



**Date 24 July 2012**

## **City Council Committee Report**

**To: Mayor Canfield & Members of Council**

**Fr: Tara Rickaby  
Karen Brown**

**Re: Norman Park**

### **Recommendation:**

**That** Council hereby directs the Planning Department to prepare an amendment to the City's Official Plan to develop a specific policy for Norman Park and an associated special designation on Schedule A; and

That Council further directs the Planning Department to develop any resulting and required zoning by-law amendment; and further

That Council further directs the Planning Department to provide a draft policy for Norman Park on or before the September 2012 Property & Planning Committee meeting for Committee consideration.

### **Background:**

In July 1939, the Keewatin Lumber Company transferred the Norman Park lands to the Province of Ontario, Ministry of Lands and Forest, subject to a restrictive covenant that the land be used for reforestation and park purposes. On February 20, 1946, that Ministry transferred those lands to the then Town of Kenora, also subject to the same restrictive covenant.

In the years / decades that followed, the subject of the restrictive covenant on this property was revisited on occasion. In the early 1990's, a question arose as to the longevity of the covenant, as generally covenants are in effect for forty years. It was determined however that while there was no reference to "in perpetuity" within the covenant, since the King was a party to the agreement through the involvement of the Ministry of Lands and Forest, the covenant, or more correctly the King, would not be subject to the restrictions contained within the legislation that generally apply to this type of covenant. As such, the restrictive covenant remained in effect beyond the normal forty year period.

On July 22, 2008, a letter was sent by AbitibiBowater Inc., the parent company for Abitibi-Consolidated Inc., to the Ministry of Natural Resources requesting that "the restrictive covenant be removed". AbitibiBowater Inc. further requested "a letter from the Ministry of Natural Resources consenting to removal of the restrictive covenant". Included in the letter was information related to the successor rights of Abitibi-Consolidated Inc., who had acquired Keewatin Lumber Company through a series of share purchases. Ministry consent was received for the removal of this covenant. This matter was brought before Council during an in camera session on September 8, 2008, at which time Council provided administration with the direction that the restrictive covenant be released from title. The discussion and the reason for lifting the covenant was that ultimately the residents of the City of Kenora should determine the uses and restrictions on City property as opposed to an outside third party. The restrictive covenant was lifted on December 31, 2008.

Following the lifting of the restrictive covenant, a redevelopment plan was created for the park area, which included the construction of a new Discovery Centre. A copy of the redevelopment plan has been attached to this report for your reference (attachment #1).

The removal of the restrictive covenant was brought to the forefront for the current Council amidst concerns from residents that mobile food vendors would be allowed at the Discovery Centre during 2012. As a result, Council requested that administration bring back a report which identified options for the current Council to consider that would ultimately safeguard the Norman Park lands and ensure the use of these lands was restricted to park and ancillary uses. A few key considerations need to be addressed as part of this process:

- Existing uses need to be recognized. This would include the existing commercial operations of the Dairy Queen, as well as the Discovery Centre. The mobile vendor is on a trial period, and should be considered independent of other existing uses.
- A process be put in place for any future changes which would include public consultation and the opportunity for feedback.

### **Options:**

In considering the protection of the Norman Park properties, it is worth noting that the City already owns and controls a number of parks and beaches within its boundaries. This is done through the Official Plan and Zoning By-laws, together with oversight through both the Planning Advisory Committee and Council, both being responsible and accountable to the public. Amendments to the Official Plan are a public process, and would meet the requirements of ensuring public notice / consultation and opportunity for feedback. Regardless, the option of reinstating the restrictive covenant on the Norman Park properties has also been explored for Council consideration. The following is a discussion of the various options available to Council:

- **Status Quo.** Norman Park is currently zoned Open Space. An explanation of the term Open Space, including permitted uses, can be found within the "Supplementary Official Plan Information" section (provided by the City's Planning Administrator) found at the back of this report. Specifically, this information can be found under Section 4.6 of the Official Plan. The property would continue to be subject to the restrictions set upon it by virtue of its zoning of Open Space.
- **Develop a Specific Policy for Norman Park under the City's Official Plan.** Tunnel Island is identified and discussed separately in the City's Official Plan. Norman Park could also be addressed separately within the Official Plan through a specific policy for the Norman Park properties, together with special designation on both mapping and schedule. This would allow Council to clearly specify the acceptable uses for that property.
- **Reinstate the Covenant.** In discussions with the City's solicitor, Bruce Ormiston, the City cannot reinstate the previous covenant with those earlier parties. Rather, the City has now lost the opportunity of the agreement being in place in party with the King. This means that the City would be the only party to any potential covenant placed on the property, and that covenant would be restricted to forty years. Regardless, future Councils could change the conditions of any covenant, or indeed simply lift it. A letter from Bruce Ormiston with regards to the option of reinstating the covenant, which also includes some history on the property, has been attached for your reference (attachment #2).

Based on the options available to the City, it is recommended that the City develop a specific policy for the Norman Park lands within the City's Official Plan. Doing so should afford the same protection of the Norman Park lands, without incurring any additional legal expense for covenant.

### **Discussion on an Official Policy:**

In order to effectively develop a policy for the Norman Park land, careful consideration should be given to the allowable uses of the parklands. These uses should be non-intrusive in nature and innately fit in the nature of the lands. It is recommended that consideration be given to incorporating the following as part of the allowable uses of the property, including accessory and ancillary uses:

#### **Allowable Uses:**

- Public assembly buildings (Discovery Centre & Community Club)
- Cultural and heritage resources and facilities (Museum)
- Community and recreation facilities (beach & playground)
- Festive cultural and ceremonial uses (weddings)
- Community Garden
- Docking
- Parking

**Permitted Ancillary Uses:**

- Washroom / change rooms
- Trails
- Facility rentals (Discovery Centre and Community Club)
- Office space

**Permitted Accessory Uses:**

- Food services (Dairy Queen)
- Tourism services (eg, shuttle ticket rentals)
- Rental kiosks (eg, recreational equipment rentals)
- Commercial uses may be approved on a case by case basis

In addition, consideration should be given to a restriction indicating that no less than a certain percentage of treed area needs to be maintained. The acceptable percentage would need to be determined in the development of this policy.

**Budget:**

Costs related to the amendment to the Official Plan, including public consultation, will need to be addressed within the existing Planning Department budget.

**Communication Plan/Notice By-law Requirements:**

The proposed amendment to the Official Plan, and Zoning By-law if applicable, would be done through the regular process required to amend the official plan, which would include public consultation.

## Supplementary Official Plan Information

### Mobile food vendors – intent of the City of Kenora Official Plan (2010)

The purpose of the City of Kenora Official Plan is to establish a vision and guiding principles for development within the City, and to use the policies to effect change on the social, cultural, economic, and natural environment for the twenty (20) year planning horizon (i.e. until the year 2031).

With respect to the matter at hand, the Official Plan also has regard to matters of provincial interest such as:

- a) conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
- b) orderly development of safe and healthy communities;
- c) accessibility for persons with disabilities to all facilities, services and matters to which the Act applies;
- d) adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- e) adequate provision of employment opportunities;
- f) protection of the financial and economic well-being of the Province and its municipalities;
- g) resolution of planning conflicts involving public and private interests;
- h) protection of public health and safety;
- i) appropriate location of growth and development; and

These matters, of course, are also important to the growth and development of the City itself. The nature of Norman Park will not change because a mobile food vendor is located on site. In fact, the majority of the population consider Norman Park to be the area encompassing the current railway museum, south and west to include the beach and playground area.

The policies of the Official Plan are based on the premise that the City needs to adapt and change in order to offset the impact of the mill closure. It also acknowledges that the City's challenge is to maintain its population, if not to grow it. The plan states that land must be available to provide recreational opportunities for active living, such as trails, as well as open space for community gardens, for example.

The City received government funding for the creation of the Lake of the Woods Discovery Centre which will spur the local economy and tourism as well as help to shift the focus away from the traditional primary resource economic base. The purpose and intent of the Discovery Centre is not negatively affected by locating a food vendor on site.

### Several principles guide Council and Staff in determining the “highest and best use” for a property.

#### 2.24 Principle 4 – Diversified Economy

*Kenora shall maintain and seek opportunities for a strong, diversified economy that provides a wide range of employment opportunities for its residents, including youth to withstand global market conditions and provide financial stability.*

*One of the objectives:*

- To support existing businesses and attract a diverse range of new employment opportunities for new and existing residents.

### 2.26 Principle 5 – Tourist Destination

*Over the lifetime of this Plan, the City of Kenora shall continue to expand its role as an urban, cultural service centre and tourist destination, providing services to the traveling public and residents of the area.*

*Objectives:*

- To increase opportunities for training and post-secondary education institutions.
- To support the development of the heritage sector to meet visitor expectations by identifying and conserving cultural heritage resources, including heritage buildings, heritage areas, cultural heritage landscapes, archaeological sites, and other elements that defines or represents Kenora's history such as the murals.
- To provide opportunities to enhance the Harbourtown Centre and the downtown as a destination for visitors by providing access to the water.
- To recognize and enhance Coney Island for recreational purposes, including opportunities for arts and festival events for citizens and tourists.

### 2.26 Principle 6 – Complete Communities

*Kenora shall encourage new development (e.g. buildings, new neighbourhoods) to provide for a mix of uses in planning for complete communities.*

*Objectives:*

- To support mixed-use neighbourhoods.
- To enhance the quality of life for existing and future residents by improving access to parkland, cultural and recreational facilities.

Section 4.6 Open Space provides the policies for the Open Space and natural environment areas which are to provide opportunities for public access and recreation throughout the City. Permitted uses in open space include parks, public and private non-commercial recreational uses, and private and municipally-owned and operated recreation facilities. The policies are clear with respect to development of open space and recreational facilities being designed to meet the needs of residents of the City as well as tourists, while preserving the environmental features and functions of those areas.

While the Official Plan recognizes Tunnel Island as a heritage site; it does not recognize Norman Park in the same way.

The Zoning By-law 160-2010, as amended, indicates that Norman Park is also zoned OS – Open Space. Permitted uses include community centres, community garden, golf course, interpretive centre, off-leash dog area, outdoor recreational facility, park, parking lot, recreational facility, and a wildlife conservation reserve. It is not unusual to develop an interpretive centre and include a snack bar or restaurant as a part of the facility. The location of a mobile food vendor on the property still meets the intent of the zoning by-law. **The use of existing parking stalls for the truck, however, is not supported by either the zoning by-law or the Official Plan.** The Official Plan has policies in the Harbourtown Centre that protect views of Lake of the Woods. In my opinion, the view protection policy should be considered in any development in any area of the City.

The City of Kenora Waterfront Design Guidelines – January 2009 indicates that the Norman waterfront is primarily a residential area with lower density than the downtown. A lower maximum

height is appropriate for this area and should be established. It further notes that the objective in Norman is to ensure that development along the water's edge in Norman should be built so that the maximum height of the building does not negatively affect the quality of the viewscape, public access, building dominance and is in scale with the existing community.

To recognize this, the mobile vendor at the Discovery Centre has been relocated away from the shore to ensure the viewscape is not affected. The vendor remains within the parking lot, and is currently taking up two stalls. The primary reasons this location was chosen were to protect the viewscape while providing access to the required electrical connection. A secondary reason was taking up the least amount of parking (only 2 stalls). The Discovery Centre staff has been getting positive feedback from the availability of the vendor to visitors, and credit increased visitation to the Centre as a result of the vendor's presence. An alternative that would ensure compliance with the zoning by-law and Official Plan would be to relocate the vendor to the gravel parking area used by staff. This location is, however, closer to the residences and would likely result in related food smells migrating into that area. In addition, the absence of an electrical connection would need to be addressed.

## **SECTION 4.6 – OFFICIAL PLAN - OPEN SPACE**

Open Space and natural environment areas provide opportunities for public access and recreation throughout the City.

### **Permitted Uses**

Uses in the Open Space land use designation include parks, public and private non-commercial recreational uses, and private and municipally-owned and operated recreation facilities.

### **Open Space Policies**

- a) The City shall continue to acquire waterfront areas for public open space uses wherever possible. Parking, multi-use trails, launching and docking facilities shall generally be developed as funding permits.
- b) Open space uses and recreational facilities shall be designed to meet the needs of residents of the City as well as tourists, while preserving the environmental features and functions of those areas. Some examples are:
  - The development of a continuous multi-use trail system throughout the City
  - Future Harbourtown development
  - Future recreation centre development
- c) Where land that is designated as Open Space is under private ownership, this Plan does not intend that this land will necessarily remain as Open Space indefinitely, nor shall it be construed as implying that such land is free and open to the general public or that it will be purchased by some public agency. If proposals to develop such lands are made and no public agency has any interest in its acquisition, then an application for re-designation to another use by amendment to this Plan shall be given consideration.

### **Parkland Dedication**

- a) As a condition of development or redevelopment, the City may require land to be dedicated for park or other recreational purposes in accordance with the provisions in Section 42 of the *Planning Act*. The dedicated land should be used for active open space. If land is unsuitable for open space or recreational use due to topography, for example, the City may require payment-in-lieu of the parkland dedication.
- b) As a condition to the approval of a Plan of Subdivision or Plan of Condominium for residential development, 5% of the land shall be conveyed to the City. In the case of commercial or industrial development, 2% of the land shall be conveyed to the City. The City may require payment-in-lieu of the parkland dedication.
- c) An alternative to requiring land conveyance for residential development, City may require that land be conveyed to the municipality for park or other recreational purposes at the rate of 1 hectare for every 300 dwelling units.
- d) All conveyed land as part of parkland dedication must be suitable for recreation purposes and acceptable to the City.



## **OPEN SPACE ZONE (OS)**

### **Purpose**

This Zone provides land for active and passive recreational uses and landscaped buffers.

### **Permitted Uses**

The following are permitted uses in the OS Zone:

- Community centre
- Community garden
- Golf course
- Interpretive centre
- Off-leash dog area
- Outdoor recreational facility
- Park
- Parking lot
- Recreational facility
- Wildlife conservation reserve

**Zone Regulations**

The following zone regulations apply to permitted uses in the OS Zone:

<b>Zoning Mechanism</b>	<b>Provision</b>
(a) Front yard (minimum)	6 m
(b) Interior side yard (minimum)	3 m
(c) Exterior side yard (minimum)	6 m
(d) Rear yard (minimum)	8 m
(e) Building height (maximum)	15 m

(f) Notwithstanding any other provision in this By-law, a park, parking lot, outdoor recreational facility, and a wildlife conservation reserve shall be permitted uses on Tunnel Island.

**OS1 - TransCanada Pipeline Subzone**

Any development adjacent to TransCanada Pipeline facilities shall comply with the following regulations:

- a) Pre-consultation with the City and with TransCanada or its designated representative is required for any development within 200 m of the OS1 subzone.
- b) Any excavation, blasting or moving of heavy equipment within the OS1 subzone or within 30 m of the OS1 subzone must be approved in writing by TransCanada.
- c) No permanent building or structure may be located within the OS1 subzone or within 7 m of the OS1 subzone.