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Twin Tower Condo Project Proposed for Site Zoned as Open Space / Parkland – An Evaluation of the Parkway House Proposal

The objective of this Evaluation is to provide a historical perspective on the original decision of the City to convey the land at 2475 Regina Street to Parkway House. The Evaluation also analyzes the proposal and expected benefits to Parkway House and Windmill Development Group, and the damage to the Lincoln Heights community and to the City itself which would ensue if the City Council were to accept the proposal.

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The Proposal

Windmill Development Group proposes to build two towers (12 storey and 20 storey) of condominium units on land zoned in the City of Ottawa official Land Use Plan as Zone 01 (suitable for open space, parkland, community garden, environmental preservation and education area).

The land involving 2 acres on Regina Street is owned by Parkway House, and subject to a Covenant to the City of Ottawa. The land is partly occupied by the Parkway House residence for disabled adults, with the balance of the land being open space.

Parkway House submitted a request to City Council in early April 2010 to remove its Covenant which is not to sell the land without offering it first to the City. This is the first of a two step request for a re-zoning from Zone 01 Open Space to permit the 12 storey and 20 storey condominium development by Windmill.

Executive Summary and Recommendation

The Proposal Contradicts Existing Land Use Decisions

The Parkway House and Windmill concept plan requires City Council to disregard the sound land use principles upon which the Council in 1977 rejected a plan by the Ottawa Separate School Board for a zoning upgrade to accommodate high density development of this open space. City Council made a considered judgement instead to

buy and maintain the land for public use. Indeed, Parkway House became the direct beneficiary of this Council decision because the decision opened the way for the City to convey the land to them for their residence. The basis for the original 1977 decision to maintain the land as Zone 01 Open Space remains valid today. This land is also designated as Major Open Space in the official Land Use Plan of the City, and is contiguous to the large area of Major Open Space including the Mud Lake Conservation Area to the north.

The customary practice of the City in such cases was to convey the land by means of a long term lease which maintained the City's actual ownership. Parkway House, (as Parkway House was known at that time), requested that the land be sold to them in order to help them raise the financing needed for the residence. The City accepted this unusual means in order to further help Parkway House, but insisted on a Covenant by which Parkway House promised to use the land solely for the purposes of its residence project. This Covenant is precisely to ensure the integrity of the City's decision to sell the land to Parkway House, and at a relatively low price, while safeguarding the land use principle of the land's public purpose, backed up by the zoning. It is this promise and legal Covenant which Parkway House now requests be waived, as a Step 1 towards selling the land to Windmill for 12 storey and 20 storey condo towers.

There can be no doubt that if the current proposal from Parkway House had been submitted in the late 1970's, it would not have been approved by City Council. Evidence of this fact is that the original plan from Parkway House was supported precisely to avoid the incompatibilities with principles of good land use planning which the high density plan of the Ottawa Separate School Board had revealed. A second piece of evidence is that City Council underlined the public interest in maintaining a public use for the land by requiring the Covenant from Parkway House. Third, the zoning has continued to consistently reinforce legally this public use status. On the basis of these three pieces of evidence, it is clearly not legitimate for Parkway House to expect to be permitted to sell the land asset which the City had awarded them for a public use. On the contrary, with this historical perspective, all parties should expect the City to exercise the right to repurchase the land to ensure it remains for public use.

Dangerous Precedent to Re-zone Open Space for High Rise Condominiums

The Parkway House concept plan requires City Council to establish a very dangerous precedent to make an ad hoc decision to rezone Open Space / Parkland to high density development. If the Parkway House request were to be accepted, no parkland in Ottawa would be truly secure from developers approaching not for profit organizations in a similar vein. This precedent should cause concern to all councillors and community associations across the city.

The Proposal is About Profits, and Ignores Land Use Principles

Although the proposal is for the City to make these significant manipulations of the official Land Use Plan, the submission is without reference to sound principles of land use. In fact, aside from intensifying land use which every up-zoning results in, the Parkway House rationale is silent and does not even attempt to address Land Use Planning principles. The reason for this is that the proposal is simply a means of enriching Parkway House so it can cover off annual shortfalls in funding which will otherwise impact operations only by 2020, while providing Windmill with a valuable site for intensive condominium development. The collateral damage to others including the City itself is totally disregarded.

The Flaws of Indirect Schemes Designed to Confer a Benefit to One Organization

When governments try through indirect means to confer a benefit on some organization, economic analysis usually reveals that the target organization receives some benefit, and others also gain benefits or advantages, often the lion's share (as in this case Windmill). On the other side, some organizations or citizens bear the costs and externalities, meaning that they suffer loss or damage. Often the disadvantages or costs passed on to the latter group are much higher than the benefits conferred on the actual target organization. In this case, the disadvantages and damages would be borne by the Lincoln Heights community generally, and the individual citizens and existing rental residences closest to the site and transportation route. However, in this instance, the City will also be damaged significantly. The integrity of the City's official Land Use Plan would also be a casualty, both immediately and with longer term precedent threatening ever greater problems and lobbying. In policy terms, the proposal also fails the equity test, i.e., that similar organizations will be treated similarly.. To those upon whom the damages are imposed, most are sympathetic to the handicapped residents, but consider this proposal to be fundamentally wrong, and unfair in its effects.

Why not insist on a straightforward, direct approach?

A direct and transparent approach would be for Parkway House to submit a request for direct funding assistance from the City under the category of programs of housing and assisted living. It would avoid the serious collateral damage to the community and to the City's Land Use Plan which the current Parkway House approach entails.

Transparency would be gained because Parkway House would be required to divulge a full array of hard financial and operating data, which to date it has avoided presenting. This would enable a clear analysis and understanding of needs and cost, and a comparison with similar meritorious organizations. The City might even be able to mount a credible case for more provincial funding for all similar organizations when

presented on the foundation of such a review. If Parkway House were required to go through such a review prior to a City examination of its current request re lifting the Covenant, there would undoubtedly be better insight into the needs, benefits and costs of their current proposal.

Conclusions

The current request re the Covenant is the first step in a two step procedure. This request contravenes three important principles for land use planning:

- reversing the 1977 and subsequent decisions to avoid high rise development on this site, and instead to keep the land in public use
- the precedent of rezoning of open space / parkland to high density condo towers;
- the proposal is not about good land use planning, but rather conveying profit for Parkway House and Windmill through manipulating the land use system

City staff and City Council should focus their review on the faulty premises and principles of the proposal at this stage, and how the plan is designed to lead the City into damaging the integrity of the official Land Use Plan, as well as to be subjected to heavy and persistent lobbying by Windmill on the zoning aspect.

The proposal involves an indirect technique to engineer financial gain for one organization, and will enable substantial benefits for the developer Windmill. At the same time, the proposal will impose costs and damages on the neighbouring community and landowners. Further, the City would be led into an ad hoc zoning decision which would damage the integrity of the Land Use Plan and set a serious precedent of rezoning Open Space into high density high rise development. Overall, this is a very bad policy direction for the City to adopt.

The City Council should recognize that the public interest will be well served only if it decides to repurchase the land. It should at the same time invite a direct request from Parkway House for financial assistance, accompanied by full disclosure of all relevant financial and operational information.

Recommendations

First, the concept plan of Parkway House should not be accepted by City Council:

- it involves serious detriment to the neighbours and Lincoln Heights community
- it would lead the City into an indefensible ad hoc decision to amend the official Land Use Plan
- it would create a highly undesirable precedent of re-zoning an area of Zone 01 Open Space into high density residential development.

Specifically with regard to the immediate issue of the request from Parkway House to lift the Covenant, the City should exercise its right to repurchase the portion of the land not needed by Parkway House.

Second, the City Council could invite Parkway House to submit a request for supplementary funding from City housing and assisted living programs. If a need to support Parkway House and similar organizations can be demonstrated, this could lead the City to support all such organizations fairly and constructively. Any actual flow of funds would likely be modest, and in the case of Parkway House likely would not be needed until 2020. Such an initiative to provide direct support to meritorious organizations like Parkway House would likely be well supported by the public.

Detailed Analysis of Major Issues

Proposal Directly Contradicts the Original 1977 Decision of City Council

This parcel of land had been owned by the Ottawa Separate School Board during the 1970's and before. The Ottawa Separate School Board decided in about 1977 that it did not need the land for a school, and proposed to request a rezoning and in order to sell it at maximum price for high rise development. The proposal was opposed by the community because of the concentration of 6 existing high rises on and adjacent to Regina Street. The traffic from the eastern end of Regina was already very high from residents of two high rises, and the land at issue has only one exit point onto Regina Street right at the same bottleneck. There was a good case for keeping the land in some public use since it had been so for decades and was bordered by Major Open Space land to the north. Public use would provide a transition from the high rise development to the south to the open land to the north.

Subsequently, a new group (now Parkway House) was looking for land to build a residence for disabled young adults. With the active efforts by Councillor Marlene Catterall and Mayor Marion Dewar, and full support from the community, the City recognized the value of maintaining the land in a public use. The City obtained the land and then sold it to Parkway House for an accommodating price to take account of the public use proposed by Parkway House. The Parkway House proposal was to build initially one residence module accommodating 12 residents, and progressively expand over time to four similar modules of 12 resident capacity for a total of 48 residents. There was a need for some facilities for day programs for handicapped young adults living elsewhere, and this was seen as a complementary role which Parkway House could fill. The 2 acre size of the land was needed to accommodate the four modules of the completed project. Among the advantages of this project were that it would keep the land for a quasi-public purpose and not be rezoned; the buildings themselves would be one storey high and architecturally appealing; and most important the traffic increase would be minimal. The low intensity use would also serve as a transition in height from the high density zone to the immediate south and the single detached housing adjacent to the northwest, as well as the open space to the north which includes the Mud Lake Conservation Area .

The decision of City Council to approve the land transfer and project plan included a Covenant agreed to by Parkway House. The Covenant is a promise to use the lands only for the purposes of the residence for handicapped adults and if at any time in the future Parkway House did not need all the land for the purposes of its residence program for handicapped people, it would notify the City and the City had the right to repurchase any land not so needed. In the meantime, the quasi-public purpose for the

land would leave the zoning unchanged, and the land is currently Zone 01 Public Space in the City's official Land Use Plan.

It is absolutely clear that if the current proposal from Parkway House had been submitted in 1980, it would not have been approved by City Council. Evidence of this fact is that the original plan from Parkway House was supported precisely to avoid the incompatibilities with principles of good land use planning, which the high density concept plan of the Separate School Board had revealed. A second piece of evidence is that City Council safeguarded the public interest by requiring the Covenant from Parkway House. Third, the zoning designation has continued consistently to reinforce legally the public use status. On the basis of these three pieces of evidence, it is simply not legitimate for Parkway House to expect to be permitted to sell the land asset which the City had awarded them for a moderate sum in the first place.

Dangerous Precedent if Council approves rezoning of this parcel of land from Zone 01 - Open Space to a high density residential use

If City Council were to accept the dramatic rezoning proposal in the concept plan, it would create a dangerous precedent. This precedent would leave few Zone 01 parcels of open space land or even prepared parkland unprotected and vulnerable to a proposal by some organization with a sympathetic social purpose to take over the space and reach a similar development deal with a developer.

Councillor Cullen has noted during the public consultations that many members of City Council favour a philosophy of fostering more intensification in land use within the built up areas of Ottawa as an antidote to permitting more urban sprawl. Some might even refer to intensification as a new policy for the City. There is certainly some merit in this concept of intensification as a philosophy. However, if this philosophy is cited to help justify a City Council decision to accept this particular proposal for a dramatic rezoning of Zone 01 land for high rise towers, it will make the precedent in this decision unmistakable and irresistible to the development industry. The various social organizations in Ottawa may not immediately see the precedent's implications, but the development industry would be only too pleased to educate them.

This precedent would likely generate many proposals which bring heavy pressure on City Council to deviate from the carefully considered official Land Use Plan. In reaction, local residents who place value on the Open Space involved and who see problems and degradation of their neighbourhood from the high density project would then need to mobilize to oppose the proposal. In doing so, such communities risk being unfairly

characterized as being unsympathetic to the plight of the disadvantaged social group involved. Overall, this is a divisive and highly unsatisfactory way to consider zoning decisions and the merits to making ad hoc changes to the Land Use Plan.

There is a formal land use policy of the City, and it is embodied in the official Land Use Plan. This is the legal cornerstone of land use planning and proper decision-making by all members of society. The Plan should not be changed without careful professional planning analysis, and elected City Council level consideration of the implications of any single request for a substantial zoning change. This is the only disciplined way to provide predictability and fairness to all investors and members of society, and to avoid unprincipled lobbying, patchwork results, and justified appeals.

Artful Procedural Tactics

The Directors of Parkway House have recently submitted a request to City Council to remove the constraints of their Covenant, i.e., their commitment not to sell the land without first offering the City the right to re-purchase what Parkway House no longer needs for their residence. The City Council has a limited time within which to decide to exercise their rights.

First, Parkway House is in no imminent risk of running out of the reserve funds it has available to cover its annual operating deficit. These reserve funds will last until about 2020 according to their own account, and further into the future if a new, stronger fundraising program is adopted. Accordingly, one can only consider any such request to City Council this spring to be a tactic to pressure the Council.

Secondly, Parkway House has made a request initially only with regard to the Covenant, and not submit simultaneously a request to change the zoning to what their joint proposal with the Windmill Development Group entails. This step regarding the Covenant is not merely procedural, but a substantive request because it raises the issues that show how incompatible the proposal is with the City's existing land use decisions dating back at least to 1977. The result of a decision by City Council to accept the submission and not to exercise its right to repurchase the surplus land would be to enable the sale by Parkway House to a developer Windmill, and the only question would be the price Windmill would pay. This price is directly related to how substantial a re-zoning which Council would ultimately decide. Windmill can be relied upon to lobby and press City Council for a substantial zoning change to achieve the kind of intensive project that Windmill Development Group is currently planning.

To any City Councillor who is sensitive to safeguarding the integrity of the official Land Use Plan and does not consider an ad hoc re-zoning decision to be sound or even sustainable to a subsequent review, and further who does not wish to set up a dynamic of high pressure lobbying on a re-zoning application, the obvious course is for the City Council to exercise its right to re-purchase the land no longer needed by Parkway House. If the Councillor has sympathy for the residents of Parkway House and wants to be constructive in looking at other means of support, the obvious course is to invite Parkway House to submit a fresh request for direct assistance (i.e., unrelated to any land use change).

There is one other negative implication to Parkway House's strategy to present their request only on the Covenant issue. The Parkway House Board of Directors has provided only partial and fragmentary details of its financial and operational results to corroborate its assertions, and to explain its and Windmill Development Group's proposals. The Parkway House Board has not shared with the community a business plan which would enable an objective analysis of the merits of its plans. As Parkway House has submitted a request to City Council only referring to the Covenant issue, it can continue to avoid a full and coherent disclosure of its situation and its plans through the simple expedient of declaring that its and Windmill's plans are not yet fully clear. This pattern of providing very limited information would not meet the test of a transparent and straightforward advocacy, and indeed it would border on the dishonest.

Fragmentary and Conflicting Financial Information which can Mislead Decision-makers

At the most recent public meeting on April 1, 2010, the Parkway House Chair of the Board said that the 2 acre parcel of land was valued at \$4 million. This valuation refers to the use of these lands for highly intensive residential use such as being proposed by Windmill. Further, it presupposes that the City will accept the waiving of its rights to reacquire the lands under the Covenant, and will also accede to a request to re-zone the land from 01 Open Space to a high density residential designation.

First of all, it is also worth remembering that many members of the community put a significant value on Open Space which, once gone is rarely recovered.

Second, this profit factor doubtless shows the genuine motivation of Parkway House. However, the prospect of financial profit is almost always the motivation of every seller of land for which an up-zoning is being sought. This profit factor is simply not a legitimate element in the City Council's consideration of a significant change to the zoning in the official Land Use Plan. Indeed, it would be improper. Yet this factor is at the heart of the proposal.

The prospective \$4 million profit is not a legitimate factor for the City to take into account. However, this reference to \$4 million does illuminate other characteristics of the Parkway House approach to the City in the request regarding the Covenant. Most importantly, the reserve funds previously raised by Parkway House currently amount to some \$900,000, according to a press interview with the Chair following the April 1 meeting. The magnitude of this financial reserve had not been divulged to the community by the Board up until that time. In any case, with this current reserve available, the shortfall in annual operating funding could be covered in perpetuity by an annuity based on an additional sum much lower than \$4 million, likely much closer to \$1 million. In other words, the claim by Parkway House that it needs to move soon to sell the lands, and the claim that it must sell the lands for high density development in order to meet its funding needs are both substantially incorrect, and are calculated to be highly misleading to the City decision-makers.

Future Steps to advance the understanding and appropriate help for Parkway House

The community considers there is a need for a more thorough diagnosis of the root problems facing this institution and to similar residential institutions serving these handicapped citizens. The criteria and broad basis for the decision-making on operating funding furnished from the Government of Ontario needs also to be examined. There will be merit in the Board of Parkway House consult with its peer group of similar institutions on an ongoing basis to look for “Best Practices” ways of operating for better services to the residents as well as proven efficiencies from other institutions. There is a need to address the revitalization of Parkway House’s fundraising, and possibly other aspects such as building up a “Friends of the Parkway House” and volunteer roster to broaden its links and outreach to the neighbourhood and west end community more broadly. There could be scope for building alliances for stronger benefits and services for the residents such as looking for more educational avenues for residents and how to fund them. The community has recently communicated to the Board its willingness to help in the consultative work of the character outlined above.

Background on the project components

The 12 storey tower (with high interior environmental standards)

The 12 storey condo tower would be designed to meet stringent standards for interior environment. This characteristic might be attractive to investor / residents who have significant allergies or sensitivities to living conditions even in modern buildings which are designed to meet customary building codes and practices.

Safe Housing Ottawa is a non-governmental organization (NGO) which lobbies governments and developers to build some housing to meet stringent standards for indoor environment conditions. This organization supports this project. At a public consultation meeting with the community, the representative of Safe Housing Ottawa stated that this site was uniquely suitable in all of Ottawa for the 12 storey building designed to minimize serious environmental sensitivities. While the current residents of the Lincoln Heights community appreciate the attractive external environment around their community, the ambient air quality is likely no different than in most residential neighbourhoods in Ottawa. Certainly, no evidence to the contrary was presented. Further, the effectiveness of the design and materials and air filtering, etc. would be applicable to whatever site would be available in the city. Accordingly, the claim by Safe Housing Ottawa that this site is the only suitable site in all Ottawa is so exaggerated as to not be credible.

Safe Housing Ottawa has applied to the City of Ottawa for a grant of some \$700,000, which would enable it to obtain a commercial mortgage to buy three floors of units (likely 24 units) and to rent them out to citizens with significant environmental sensitivities but who would not have a sufficient income level to enable them to buy such a condo. The rents would be set such as to meet the costs of mortgage payments and taxes, and all condo fees, and other landlord expenses, and hence allow Safe Housing Ottawa to avoid any deficits.

The proposed City grant or contribution of \$700,000 would amount to about \$30,000 per unit. Depending on the price the developer would set for the condos in this tower, this City of Ottawa subsidy might account for about 10% of the financing required to meet the initial price.

The remaining 9 stories (likely 72 units) would be marketed to individual investor / residents. Since the design and execution would be more costly in this tower than for a condo meeting customary code standards, a higher selling price per unit would likely be needed to reflect this higher cost factor. Accordingly, the marketing effort would target buyers who might find the environment standards to be a valuable feature and be willing and able to pay somewhat more to obtain this. It is not clear whether any interested buyer would be turned away for lack of demonstrating environmental sensitivities or

allergy symptoms. In any event, these condos would be competing for buyers against all other projects in the city in terms of price and value. This factor would likely limit the price premium the developer could obtain for these units. The developer has indicated that the units in this tower would likely not achieve the profitability levels they would normally seek for a condo tower.

Safe Housing Ottawa has stated that it has a data base of citizens who would like to live in such a building, and who declare that they have serious sensitivities to customary interior environment conditions. It is not clear how many would be qualified buyers, i.e., would have the income level to buy a condominium in the top 9 stories of this tower once the unit prices are set by the developer. Indeed, it is not clear how many citizens on the Safe Housing Ottawa list may not even be able to afford the rent in the 24 units which Safe Housing Ottawa proposes to buy and rent out. The proposed City subsidy would reduce the size of the mortgage and hence its cost by possibly 10%, but the support level compared to the total monthly costs would be a much smaller percentage. To illustrate, what if the developer were to price the units at say \$300,000. In such an example, the monthly mortgage cost at current rates would be well above \$1500. Monthly provision for taxes might be \$200, and Condo fees might be another \$400. The new HST would add 13% to the purchase price and all service charges. Then the tenant would then have to cover utilities. This basic example strongly suggests that many of the citizens on the waiting list for Safe Housing Ottawa units may not have the income level to handle the substantial monthly costs for the units being purchased and then rented out by Safe Housing Ottawa.

Under the rules and regulations which govern condominium projects, when completed the governance of this building would be in the hands of the condo owners. There would be no relationship to the developer, or to Parkway House except as a neighbour.

20 storey tower

The second condo tower with 20 stories would be designed and built to customary code standards. The developer expects that the marketing of these units to condo buyers would be successful because of the developer's design and construction expertise, the location factor, and the attractive neighbourhood. The developer expects that the pricing of these units will enable the overall project to achieve their normal profit range, including recouping the costs of land acquisition and building a new residence for Parkway House on a small portion of land to which Parkway House would retain ownership. Indeed the developer asserts that they need to build this second tower and that it have 20 stories (possibly 160 units) in order to make the overall project viable and to generate an overall rate of return satisfactory to them.

This tower would follow the rules and regulations governing condominiums, and become governed by the unit owners once it is completed. It presumably would be separate from the other 12 storey tower since it would be of a different character in terms of environmental sensitivity and be finished at a different time. In any event, it certainly would have no relationship to Parkway House, except as a neighbour.

Profile of Parkway House

Parkway House is a not for profit, registered charitable institution which owns and has operated a residence for 12 handicapped adults for three decades. It receives an annual operating grant from the Government of Ontario. The funding formula apparently is based on a per diem rate of \$165 per resident (as cited at the April 2010 meeting by the manager of the residence). The computation of this \$165 per diem rate for 12 residents amounts to \$722,000 annually, although another Parkway House representative referred to annual revenue amounting to about \$650,000. The actual budget has evidently been running at about \$750,000, which led to one comment at the meeting which suggested that there is an operating gap or shortfall approaching \$100,000. This comment would seem to be in conflict with the mathematics of the per diem rate. It would also be at odds from information from a meeting between the President and another Director with a community delegation last June, when it was indicated that there has been a deficit for at least five years, typically in the \$50,000 to \$75,000 range. The operating shortfall would presumably not take into account the income earned from investing the reserve funds. In any event, this summary shows the fragmentary information divulged by Parkway House to the community over the past year would not provide any reliable basis for analysis or conclusions.

Parkway House directors assert that it is the philosophy of the Government of Ontario program administration to underfund the budget requests and that the institution must do its own fundraising to fill in the shortfall. The directors have said that they have found it increasingly difficult and unrewarding to fundraise in recent years, and apparently let such efforts reduce to a very low level.

Parkway House did do a fundraising campaign several years ago as they tried to move ahead with the capital expansion for a second residential module. They did raise enough funds for the capital cost but found that the Government of Ontario program would not assure the requisite operating funds. Parkway House decided it could not proceed without such assurance. The funds raised, reportedly in 2010 about \$900,000, are available for filling in the shortfall in annual operating funding. On this basis, the shortfall issue can be covered for another 8 or 9 years before these funds would be exhausted. The lifetime for these funds would be extended if they were invested

reasonably effectively and if Parkway House re-established effective fundraising activity, even if it could be only moderately successful.

This assertion about a deliberate provincial policy of expecting all the recipient institutions to cope with an operating funds shortfall needs to be reviewed with the program administrators. The administrators also need to be asked about how all other similar institutions have coped with this policy (since it is unclear whether others have a building reserve fund that they can so easily draw upon to meet an operating budget shortfall).

Parkway House Directors have considered how to resolve the annual operating deficit and have been contemplating a plan of selling off land to a developer for the last five years. The first that the neighbours in the Lincoln Heights community learned of the proposed scheme was at a public meeting in April 2009. A group of neighbours then asked to meet with some Directors and this meeting took place a month later. No further communication or information was received by the community until the public meeting on April 1, 2010. Parkway House has not provided a reasonable set of financial and operating information, which should be made available in an organized business case for its proposal. Instead, it has provided partial, fragmentary information which does not allow an objective analysis of their assertions and conclusions. This does not meet the standard of a transparent and proper manner for a quasi public institution to advance its proposals.