

McKITRICKS

April 29, 2019

Barristers and Solicitors

-SENT VIA E-MAIL- Ben.Bath@ontario.ca

Allan G. McKitrick, Q.C., J.D.

Local Planning Appeal Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

*Allan D. McKitrick
B.A., LL.B.*

Attention: Ben Bath

*David G. Nattress
B.Sc., LL.B.*

Dear Mr. Bath:

Re: Case Number:	PL190146
File Number:	PL190146
Municipality:	City of Kenora
By-Law Number:	BL 41-2019
Property Location:	Area of 543 Lakeview Drive
Applicant(s):	TCG Lake Ventures Corp
Appellant(s):	Northshore Ridge Condominium Corporation

We have recently been retained by the City of Kenora in connection with this Appeal.

We wish to make the following submissions for consideration in the preliminary screening process.

A copy of the Notice of Appeal is attached.

The question is whether the Appeal is based on the grounds prescribed in Subsection 34(19.0.1) of the *Planning Act*, ie that the by-law is inconsistent with policy statements under Subsection 3(1) of the *Act*, conflicts with a provincial plan or fails to conform with an applicable official plan.

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There is no mention in the Notice of Appeal of provincial policy statements or a provincial plan, so the question relates solely to conformity with the applicable official plan.

The Notice incorrectly states that relief is requested from setback requirements for "all abutting property lines, including the height". In fact no such relief is requested for Area B and, in the case of Area C, the relief relates only to the rear setback and setback from water and the permitted height is reduced from that now permitted.

The Notice further misdescribes the proposed permitted use as 35 "new residential units", whereas the amendment is for a Resort, not a residential development.

The issue, however relates principally to whether the Appeal is validly based on official plan conformity and in this regard I request consideration of the following.

1. The Section of the Official Plan referred to is Section 3.15.5. A copy of the full text of Section 3.15 is attached.
2. The Notice of Appeal appears to presume that simply because of the alleged reduction in setbacks and the relief on the height requirement for Parcel A, there is therefore a failure to conform with Section 3.15.

In fact, the first paragraph of Section 3.15 states that:

“Wherever a change in land use is proposed, consideration shall be given to the effect of the proposed use on existing land uses. Where there are potential compatibility concerns, consideration shall be given to the extent to which increased site plan requirements can reduce the potential impacts.”

The Municipality fully intends to impose such site plan requirements.

3. Under the first paragraph of Subsection 3.15.5, (the one specifically referred to by the Appellant), the following statement appears.

“Compatibility can be achieved in a variety of ways, including the provision of appropriate setbacks, buffering features, and transition in building height and massing.”

There then follows a list of criteria for consideration in relation to zoning amendments.

These are matters to be taken into account in the planning process, and they have been. They are not fixed, quantitative requirements which must be met to achieve conformity with the Official Plan.

4. Paragraph 7 of the Appellant Form is blank, indicating that no professional planning evidence would be called to provide evidence on official plan conformity.

5. It is submitted that the *Act* was amended to limit appeals to real issues of conformity with the planning and public policy principles embraced by the applicable official plan.

Appeals are not authorized or intended to be based on the minute details of development such as the yard and height regulations as referred to in the Notice of Appeal. Those are purely local matters for the City Council or the Committee of Adjustment as the case may be.

If such details could be accepted as a basis for appeals, the purpose of the amendments to the *Act* would be defeated. Entitlement to appeal would again be unrestricted.

6. The issue is to be determined by an examination of the Notice of Appeal itself. On its face, is it based on one of the permitted grounds and secondly, does it “explain how the by-law is inconsistent” with one of the aforementioned planning documents as required by Subsection 34(19.02) of the *Act*?

It does not meet those tests.

7. Even if the criteria referred to in Subsection 3.15.5 could be considered, there is no statement in the Notice of Appeal specifically demonstrating how the by-law fails to conform thereto and how that results in non-conformity with the official plan in the sense intended by Subsections 34(19.01) and (19.02) of the *Act*.

* * * * *

We therefore submit that the Appeal is not valid and request that such a determination be made in the screening process.

If anything further is required from me at this point, please let me know.

Yours very truly,

McKITRICKS

Per:

A handwritten signature in blue ink, appearing to read 'Allan G. McKittrick', with a long horizontal stroke extending to the right.

Allan G. McKittrick, Q. C.
AGMcK:mk

Cc Linda Delamere
Karen Brown