An Open Letter to City Council from a Concerned Citizen

12 Sinclair Court
Hamilton
L8K 2B5

City Council
City Hall
Main Street
Hamilton

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Dear Mr. Mayor, Ladies and Gentlemen of Council,

I write with reference to your impending decision as to the fate of the Lister Building.

As a young man I witnessed the demolition of a 16th century farmers market building to make way for an office block. On a visit to England after a 25 year absence I discovered that the house of my birth had been replaced by an apartment block and that the house in which I lived during the whole of my school years had been replaced by a road. The grade school that I attended had been replaced by a shopping mall. The college, which I attended, had been upgraded to a university and relocated to another city but most startling of all was the transformation of my favourite ‘pub’. What had once been the premier hotel for miles around and the favourite haunt of the ‘smart set’ and the ‘wannabes’, such as myself, is now a boarded up derelict building used for the storage of the municipality’s excess office equipment. This building was originally Henry V111’s hunting lodge and served for centuries as a hostelry.

As you will appreciate my sensibilities, with regard to the demolition and decay of old and/or historic buildings, are somewhat blunted. I no longer have strong feelings with regard to the demolition or preservation of buildings. My view is that if the Lister Building’s ‘time has come’, then its ‘time has come’!

My major concern is with the proposed financial arrangement. Normally when property owners come to Council with a proposed re-development they do so with the expectation of earning a very much larger profit than they would obtain by investing in government bonds. And I am sure that LIUNA has the same expectation. The justification for the increased profit is the risk taken by the owner. No profit is guaranteed and the owner may lose some or all of the original capital investment. It is not unknown for some developers to lose capital and indeed some end in bankruptcy. Witness O & Y. However by agreeing to a 15 year lease at a premium to current market rates, which I have heard amount to a total of 10 million dollars over the lease period, the City has effectively guaranteed no risk to LIUNA’s capital. Although the arrangement does not guarantee a profit for LIUNA they would have to be extremely incompetent managers if
they allowed 50% of the rental space to remain unoccupied for a period of 15 years. I do not in any way suggest that LIUNA have acted in any unethical or improper manner. I am sure that they have acted in the best interest of their members, but I feel that what is in the best interest of LIUNA’s members is not in the best interest of the City’s taxpayers.

A second concern which I have is the rather vague basis for the projects objective i.e. the revitalisation of Downtown and the location of the majority of the office staff of all departments under one roof. With respect to revitalisation, I do not have any criticism of the proposed building’s appearance. It cannot be said to be an architectural gem but it is not unpleasing. However the Lister site is one block north of Gore Park and the major east-west thoroughfare and in addition the western elevation of the building faces the unprepossessingly blank façade of the former Eaton Center. The southern exposure is even worse it faces a parking lot. The argument for the expenditure of $10 million on such an upgrade seems flimsy to say the least. Would the money not be better spent upgrading the facades of the buildings surrounding Gore Park? (By outright grants if necessary). Relocating City Staff will increase the volume of retail business ‘downtown’ but it will be at the expense of business at the existing staff locations. Will this $10 million expenditure increase tourism? Will it increase retail trade in the City as a whole? Will it increase the amount of occupied office space as a whole or will it simply increase the already excessive amount of office space that is currently unoccupied? Until these questions can be answered in the positive, the acceptance of the current proposal would appear to be the guarantee for a speculative gamble.

Regarding the objective of locating the City’s office staff at a single location I am unaware of any definitive studies that show an increased efficiency of operation due to the location of all departments under one roof. This preposition appears to be based upon belief and supposition. This may have been true before the telephone was available to all employees. However not only is the telephone available today but there is also the cell phone, fax, e-mail and internet and I have no doubt that before the expiry of the proposed lease the videophone will be in common use. The only advantage would seem to be administrative convenience for which the expenditure of $10 million dollars is hard to justify.

In light of the above, it could be argued that the City, as a corporation, is the main beneficiary of the additional costs to the taxpayer of the proposed lease. Yet the City holds the role of trustee with respect to the disbursement of funds on behalf of the taxpayer (the beneficiary). Thus it could be argued that the City i.e. City Council and senior management, is in violation of its fiduciary duty.

“A fiduciary duty is the highest standard of care imposed at either equity or law. A fiduciary is expected to be extremely loyal to the person they owe the duty (the "principal"): they must not put their personal interests before the duty”

A question with respect to this quotation: Is the City placing its personal interest in administrative convenience before benefit to the taxpayer (the principal)?

“When a fiduciary duty is imposed, equity requires a stricter standard of behaviour than the comparable tortious duty of care at common law. It is said the fiduciary has a duty not to be in a situation where personal interests and fiduciary duty conflict”

The same question may be posed with respect to this quotation.
“A fiduciary must not put themselves in a position where their interest and duty conflict. In other words, they must always serve the principal’s interests, subjugating their own preference for those of the principal. The fiduciary’s state of mind is irrelevant; that is, it does not matter whether the fiduciary had any ill-intent or dishonesty in mind.”

In the case of this quotation, did the City subjugate their preference for administrative convenience for those of the taxpayer (principal) even without any ill-intent or dishonesty?

I have little knowledge of law thus I do not know the validity of the above argument. However if it is valid then there is nothing to prevent any party opposed to demolition from applying to the courts for an injunction. Should such an action be taken, then current plans would be thrown into disarray and no doubt the taxpayer would yet again be expected to pay extremely costly legal fees.

My third concern is that although the development conforms to the GRIDS option accepted by Council i.e. ‘nodes and corridors’ with the ‘Downtown’ being the central ‘node’ I would suggest that an equal distribution of the $10 million to all of the ‘nodes’ would be more beneficial. This could be achieved by locating individual departments at each of the ‘nodes’ and installing a video-conferencing centre at each location. Currently a number of the larger U.S. corporations are establishing video-conferencing centres ‘in house’ apparently with great success. Some of these companies being multi-nationals, I presume this is happening ‘world wide’. The cost of a centre is approx. $500,000. Would it not be better to achieve the same administrative convenience, by expending approx.$4 million on such centres and at the same time contributing to the development of all the ‘nodes’, rather than spending $10 million on the single ‘Downtown node’? The implementation of such a project would no doubt provide the City with a reputation as a leader in the application of new technology. “The first city in the world to apply video technology to its daily administration.”

Finally, I would ask that Council deny the Demolition Permit Application. Not as a long-term measure, but to allow time for reconsideration of the proposed development in its current form. It is understandable that after many years of varying proposals for development of the Lister Building, a sense of frustration is driving the “let’s get on with it” view of many. However actions born of frustration most frequently lead to a hardening of attitudes, as the ‘Caledonia Problem’ clearly illustrates.

I would ask you, Ladies and Gentlemen of Council, to please carefully consider the concerns that I have detailed, if not my suggestions, and in anticipation of such, I remain,
Yours very truly,

Roy Salisbury.