

Affidavit of Jennifer Keesmaat

1. I am a registered land use planner in the Province of Ontario and hold the designations of MES, RPP, MCIP. I am also the former Chief Planner, The City of Toronto, former CEO, Creative Housing, recipient of the Canadian Institute of Planners Presidents Award, 2016, and member of the International Panel of Experts, Singapore Urban Redevelopment Authority and of the Advisory Board, Urban Land Institute.
2. I have been retained to provide as affidavit in this matter as set out in Rule 26.12(d) of LPAT's Rules.

Introduction

3. Land is our most valuable resource.
4. How it is planned and used has significant implications for the viability of the provision of public services, including access to affordable housing, water and transit, schools and hospitals. For this reason, the Province of Ontario, through the Provincial Policy Statement (PPS), lays out in considerable detail how municipalities, in their planning, must conform to the Provincial interest. Precisely because sprawling land use planning has implications for service delivery over the long-term, and therefore can compromise access to services and the capacity of the municipality to sustain required service levels, directing growth to existing serviced areas prior to building new infrastructure is the foundation of the responsible use of land in the PPS.

Policy

5. Windsor's Official Plan (OP), 2013, recognizes and respects this higher order policy requirement and stresses the importance of the city centre as the heart and focal point of the city (3.2.2.2), promotes rationale growth and land use planning that is tied to population growth and servicing availability (Vol II 1.23), and inherently acknowledges the need for a more sustainable approach to transportation planning that reduces vehicle trips and is designed to better promote access to walking, cycling and transit. The plan explicitly identifies less sprawl onto agricultural and natural lands as a strategic, foundational objective (OP 3.2.1.2).

6. Sprawling development is defined as that which requires vehicular access for mobility, as opposed to development designed to support walking, cycling and transit as primary mobility choices. With sprawl, potential efficiencies in municipal service delivery are lost. In addition, 21st century postindustrial cities that are in a state of reinvention, recognize that the clustering of people, services and jobs is paramount to creating healthy, sustainable communities that can accommodate the needs of both an ageing population and long-term economic development and growth. For this reason, it is not surprising that the Windsor Official Plan stresses the importance of mitigating sprawl in the future development of the city.
7. Any development that increases vehicle trips required for access to housing, jobs, and healthcare is a contributor to sprawl. Current planning practice recognizes that a fundamental pillar of sustainable development rests with the use of existing infrastructure to accommodate new growth, prior to building new infrastructure, as well as the integration of jobs within the existing urban fabric of a city. The emphasis on the revival of city centres, as opposed to design of business parks on the periphery of a city, is a response to the risks and costs associated with sprawl. As identified in the Official Plan, sufficient land exists to accommodate population and employment growth in existing areas of the city of Windsor over the next 20 years (OP 1.1).
8. The Development Approach as outlined in the Official Plan rests upon the recognition that compact development supports transportation choices, including walking, cycling and public transport, as well as the high, and unsustainable cost of service provision when density is accommodated over a vast land area is unsustainable over the long-term (OP 3.2).
9. Land economist Pamela Blais, in **Perverse Cities**, provides a detailed analysis of this phenomenon, concluding that it is inherently inconsistent for a city to pursue sustainable development goals while underutilizing existing infrastructure and building sprawling new neighborhoods at its edges.
10. In decision-making as it applies to land use matters, it is necessary to conform to existing policy frameworks, which have been developed in transparent, public processes and approved by governing bodies of elected officials, at both the municipal and provincial levels.
11. This requirement, essentially and when correctly applied, ensures the responsible, efficient use of land in keeping with the long-term public interest.
12. If the intention is to embrace a fundamentally different course for the city, or the Province, policy frameworks must be brought into conformance with this new direction, as shaped by the input of the public. That has not been proposed here. It has not been suggested that the PPS contains a fundamental flaw, or that the Official Plan direction is, or should, no longer be sustained. And yet advancing OPA 120, which is a blueprint submitted by Windsor Regional Hospital to expand Windsor's developed footprint by 400 hectares and to be anchored by a new hospital at County Road 42 and Concession 9,

is inconsistent with these frameworks. Doing so does not support compact growth or a movement towards a more balanced transportation system where walking, cycling and transit are designed as foundational to the City of Windsor's movement systems.

13. In addition, the planning rationale for both proceeding with OPA 120 in the absence of demographic trends that indicate expansion of municipal infrastructure is required, and the planning rationale that supports the siting of a hospital in this location as representing good land use planning, remains unclear. A compelling case has not been made.
14. Not only does OPA 120 neglect the environmental and financial consequences of prematurely developing active farmland in an area that, if developed, will require extensive flood containment measures, it also removes Windsor's second largest employer from the city centre, weakening the downtown as a major economic centre despite clear policy direction in the OP that focuses on strengthening it. It also creates barriers to access health care.
15. Given the major catalytic implications of consolidating employment at this scale in one location, ensuring alignment between any Official Plan Amendment, such as that proposed in OPA 120, is critical to ensuring that the larger, long-term interests of the development approach to the overall city are maintained, and ideally, enhanced. That case has not been made.
16. The matter is of sufficient seriousness, given that a lack of conformity to the existing policy framework is in essence a breach of the public trust as bestowed upon public officials.
17. Conformity to existing policy is not suggested, it is required.
18. In some instances what might be seen as a lack of conformity is a disagreement about the interpretation of policy. But the absence of a Planning Rationale that advances a logical framework for OPA 120 rules out this appeal as a simple matter of a difference of interpretation. The policy is clear and pointed...
19. As proposed, OPA 120 creates a fundamental divergence from the objectives of the Official Plan to create a sustainable city over time. Given an expected on-going slow growth scenario, releasing agricultural land for development will likely result in more vacant properties in the core, add more vehicular traffic, resulting in the inefficient use of existing land and infrastructure. All of these outcomes, which are easily established through precedent, are contrary to the fundamental objectives of the Provincial Policy Statement and the Official Plan.
20. These and other considerations are outlined in the Case Synopsis submitted by CAMPP Windsor Essex Residents Association for the Official Plan Amendment and Zoning Amendment, both of which I have reviewed and adopt.
21. Three additional considerations:

A. Respect for the Development Approach in the Official Plan.

22. Earlier analysis has referenced the policy drivers that direct the efficient use of both land and existing infrastructure, with an emphasis on ensuring vacant, serviced areas are viewed as the valuable asset that they are. However, the integrity of creating a dense urban core is not only eroded by the siting of the second largest employment hub on agricultural land: it is further eroded by the opportunity lost with respect to capitalizing on existing services (transit, water, sewer) adjacent to an existing population base, and the likelihood that ancillary uses that support this employment base may no longer be viable in the city centre absent this significant employment function. The momentum of the Official Plan is towards creating a more compact, dense, mixed-use city. OPA 120 shifts the momentum of the overall city development in a fundamentally different direction, thereby undermining the Development Approach espoused in the Official Plan.

23. It is, therefore, at odds with the most basic, foundational elements of the Official Plan.

B. Land use development that supports walking, cycling and transit.

24. In order to create a sustainable and healthy environment, the Official Plan recognizes the importance of planning land in such a way as to ensure mobility choices. The two are directly linked. To achieve this, the Plan focuses on creating a mixed-use centre , with a further recognition that doing so is the backbone to designing a city where it is possible to work close to home (OP 3.2.3.1). Given that the hospital will be the second largest employment hub in the city, to locate it away from the existing population is inconsistent with this policy direction. It does not support walking, cycling and transit as the preferred transportation approach, which is a priority that the Plan seeks to advance.

25. Further, given the slow growth scenario that Windsor is anticipating and expects to continue, the hospital will be an amenity that primarily serves existing populations – including an ageing population. To support walking, cycling and transit, the hospital must be sited in a location that readily provides excellent mobility choice related to these options. Integration with the existing urban fabric of the city would be the most strategic, effective, and cost-effective way to do so.

Requirement to consult.

26. Given the legitimacy of the concerns raised by the public, the inconsistency between OPA 120 and existing policy frameworks and the broader public interest to plan and build a sustainable city, and the long term implications of OPA 120, the duty to consider, address and engage concerns regarding the planning process, the planning rationale, mobility, access and equity are insufficiently met to satisfy even the most basic interpretations of the expectations from community engagement as outlined in the PPS and the OP.

27. Not only has the Windsor Official Plan and the PPS been structured to make this public consultation a legal requirement, but the City of Windsor, in its Official Plan is considerably more pointed, stating that “new ways will be found to build consensus within the community to ensure that Windsor advances toward its desired future” (OP 3.2.4.1).

Closing

28. The expert evidence affirms a slow population growth scenario for Windsor moving forward. The expert evidence affirms an abundance of existing, serviced employment lands will continue to be available moving forward. Municipal policies, in the Official Plan, affirm the importance of creating a compact city that is designed to minimize vehicle miles travelled and enhance walking and cycling as mobility choices, focusing on urban renewal to advance creating a livable city.
29. It is therefore my opinion that OPA 120 is not in keeping with the most basic directions identified in the Provincial Policy Statement and the Official Plan to protect the long term public interest.
30. This statement is true and reflects a diligent application of policy to advance the public interest in this matter.

AFFIRMED BEFORE ME at the City of
, in the Province of Ontario on
, 2019

Commissioner for Taking Affidavits
(or as may be)

JENNIFER KEESMAAT