decision. We feel it is inappropriate to place the UTRCA in the position of defending the wetland, and the MNR's interests on Provincial significance of the wetland and perhaps other MNR legislative roles such as species at risk, at our permit stage when this should be addressed at the planning approval stage. As indicated, Site Plan approval and UTRCA permits are implementation activities which are intended to implement land use planning approvals. They are not intended to be the forum for establishing the principle of development. These implementation activities do not allow for the meaningful public input that is critical to allow for the establishment of the principle of development. In a case such as this where the principle of development is set prior to the implementation activity, the processes may be inappropriately constrained by the expectations that have been established through the approval of the planning applications.

Thank you for your consideration of our comments. If there are any questions, please do not hesitate to contact Christine Creighton or the undersigned.

Yours truly,
UPPER THAMES RIVER CONSERVATION AUTHORITY



Jeff Brick, MCIP, RPP
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JB/CC/cc

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