### Committee Direction:

Following a Public meeting held to discuss the merits of a proposed Official Plan Amendment and change in zoning to permit a 42-unit townhouse complex for multiple residential use, the Economic Development and Planning Committee, on September 2, 2008, directed staff to meet and discuss the requirements necessary to develop a Communal System Default Agreement for the proposed development.

A number of items were identified by staff that are required to be addressed in order to prepare a satisfactory Default Agreement. These items were detailed in a letter sent to the applicants’ agent, Ed Fothergill, on November 4, 2008 (see Appendix “A”). The requirements detailed in this letter were intended to facilitate further discussions between staff and the owner/applicant regarding the creation of a Default Agreement. In this regard, the applicants’ consulting engineer, Douglas Barker, provided a written response as detailed in Appendix “B”.

### Information:

The Copetown Lions have proposed to develop a 3.27 ha property to permit a 42-unit townhouse for multiple residential use. The location is outside of the urban service boundary and, therefore, communal water and wastewater servicing of the development...
is proposed. In such circumstances, the Ontario Ministry of Environment requires that the jurisdictional municipality (in this instance, the City of Hamilton) enter into a 'default' responsibility agreement that will ensure the City's assumption of responsibility for the communal services, their continued operation, and maintenance should the owner of the development be unable or unwilling to continue to do so, or through Ministerial Order at some point in the future. The latter regulatory direction has been reiterated and further emphasized recently by Provincial legislation proposing to consolidate smaller water systems and strengthening their governance by making municipally owned utilities responsible for providing these services (see www.waterpanel.ontario.ca).

Under the Safe Drinking Water Act 2002, and O. Reg.170/03 Drinking Water Systems, the various types of systems are described and the requirements and standards for their operations are set. Under O. Reg. 170/03, non-municipal (private) year-round residential systems are held to less robust requirements than municipal residential systems in most aspects of design, construction, process treatment components, operation and operator certification, maintenance and water testing. A municipality that assumes responsibility for a non-municipal year-round residential system under default is, therefore, immediately held to higher process component requirements, operation, maintenance, treatment, recording and reporting, auditing, licensure/permitting and testing standards as the system becomes a defined municipal system under O. Reg. 170/03. Re-designing the system for compliance under such conditions may not be cost-effective, practical, or even possible given the existing footprint and design.

Under the direction of Committee, the City has embarked on the task of negotiating prerequisite conditions that would facilitate a Default Agreement and afford the suitable liability reduction of City interests. These conditions, outlined in Appendix “A”, formed the basis of a meeting between City staff, and the applicant and owner on January 11, 2010.

The applicants' agent attended the meeting, in addition to their engineer, Doug Barker, and Bill Shewfelt, Frank Davis, and Adrian Ferry of the Copetown Lions Development Association. Attending on behalf of the City were Steve Robichaud, Jason Thompson, and Edward John, of the Planning Division, and Chris Shrive and Udo Ehrenberg, of the Public Works Department.

During the meeting, City staff noted that prior to preparing the Default Agreement, the proponent would have to submit full and complete engineering design drawings for the water treatment distribution system, as well as the sewage treatment system. These reports and studies would also be subject to peer reviews, with costs borne by the developer.
The applicants’ agent, Ed Fothergill, concluded that his clients would not be willing to complete final design drawings in advance or ahead of any development approvals and, instead, said approvals should precede the design details on the basis of a Holding provision which could ensure the completion of the required studies. Staff reiterated the concern over establishing the principle of the land use on-site in the absence of any comprehensive and considered planning/engineering justification regarding the feasibility and appropriateness of the project. The requirement was identified for the proponent to demonstrate the land’s inherent environmental capability to support private services (adequate potable water, appropriate soils and land area for waste dispersion / attenuation). Independent field testing was undertaken nearby by the Ontario Geological Survey, and the preliminary results of this work, combined with professional knowledge of the local hydrogeology, soils, and conditions, indicate that the environment is not capable of sustaining these services at the scale required to support the proposed development. As such, and in the absence of detailed studies demonstrating otherwise, staff is of the opinion that to establish the principle of a multi-family development on communal services would not represent good planning as it is doubtful that the proponent could satisfy the preconditions of development.

Staff continues to discuss and negotiate the prerequisite conditions for a Default Agreement, with the latest meeting held on April 12, 2010. In attendance at the meeting were the applicants - Bill Shewfelt and Adrian Ferry, the applicants’ agent - Ed Fothergill, and the applicants’ engineer - Doug Barker. Attending on behalf of the City, were Steve Robichaud, Jason Thompson, and Edward John, of the Planning Division, Don Fisher from Legal Services, and Chris Shrive of the Public Works Department. At the meeting, staff once again presented the prerequisite conditions that must be satisfied for staff to be able to report back to Committee and Council on the Default Agreement. In response to these requirements, the applicants’ agent, Ed Fothergill, discussed the possibility of implementing a system based on private requirements, but to design the system for the opportunity to be upgraded to municipal standards and to provide the City with securities to implement the design, if and when necessary.

Staff reiterated the concern that in order to understand the required securities, which would form an integral component of any Default Agreement, as well as the viability of the lands inherent environmental capability to support private services (adequate potable water, appropriate soils and land area for waste dispersion/attenuation), further study must be done, as outlined in staff’s letter of November 4, 2008 (Appendix “A”), prior to establishing any principle of development upon the lands. The meeting concluded on the basis that the applicants were going to assess whether or not to proceed with doing further work (i.e. water quantity/quality testing). The applicants advised that they would report back to City staff in due course.
Conclusion

In the absence of complete and final design details regarding the measures that staff considers as a prerequisite for entering a Default Agreement, staff considers that the principle of the land use has yet to be established, and that the potential liability to be borne by the City would be overly substantial. On this basis, staff does not support the treatment of these issues through a Holding provision as being sufficient based on the aforementioned issues. Accordingly, in the absence of the required information to demonstrate the suitability of the subject lands, staff reiterates that the application is premature, and cannot be supported for the reasons articulated in Report PED08193.

- Appendix “A”: City Response Regarding Default Agreement Conditions
- Appendix “B”: Response of Applicants’ Agent and Engineer

:EJ
Attachs. (2)
November 4th, 2008

Dear Mr. Fothergill,

Re: Copetown Lions Proposal for Multiple Residential  
1031 Highway 52 North  
Basic Servicing and Default Agreement Requirements

As directed by Committee at the Economic Development and Planning Committee on September 27th, 2008, staff have now had the opportunity to meet and discuss the preliminary requirements necessary to develop a communal system default agreement. These requirements, detailed below, are intended to facilitate further discussions between staff and your client regarding the creation of a default agreement. Please review this information and advise of a suitable time you would be able to meet with staff. Finally, please note that the information below is provided as guidance only.

Background

The Copetown Lions have proposed to develop a 3.27 ha property to permit a 42 unit townhouse for multiple residential use. The location is outside of the urban service boundary and therefore communal water and wastewater servicing of the development is proposed. In such circumstances, the Ontario Ministry of Environment requires that the jurisdictional Municipality (in this instance, the City of Hamilton) enter into a ‘default’ responsibility agreement that will ensure the City’s assumption of responsibility for the communal services, their continued operation and maintenance should the owner of the development be unable or unwilling to continue to do so at some point in the future.

Under the Safe Drinking Water Act 2002 and O. Reg.170/03 Drinking Water Systems the various types of systems are described and the requirements and standards for their operations are set. Under O. Reg. 170/03, non-municipal (private) year-round residential systems are held to less robust requirements than municipal residential systems in most aspects of design, construction, process treatment components, operation and operator certification, maintenance and water testing. A municipality that assumes responsibility for a non-municipal year-round residential system under default is therefore immediately held to higher process component requirements, operation, maintenance, treatment and testing standards as the system becomes a defined municipal system under O. Reg. 170/03. Re-designing the system for compliance under such conditions may not be cost-effective, practical or even possible given the existing footprint and design.

Design Requirements, Costings and Initial Basis for Default Agreement

Given the above and the exposure of the City to the risks and costs associated with future assumption of responsibility for the system, its operation, maintenance and treatment and testing standards, the City requires the following to be undertaken by the proponent as a component for the basis of any further discussions with respect to development of a default responsibility agreement.
Re: Copetown Lions Proposal for Multiple Residential
1031 Highway 52 North

1. Full and complete engineering design reports for the proposed water and sewage systems. The water system must be designed in accordance with small Municipal Residential standards requirements as defined under the Safe Drinking Water Act O. Reg. 170/03 Drinking Water Systems. The sewage system will be designed according with the Ontario Water Resources Act section 53. The design reports for water and sewage systems will:
   - be based upon the current Ministry of Environment design Guidelines. The Guidelines are available on the Ministry’s website
   - include all required specifications and drawings
   - include all flow sources and detailed calculations
   - include all treatment and distribution systems design and monitoring requirements in accordance with the applicable MOE guidelines
   - have full, detailed costings for the systems

2. Completion of a Class Environmental Assessment Schedule C in accordance with O. Reg. 345/93.

3. The City will require the design reports to be subject to peer review at cost to the proponent. The City will provide a cost estimate for the peer review upon receipt and review of the design reports.

Errors, deficiencies and/or omissions that may be identified in the submitted design reports as a result of peer review within the framework of MOE design guidelines for a small Municipal Residential system will require address prior to proceeding to the drafting of a default responsibility agreement.

Finally, should assumption of the proposed systems by the City occur at some point in the future, under the conditions of any proposed default responsibility agreement the City would assume operation of the systems only on a full recovery of costs basis. There may be a requirement to register such condition on leasing agreements or on property title.

Should you have any questions, please contact Edward John at Ext: 5803.

Yours truly,

Jason Thompson, MCIP, RPP
Senior Project Manager
Development Planning - West Section

EJls
Attachments
cc: Councillor Robert Pasuta
    P. Mallard, Director, Planning Division
    S. Robichaud, Manager, Planning Division
October 19, 2009

Mr. Jason Thompson
Senior Project Manager
Planning Department
City of Hamilton
77 James St. N.
Hamilton, ON L8R 2K3

Dear Jason:

Re: Copetown Lions Development Association
Proposal for Multiple Residential Development
1031 Highway 52 North

Please find enclosed a report from DR Barker & Associates Ltd. in response to your earlier correspondence regarding this matter. I can see from Mr. Barker’s report it would appear that it is feasible for the proponent to design the water treatment and distribution system to meet municipal requirements. Mr. Barker has also confirmed that the same applies with respect to the sewage treatment system.

We look forward to your reply and confirmation that this information will satisfy the City in terms of providing support for the project and moving ahead on the basis of a standard default agreement.

If there are any questions with respect to this matter, I would suggest that it would be prudent to set up a meeting with staff, myself, and Mr. Barker to review any of these matters in further detail.

Sincerely,

E.J. Fothergill, MCLP, RPP
President

cc. Councillor Lloyd Ferguson
Councillor David Mitchell
Councillor Robert Pasuta
WORK PROGRAM
PRELIMINARY ENGINEERING REQUIREMENTS
42 UNIT SENIORS DEVELOPMENT
COPETOWN, ONTARIO

COPETOWN LIONS DEVELOPMENT ASSOCIATION
(Revised October 19, 2008)

1. Stage 1:
   a) Hydrogeological Investigation:
      - Drilling of new well and well pump test
      - Water quality testing
      - Selection of sewage treatment plant location and in-situ percolation test
   b) Archaeological Study

   PROJECT RE-EVALUATION

2. Stage 2:
   a) Environmental Impact Assessment

   PROJECT RE-EVALUATION

3. Functional Engineering Report:
   a) Update of preliminary engineering design report
   b) Traffic Study
   c) Noise Study
   d) Grand River Conservation Authority
   e) Engineering Project Management and Development Report

4. Municipal Liaison:
   a) Submission of preliminary engineering report. Meetings and liaison with
      City of Hamilton and effected agencies to achieve preliminary engineering
      Report approval.
   b) Preparation of draft municipal default agreement.
D.R. Barker & Associates Ltd.  
Consulting Engineers  
110 Chihoelm St., Oakville, Ontario  L6K 0H9  
Tel: (905) 838-5440 Fax: (905) 838-5522

October 19, 2009

Fothergill Planning and Development Inc.  
62 Daffodil Cres.  
Ancaster, ON L9K 1E1

Attention: Mr. Ed Fothergill

Re: Requirements – Basic Servicing and Default Agreement  
Proposed Residential Retirement Community  
1031 Highway 52  
Copetown, Ontario  
Cootes Point Lions Development Association  
Our Ref. 09192

Dear Sir:

As requested, we have reviewed this project further with the intent of formulating a position to meet with the City of Hamilton to discuss their correspondence of November 04, 2008. The City’s letter outlines their preliminary requirements to facilitate further discussion regarding the creation of a default agreement for this project. The default agreement would be a key stage of overall project approval. We can advise further as follows:

1. Environmental Impact Assessment:

Current regulations denote new water supply and sewage treatment systems to be Schedule ‘C’ projects. These require an environmental impact assessment report.

We recommend that an environmental impact assessment report be part of the ongoing work program.

2. Engineering Design Report:

a) Drinking Water System:

The City of Hamilton correspondence refers to “.... current Ministry of the Environment guidelines.” These are dated 2008 and replace the Ministry’s 1982 publication.
A concern of the Copetown Lions Club is whether adhering to the new standards and essentially designing the water system to "municipal" rather than "non-municipal" standards will represent an unacceptable financial burden to the project? We do not think so. However, a staged development program is recommended. If at any stage a "red flag" appears, the overall project could be reviewed before proceeding further.

We have reviewed the MOE requirement for a "Small Municipal Residential System" serving a designated facility vs. a "Non-Municipal Year-Round Residential System". Additional requirements appear to relate to the following:

- Additional water quality testing at both the design and operational stages.
- Treatment to municipal standards requirement.
- More design data for project approval, example:
  - Process flow diagram.
  - Hydraulic profile.
  - Treatment of water system waste disposal.
- Inclusion of standby power.
- Additional reporting in conjunction with ongoing operation.

b) Waste Water System:

The City has outlined that the sewage system is to be designed according to the Ontario Water Resources Act, Section 53.

This is acceptable.

Discussion:

The City of Hamilton has outlined very detailed requirements for what we consider will be relatively straightforward water supply and sewage disposal systems to service this senior's development. The City has expressed concern with having to take over the operation and maintenance of the system. Properly designed, installed, operated and maintained systems will minimize this potential.

Prior to proceeding with the required studies, it is our recommendation that the Copetown Lions Club clarify with the City that if the conditions outlined are met, the project will receive approval. In addition, prior to proceeding, we recommend clarification of the following:

D. R. Barker & Associates Ltd., Consulting Engineers
a) Fire Protection Requirements:

We understand the nearest response unit to this site is located at the junction of Hwy 403 and Wilson Avenue in Ancaster. The response time is approximately 8 minutes and 40 seconds involving 5.46 km of travel.

We note that the existing pond does give an opportunity for on-site water for fire flow purposes.

b) Terms of a Default Agreement:

The terms of a standard default agreement, used on other private communal servicing projects within the City of Hamilton, are familiar to this office.

At this time we recommend clarification with the City of the general principles of an agreement as well as the intent of the financial security component. In regards to the latter, our experience relates to an initial deposit to guarantee annual operation and maintenance; achievement of full replacement cost would be amortized over a 20-25 year period.

We trust the above matters are clear.

We look forward to our further discussions on this project.

Yours very truly,

Douglas R. Barker, P.Eng.
Consulting Engineer

D. R. Barker & Associates Ltd., Consulting Engineers