

MEMORANDUM

To: John Linhardt – Commissioner of Planning and Sustainability
From: Nick McDonald
Date: Feb 5, 2020
Re: OPA 32 - Request by 823 Trafalgar DG Farms Inc. (Hodero)

Request

Section H6.23.2 (d) of OPA 32 as adopted by Council states the following:

"Applications for development in the Secondary Plan area shall only be approved, and development shall only proceed when: Landowners have entered into agreements that provide for the equitable cost sharing of the provision of required community infrastructure;"

In a letter dated July 6, 2018 from Arnold Foster LLP (writing on behalf of 823 Trafalgar DG Farms Inc.), it is requested that the above section be deleted and replaced such it says the following:

"Landowners with in the Secondary Plan area, owning an excess of 5 hectares, have entered into agreements with all others such landowners that provide for the equitable cost-sharing of the provision of required community uses and infrastructure, including but not limited to parks, schools and stormwater management ponds and including an equitable sharing of the costs of the lands required for such community uses and infrastructure."

It is indicated in an email dated October 2, 2019 from Mr. Arnold that there have been several discussions between 823 Trafalgar DG Farms Inc and the Southwest Georgetown Landowners Group, *"but to date they have not allowed us to become part of the landowners group"*.

Given that the timely provision of infrastructure and community facilities is in the public interest, there is a need for private agreements between landowners to address the distribution of costs for development. Section H.6.23.2 (d) of OPA 32 as adopted by Council provides for this. However as set out below, a modification to the policy is recommended to provide additional clarity.

Analysis

Section H6.23.2 (d) of OPA 32 as adopted by Council essentially states that landowners are required to enter into agreements that provide for the 'equitable' cost sharing of required community infrastructure before applications can be approved.

In my opinion, this equally applies to landowners who 'lose' developable land for the purposes of providing community infrastructure that benefits others and to landowners who 'gain' developable land as a result of the required community infrastructure being elsewhere.

In reviewing the policy as adopted, I do have a concern with the policy as written because it establishes a potential expectation that the private cost sharing agreement be 'equitable' and this may place an onus on the Town in the future to determine if private landowner agreements are 'equitable' when considering future applications. It is my opinion that the determination of what is equitable should be a private matter and not one that is adjudicated by the Town.

On this basis, it is recommended that the policy under discussion be updated such that it indicates the following:

Applications for development in the Secondary Plan area shall only be approved, and development shall only proceed when: Landowners within the Secondary Plan have entered into a private cost-sharing agreement(s) amongst themselves to address the distribution of costs of development, for the provision of matters such as community uses and infrastructure facilities, including, where appropriate, the lands required for such uses and facilities.

The above policy no longer uses the word 'equitable' and instead refers to these agreements as 'private' since the Town should not be adjudicating private agreements. In addition, the words 'lands required for such uses' have been added to respond to the request made by Mr. Arnold thereby indicating that the land component could be an element of the private agreement.

It is noted that this policy would be implemented through the development review process and the imposition of conditions of Draft Plan Approval. These conditions also typically require the entering into of private agreements as well and confirmation before registration that each landowner has fulfilled their obligations in accordance with those agreements is typically required. If there are concerns about the condition at the time of Draft Plan Approval, the condition could be appealed to the LPAT for adjudication.