

Distributed at the Planning and Development Council Meeting of June 10, 2019
Re: Item 6 – Recommendation Report, Zoning By-law Amendment, 393 Dundas LP,
393 Dundas Street West, File No. ZBA 1319.07 - By-law 2019-006

June 9, 2019

Mr. Konstantine Stavrakos
O'Connor MacLeod Hanna LLP
700 Kerr Street
Oakville, Ontario L6K 3W5

Dear Mr. Stavrakos:

**Subject: Zoning By-law Amendment, 393 Dundas LP, 393 Dundas Street West, File No ZBA 1319.07-
By-law 2019-006 - Town of Oakville**

I am writing at your request to provide my land use planning opinion on the extract below from a Town staff report on the above noted application that is to be dealt with at the Planning and Development Council meeting on June 10, 2019:

In the absence of clear direction from the federal regulatory authority, precedent, or policy direction, staff does not propose to assign responsibility for possible mitigation measures to either the developer or the radio station as a condition of this approval. Instead, 393 Dundas Street West is encouraged to engage in discussions with Whiteoaks to identify potential mitigation measures that may ensure that the design and construction of any buildings to limit potential impacts on the radio signal or pattern. The Owner is further encouraged to establish a set of test points to test from time to time to evaluate possible degradation of the radio signal or pattern resulting from construction of the building(s). It is noted that through site plan control, the possibility of on-site mitigation measures will be evaluated and may be required if appropriate.

In essence, the author of the Town staff report does not believe that there is any policy direction to rely upon to assign responsibility for mitigation. It is my opinion that Section 1.2.6.1 of the Provincial Policy Statement (PPS) does deal with this issue and this section is reproduced below:

Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities.

On the basis of the above, 'odour', 'other contaminants', 'minimizing risk to public health and safety' and 'ensuring the long-term viability of major facilities' are matters that should be considered under the PPS.

Major facilities is defined by the PPS as per below:

Means facilities which may require separation from sensitive land uses, including but not limited to airports, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.

It is my opinion that the CJMR and CJYE radio stations that have been operating at 1303 Dundas St. West since the 1980's would be an example of a 'major facility'. It is noted that the list of examples of major facilities provided in the definition is not all-inclusive as a result of the inclusion of the words 'including but not limited to'. In my opinion, if a use requires separation from sensitive uses, it qualifies as a major facility, particularly if the sensitive land use has an impact on the long-term viability of major facilities.

It is noted that a significant addition was made to the 2014 PPS as it relates to this section. Previously, much of the wording that is now in Section 1.2.6.1 was in Section 1.7 e) of the 2005 PPS and it indicated the following: *"Long term economic prosperity should be supported by planning so that major facilities (such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants and to minimize risk to public health and safety."*

Most of what was in Section 1.7 e) has been moved to Section 1.2.6.1, however, the following words in underline have been added: *"Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities."*

In my opinion, this means that the consideration of the nature of the adverse effects is not the only consideration; rather, the separation of uses may be required to ensure the long-term viability of major facilities such as the existing CJMR and CJYE radio stations. In other words, Section 1.2.6.1 directs that when assessing land use compatibility concerns, it is not only the use of the land that needs to be considered, but the user as well.

It is also my opinion that Section 1.3.1 of the PPS (Employment) also has an impact on the consideration of whether the siting of sensitive land uses adjacent to major facilities is appropriate. Section 1.3.1 states the following:

Planning authorities shall promote economic development and competitiveness by:

- a) Providing for an appropriate mix and range of employment and institutional uses to meet long-term needs;*
- b) Providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;*
- c) Encouraging compact, mixed-use development that incorporates compatible employment uses to support liveable and resilient communities; and*
- d) Ensuring the necessary infrastructure is provided to support current and projected needs.*

Section 1.3.1 of the PPS begins by indicating that planning authorities 'shall' promote economic development and competitiveness by doing certain things, which are set out in sub-sections a) to d). The use of the word 'shall' means that the policy is a directive and therefore mandatory and is required to be met to the greatest extent possible by every planning authority. It is noted that Section 1.3.1 deals with employment generally, and not just employment within 'Employment Areas', which is dealt with in more detail in Section 1.3.2 of the PPS.

Section 1.3.1 b) indicates that the Town shall promote economic development and competitiveness by providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites which support a wide range of economic activities and ancillary uses and take into account the needs of existing and future businesses.

In my opinion, this is one of the very few occurrences in the PPS where the user of land becomes a consideration in a policy that is directive. In this case, the existing CJMR and CJYE radio stations were here first. And due to the nature of these businesses, the protection of their ability to continue

operating in the future is an issue that should be considered.

To assist decision makers with respect to the interpretation of Section 1.2.6.1 in particular, there are a series of Guidelines that were issued by the MOE in the early 1990s (the D Series Guidelines) that in my opinion need to be considered. It is recognized that these guidelines are dated; however, they have not been replaced and they do include some general land use planning principles that in my opinion represent good planning. In addition, it is also recognized that the D Series Guidelines do not provide the basis for determining how the long-term viability of major facilities is to be considered as per Section 1.2.6.1 of the PPS, since this was a later addition to the PPS. However, it is my opinion that they continue to be relevant particularly as it relates to the separation of uses and the responsibility for mitigation.

Section 1.4 of Guideline D-6 indicates that the general approach in Section 3 of Guideline D-1 applies to circumstances where a sensitive land use is proposed. Section 3.1 of Guideline D-1 establishes the preferred approach and it indicates that various buffers may be used to prevent or minimize adverse effects. However, Guideline D-1 also states that *"distance is often the only effective buffer ... and therefore adequate separation distance, based on a facility's influence area, is the preferred method of mitigating adverse effects."*

The importance of separation distance, as opposed to relying on buffers to minimize adverse effects, is supported in other sections of Guideline D-1. Section 3.2 states that *"the separation distance should be sufficient to permit the functioning of the two incompatible land uses without an adverse effect occurring."* Section 3.4 indicates that *"when impacts from discharges and other compatible problems cannot be reasonably mitigated or prevented to the level of trivial impact, new development, whether it be a facility or a sensitive land use shall not be permitted."* Again, this supports the principle that separation is the preferred method way to prevent or mitigate adverse effects in accordance with Section 1.2.6.1 of the PPS.

As noted above, Guideline D-6 indicates that the general approach in Section 3.0 of Guideline D-1 should be followed. Within Section 3.1 of Guideline D-1, it is indicated that Section 4.0 of Procedure D-1-1 may be used to prevent or minimize adverse effects. Section 4.0 of Guideline D-6 then directs the reader to Sections 1, 2 and 3 of Procedure D-1-1. This means that Section 1, 2, 3 and 4 of Procedure D1-1 applies.

Section 1.3 of Procedure D-1-1 establishes the process that proponents should follow when a sensitive land use is proposed near a facility that may create adverse effects on the sensitive land use. While this section does not deal with the long term viability of major facilities, it is within this section that it is indicated that the *"proponent is responsible for evaluating the severity of impacts, both before and after mitigation, within the facility or facility's influence area or potential influence area."*

In my opinion, this establishes the planning principle that the proponent of the sensitive use is responsible for mitigation.

It is my opinion that protecting the viability of existing businesses is a key factor to consider in determining whether to permit a use potentially affecting that viability nearby. This is because once a use is established, that use has certain expectations with respect to being able to continue using the property in the manner that it is. On this basis it is my opinion that the proponent of a sensitive land use is responsible for mitigation in accordance with Section 1.3.1 b) and 1.2.6.1 of the PPS.

I trust this is what you require at this time. If you have any questions, please contact me.

Yours truly,

MERIDIAN PLANNING CONSULTANTS

A handwritten signature in black ink that reads "Nick McDonald".

Nick McDonald, RPP
President