

Final Argument

OMB CASE NO: PL060850

November 18, 2008

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Introduction:

Since this is the final time you will hear from me, I would like to take this opportunity to make a few comments and observations about my experiences. I have personally expended a great deal of effort and invested considerable personal time in this venture, including over 45 days of hearing and for those days when I couldn't be present I have reviewed notes that were made available to me. I also reviewed my opening statement and find that after all this time I have come full circle and after having heard all the evidence, I remain convinced that this development is too large and inappropriate for Port Dalhousie. That is not to say that I haven't learned a lot about heritage, planning and parking in the process. If I had to do things over again I would have been able to follow the process more appropriately and been able to introduce more evidence, however such is life.¹ My argument will be from the point of view of a citizen's experience

¹ Opportunity to Challenge Expert Report in Feb 2008

and what I believe to be common sense which on its own should tell us more than the often pedantic views of paid experts.

I am on very familiar ground when it comes to labor law but I have to admit this process has held some surprises. There is one conviction however that I carry with me. I have spent 30 years of my career attempting to have labor relations move beyond the adversary system and this experience has confirmed to me that the OMB process is in similar need of reform on that score. The opposing parties are both I suspect forced to the margins of their respective positions and will I predict end up in a lose/lose situation after considerable community expenditure of scarce resources, no matter which way it goes.

I do want to commend all parties for their professionalism and particularly the chair whose intellectual capacity and sense of humor and sheer ability to stay on top of all this paper has been outstanding.

Unfortunately the process has us all caught in a legalistic system that is designed to narrow to a conclusion, based on strict rules of evidence, but which take little account of the public will and ordinary citizens whose evidence and

passion I fear will be too lightly considered. This community has born the brunt of a well organized military style assault by the developer, complete with a battalion of lawyers and paid experts; special forces of lobbyists and well orchestrated community organizations², T-shirts, bill boards and even a psychological warfare unit of dirty tricks, pressure tactics, and sordid politics³ which has led to a complete lack of trust by citizens in this development. I strongly believe in the rights of citizens to control the type of development they want in their community and they even in my respectful submission have to right to be wrong. I think any effort to use the OMB to over come this public will should be viewed with grave reservation.

The community has done everything they could; they organized themselves, got politically involved and even changed their town council⁴, raised funds (the hard way)⁵, hired legal counsel, and attended many public meetings to show their displeasure etc. I remain deeply convinced that the vast majority of

² NCSD members meet in developers office-Bedwell.

³ Exhibit H 167, 168, 160 secret committee evidence after failure of first proposal. Petrowski et al.

⁴ Exhibit #144, 145

⁵ Exhibit 160 Various copies of Port Reporter.

the citizens remain opposed to this particular proposal. They worked hard, through PROUD from 1999-2003 to obtain a heritage designation, which garnered 85% support of the local residents and had the unanimous agreement of their city council. This was also all fully confirmed by the OMB decision in 2003⁶. This included not only heritage designation but also its low rise character. By-law 88-72 was already in place; yet within months of this agreement it was being attacked. It should surprise no one that those so deeply involved in creating it should now be deeply involved in defending it.

My respect for the common sense of ordinary citizens has gone up through this process; however my respect for “experts” has been diminished. It depends on who is the best salesman. When Mr. Diamond couldn’t “sell” the project to the community the developer hired Mr. Kirkland who has proven himself to be the consummate salesman complete with references to Roman towns and Michelangelo. In a period of six short weeks he borrowed most of Mr. Diamond’s plan, he made a few design changes and created a new proposal that

⁶ Exhibit 5D Tab 8.

had a different style but contained all the same elements minus 10 stories⁷. He said to the residents what we all wanted to hear, namely that towers are not appropriate in a beach town and that everything was negotiable⁸, but in the end little had changed except that the developer was much better prepared for the citizens' reaction. The "sales" effort was commendable, but we have to be able to see through the strategic and doctored photos⁹, towers that fade into the sky and arguments about angular plane so that we can pretend that the 20 story tower won't be very visible to the vast majority of people who use Port Dalhousie in the summer time in Lakeside park or along the Pier or along Main Street. It seems that Mr. Goldsmith is not the only one who can be accused using a stylized approach! In fact this had more to do with a battle of resources between the parties than any attempt to mislead. Massing studies are cheaper than full blown renderings.

⁷ Exhibit 13

⁸ James Vanderburgh evidence and others i.e. Garcia

⁹ Various Photo Boards. Pg 61, pg 49 cut off, pg 15 No Tower.

In fact sometimes Mr. Kirkland's enthusiasm got away from him when he acknowledged that several hundred people use the beach¹⁰ and that the proposed Hogan's square could be used to hold up to 1600 people¹¹. He temporarily forgot that they all have to get there and park. In the end if the citizens prevail we may either have a developer who retreats from the field, there by delaying development of the area further, than the existing four "Lost" years of delayed development we have already experienced or if the developer prevails, we may be involved in an ongoing war with all the unfinished parts of Mr. Kirkland's greater vision¹².

I will comment more briefly on areas for which I was present and engaged in some cross examination and make certain observations on the evidence of those topics however I will offer a more detailed argument on traffic and parking.

¹⁰ H.B.-Cross examination of Kirkland.

¹¹ Exhibit 13.

¹² HB. Cross examination of Kirkland- "His jurisdiction is limited to 1.2 acres."

Economic Impact

Interestingly enough the economic impact of this development has since 2004 has been the number one driver behind this project. In fact it was the economic impact which was primarily used to convince the Niagara Economic Development Corporation, the Chamber of Commerce, City and Regional Councils, as well as the public of the viability and need for this project. These economic impacts were copied in the application¹³ and were repeated by Mr. Brickell and many of the other supporters and PVDC witnesses as part of their public campaign (complete with bill boards and news paper ads), as the main reason as to why this proposal should prevail and yet not one witness was called to support the only economic study filed with the application. The reason should be clear, as was discovered during the hearing; the study was severely flawed and it became quite evident during questioning that there is no business plan behind this development in fact Mr. Noskiewicz argument is they don't need one. So given those facts and the basis of this proposal being revitalization, the

¹³ Exhibits 12, 13, 7, Mr. Brickell's witness statement etc. etc..

argument is we have to assume it. This project is and remains a field of dreams, Build It and they will come. This was done largely to gain support from a hurting community that is in transition from its original manufacturing base to a more service based economy as are many cities and towns in Ontario.

As a matter of fact not only did they not defend the economic study, Mr. Smart in his evidence even cast doubt on it himself by indicating that the 40 stores would have to be 500 square feet each, when he was being pressed on the parking issues for staff. Yet it was his client who supplied the information.

It is very doubtful in my mind whether St. Catharines city council would have even passed this proposal without the alleged economic impact of this study. The council certainly wouldn't have passed this proposal for heritage preservation purposes alone. So what we have here is that very thing that got this proposal narrowly passed at city council¹⁴ was precisely what the developer chose not to defend before the OMB.

¹⁴ Exhibit 5, Tab 8.

The Niagara Economic Development Corporation (NEDC) was created to help spur new economic development¹⁵, and yet Mr. Brickell after four years and over 8 million dollars of tax payers' money couldn't give one example of an economic project he had brought to Niagara¹⁶. The NEDC would support any project at this stage regardless of the heritage or planning consequences; in fact Mr. Brickell hasn't yet found a development he didn't like. There is little doubt that this project should contribute positively to the economic growth of the community, but of course then so would a well placed tornado. It is misleading and disingenuous to confuse economics and revitalization with good planning or to use that to over-ride zoning,¹⁷ or the heritage designation,¹⁸ and the Port Dalhousie neighborhood plan¹⁹. That is in my view short term gain for long term pain for future generations.

Everyone is in favor of intensification and smart growth, as Mr. Brickell indicated, the question is how much intensification on a 1.2 acre site is enough.

¹⁵ Exhibit 46-50

¹⁶ Cross by HB on Economics

¹⁷ Exhibit 30 Tab 1. By-law 88-72 of Exhibit 5B-Tab 6.

¹⁸ Exhibit 50-Tab 7. By-law 2002.180

¹⁹ Exhibit 5B. Tab 5g.

50%, 100%, more? What are the limits of intensification? I and many residents believe this is too much for this site.

Heritage

The heritage designation in Port was widely supported by the residents²⁰. I am not an expert but have heard a lot about Heritage over the last six months. It was assumed by many that this designation would protect the Canal Village precisely from this type of overwhelming development. The preservation of that Heritage is however very much a secondary concern of this development, the primary focus has been to put as much development on a 1.2 acre site as possible.

Port Dalhousie is a heritage district under Part 5 of the Heritage Act, and as such, it is very distinguishable from the Toronto distillery district²¹ which was designated under part 4 of the act. The distillery district was often quoted during the hearing in a large number of ways as a comparator. However it should be clear to all that the distillery district started out as a dormant industrial zone without an existing community where as Port Dalhousie, is exactly the opposite and has a long standing identity as an existing village community, a fact that

²⁰ Exhibit 5D Tab 8, pg. 347.

²¹ Exhibit 15 pg 21-22.

even Port Dalhousie businesses utilize for their promotion²². There is little doubt even from supporters of the project that this is no minor intervention in this 19th century canal village²³. It is in fact a massive intervention which will radically disrupt the heritage fabric of Port Dalhousie²⁴. There is no going back. Once this project is done the heritage aspects of Port will never be the same. It remains an open question whether the heritage designation can even survive this development.²⁵

Mr. Kirkland attempt to invoke “cardo-decumanus” as a new cross roads point intersecting with the 1st Welland Canal is little more then an attempt to change the main “cardus” which historically in Port was the harbor front and the foot of Lock Street to justify the condo as “icon”. As we know cardo is also the Latin root for heart (cardio) and this project amounts to an involuntary heart transplant from the harbor front to a condominium tower focus which is not what citizens bargained for nor is that in keeping with the preservation of heritage.

²² Exhibit 26. Various Brochures.

²³ Chapman, Higgins under cross.

²⁴ Mr. Blozowski- “irrevocably alter Port Dalhousie”.

²⁵ Mr. Blozowski- “uncertain whether Heritage District would exist if Tower was approved”.

The treatment of the jail with the 20 storey tower enveloping it is, to even the most casual, untrained observer, and certainly many of the heritage experts is totally inappropriate²⁶. It takes tortured logic to call this Heritage Preservation. I am not a heritage extremist and I wouldn't fall on my sword for areas like the Rum Jungle, and call that built heritage but we have so little built heritage left in St. Catharines that we need to do all that we can to save what we have. The evidence is clear, it is only the jail and Austin House is being conserved²⁷ and for all practical purposes all the rest goes. The Port Mansion will only have unnoticed fragments left²⁸ and the restoration proposed is a re-creation based on photos which amounts to a Disneyesque replacement, which could be built anywhere²⁹.

The sheer size of the development will radically alter the historical low rise character in terms of scale, mass and volume. The few remnants remaining will be enveloped within a brand new development which will surround the existing

²⁶ Martindale, Blozowski, Benson, Morgan

²⁷ Exhibit 7, Tab 7, Figure 7.07.17

²⁸ Portions of South Wall.

²⁹ Morgan's comments on Union/McGrath.

built heritage on all sides including over the roof³⁰. If this type of encirclement is possible in a designated heritage district then I don't see how any heritage structures can be safe from new development any more. This decision will, without a doubt, set a precedent in all heritage districts across Canada.

³⁰ Photos of Austin House/Jail post development.

Planning

Port Dalhousie is protected by the cities official plan³¹ and more specifically section 16 of the St. Catharines official plan which is known as the Port Dalhousie Neighborhood Plan; which is a very detailed and particular document which forms an agreement of understanding between the residents of Port Dalhousie and the city. The purpose of this plan was to guide future development in Port. This Plan as well as the accompanying zoning by-law 88-72 has been in place since the '70's and has been followed ever since with few amendments. The evidence is that Port has grown and prospered significantly since that time within the bounds of that Plan and zoning³². Mr. Noskiewicz in his enthusiastic argument indicated that no revitalization had occurred in almost 100 years. Interestingly I didn't hear one scrap of evidence from anyone that said the reason for it was the height limit.

When the developer began amassing their property these rules were already in place and as late as April 19, 2004 city council chose not to address

³¹ Exhibit 5B Tab 5

³² HB Cross examination of Mr. Smart, Chapman, Exhibit 193.

the 11 meter height restriction for the commercial area even when they had the opportunity to do so³³. Interestingly even the Regional Plan when providing for exceptions to height limit gives a relatively reasonable range between 80-120% as to what kind of building may be considered compatible³⁴. Clearly 500% plus was not in the cards. The OP and PDNP needs to be interpreted according to its purpose which includes, maintaining the character of the commercial core and the protection of the residential area from encroachment (paragraph 3 & 4). To maintain present accessibility to parks,(paragraph 6) to maintain the safe and orderly flow of traffic (paragraph 8), to provide adequate parking facilities in the core (paragraph 10), and to conserve individual buildings of historical and architectural value (paragraph 14). Those purposes are clearly being encroached upon by this project and in some cases completely ignored. If citizens can not depend upon a Plan that is designed to protect their neighborhood and developers can't depend on them to form a level playing field, then one wonders what the point of them is. It will become a free for all and

³³ 5D-Tab 9 Minutes of Council April 19, 2004.

³⁴ Exhibit 5B, pg 145.

developers will simply mount a heavy duty political campaign whenever their particular economics dictate that the regulations are in the way. Planning by-laws should be changed when the citizens decide they should be changed, not in the context of a huge development when extraneous issues like economics put undue pressure on a community.

The Tower:

The Tower is a “tower” as acknowledged on all sides. It is not low rise or a mid rise. It will be the highest structure in the city and it is unsuitable for a heritage district. It will dominate the core³⁵ and the shadow impact will be significant especially in the morning³⁶. There are supporters close to the core who I know, who have no idea that the shadow will reach their back porch because they haven’t been at the hearing. There is only one reason for the tower and that is pure economics. I have heard no heritage or planning reason to have it. None of the planners or heritage experts called by the city or Proud, can square the tower in a heritage district, they just can not reconcile the height³⁷. As Mr. Blozowski said it will “irrevocably” alter Port Dalhousie. Mr. Morgan said the development is “out of scale with setting”. Even Mr. Higgins admitted in cross that it was not subordinate. When you listen to the city planners you get the feeling that even they have reluctantly given in because they want the “package” to bring big development to St. Catharines, but if it would be

³⁵ Mr. Martindale

³⁶ Exhibit 22.

³⁷ Mr. Blozowski.

somewhere else, they could just be happy. They relied totally on the Peer
Reviewer, Mr. McLelland and Mr. Higgins, when they were against it Mr.
Chapman was against it, when they were for it, Mr. Chapman was for it.

Parking and Traffic

This issue is a very large concern for the community since it has a direct effect on citizen access to the city wide park, and even to the city itself³⁸. As was clear from the evidence Port Dalhousie is a limited access community³⁹ and any congestion has a direct effect on the citizens' ability to travel through and to the commercial core and the park as well as access to the wider community amenities such as shopping for necessities which are not available in Port. The residents adjacent to the commercial core are very directly affected by the overflow of parking and traffic which currently regularly backs up into the community and affects their quality of life. It is grossly unfair to say "well that's life in a beach town"⁴⁰. Beach front communities have very particular seasonal patterns, but this development brings with it a new shopping district, a theater, and a full condo development which are not normally found in a beach front community. It is in fact specifically designed to take the seasonality out of it⁴¹.

³⁸ Ms. Fisher

³⁹ Mr. Jacobson, various residents.

⁴⁰ Chapman May 15, 2006

⁴¹ Mr. Kirkland

Parking has been a problem in Port since the 1920's and the invention of the automobile ⁴². There were identified shortages by the city Engineering Department in 1989, so much so that consideration was being given to building a new parking garage along Gary Road⁴³. The city was asked to do a full parking study and finally did so in 2004. The long awaited parking study however was not released until well after this development was under way. In fact, the actual study ⁴⁴ was completed in Feb 2005 and yet was not seen by the public in its entirety until exhibit 110 came on the table at this hearing. All the citizens had to go on, was the city's strategic and corporate planning report of April 30, 2006 which the public only got to see on the Friday before it was passed on May 8, 2006. This was rushed through to avoid public comment and process because this development was looming. This is clearly not the way to deal with the public.

We agree with the developer and Mr. Middleboro and Mr. Chapman that this development will reduce parking issues between 10pm and 2 am no question. The problem however is that in doing so we will be creating the

⁴² Exhibit 72

⁴³ Exhibit 30-Tab 1 page 34.

⁴⁴ Exhibit 110.

parking version of a “Perfect Storm” from 2-10 pm particularly on summer weekend afternoons and evenings from May to October, but also during the week if the theater and new shopping district is successful. The problem is that when the traffic increases in the afternoon, residents are awake and up and about; at 2am they are mostly asleep although they may be bothered by noise but not traffic.

There will be a conflict of uses which will pile up during afternoon hours particularly, which will create not only congested traffic in the commercial core but also will frequently, on a much more regular basis have a major parking overflow into the residential district. This is NOT providing for adequate parking in the commercial core as promised by the PDNP nor it is protecting Port Dalhousie residents from encroachment by the commercial core.

This storm will come from four elements. First the recreational users according to the evidence start to back up into the neighborhood as early as 10:30am as people begin coming down the stairs past Mr. Vanderburgh’s place⁴⁵.

⁴⁵ Mr. Vanderburgh

Lakeside park is a city wide park⁴⁶ which people of all ages enjoy on summer weekends, the hotter the better, the more people come to enjoy the playground, the beach, the carousel, volleyball, and the pier. This recreational use continues through till 5pm when folks go home for supper or out for supper in the commercial core. This is further reinforced by people coming for supper after work, and afterwards taking a walk on the pier to walk off a meal, or just to watch the incredible sunset which is a favorite past time for St. Catharines residents and guests alike. There is ample evidence by witnesses and photographs that the parking lot is full under the current regime without any development⁴⁷.

The second wave proposed by this development is the proposal to expand the shopping district and commercial core by 3645 square meters of commercial space. The reason I call this expansion is because current use of this space on the proposed site is very limited in the afternoon.⁴⁸ These are also not necessarily the same people as in the first wave, since the beach folk are often

⁴⁶ Exhibit 30. Tab 8 General Policies. 2/27.

⁴⁷ Exhibit 276, 30., B.A. Parking Study. Middleboro. 100% capacity at 1:00pm, 85% Theoretical capacity 11:00am.

⁴⁸ BA Parking Study Exhibit 30, Tab 2 pg. 39.

not dressed for shopping or even interested in shopping. This is the hidden wave, hidden by the parking exemption. If this commercial expansion were to be placed on a main street in the convenience commercial area for example, this type of development would have to provide one space for every 19 square meters or 192 spaces⁴⁹ according to the existing St. Catharines Retail parking requirement. Put another way, with the agreement of Mr. Grubb who agreed with Mr. Middleboro to the observation of 2.4 individuals per automobile⁵⁰ and agreed during cross that the formula could be used both ways⁵¹, that is autos to seats and vice versa. In the BA parking study the numbers are broken down a bit better; 1876 square meters of actual retail which according to the “normal” commercial formula would require 99 spaces alone⁵². In addition there would be 2475 square meters of restaurant space which is 700 seats divided by 2.4

⁴⁹ Pg. 37 Exhibit 30. By-law 88-72

⁵⁰ Exhibit #30 Tab 3.

⁵¹ Cross by HB of Mr. Grubb

⁵² By-law 88-72

persons observed per vehicle which by itself equals 292 spaces. Adding those together gives us a total load of 391 spaces⁵³ when at capacity.

In most commercial mall applications, stores have to provide parking according to a formula even though often these large lots are not always full except at peak periods. (Christmas, Easter etc...) This all assumes of course that things are at full capacity which is what you have to plan for. You can't plan for maximizing what is already at over capacity, you need to be moving in the direction of theoretical capacity which according to Mr. Chapman and the study is the goal. In this case it appears that the plan is for over capacity. Even Mr. Chapman who estimates 120 spaces for the theater goes on to recommend 104?

The BA parking study is quite revealing in that it was the evidence that their observations were done on less than stellar days⁵⁴ They then falsely, in my view, utilize that observation and project it into the future. At 5% or 15% occupancy for 700 available seats, something that would never be acceptable to

⁵³ Exhibit 30 pg. 37

⁵⁴ Exhibit 114, 115

any respectable restaurateur or storekeeper on a summer weekend⁵⁵. They assume that future utilization will be similar to the past; however, the vast majority of the 2746 seats currently available are filled **at night** at one place, "My Cottage"⁵⁶. During the afternoon hours, the proposed upgraded 700 seats are actually a large increase over the number of seats that are currently occupied during the day. One must also consider that more seats are moving indoors (pg 33). Using projected numbers in this way, is the height of irresponsibility in my view given the huge change in the type of development that is taking place.

The engineering report⁵⁷ already in 1989 acknowledged that there is a current symbiotic relationship between the late night bar scene and recreational uses since they rarely conflict. (See Tab 1) Now that delicate balance will be upset. The city can exempt a commercial zone (C-4) and use it for a large development that was never anticipated, but you can't exempt the vehicles that the development generates, they are real and take physical space. Shoppers

⁵⁵ Exhibit 30 page 38.

⁵⁶ Exhibit 118.

⁵⁷ Tab 1 of Exhibit 30, page 3

and restaurant goers shop and sit on terraces in the sun during the day at exactly the same time as when the recreation area is in full swing⁵⁸.

To make matters worse, the third wave is a proposed theater which comes in the afternoon for a matinee as well as evening performances⁵⁹ both on weekends and during the week. People will come to a matinee at 1pm and leave at 5pm, or they may stay either before or after for lunch or supper and then the evening theater goers take over⁶⁰. Assuming that the 415 seat theater is successful and we go with the low estimation of 120 spaces provided by the BA study (or Grubb at 145 spaces) or we could utilize the 2.4 observation agreed to by Mr. Grubb and Mr. Middleboro for as high as 173 spaces, either way they will have to compete with the above users. There may be some overlap but you can't count on it , because people don't go to theaters in their bathing suits and shorts.

The evidence of most witnesses is that the east side solution is too far away especially for theater goers dressed for the theater, seniors and families⁶¹.

⁵⁸ Martindale "Does not address Retail, Office, Restaurant Parking"

⁵⁹ Christopher Newton

⁶⁰ Exhibit 30, page 38.

⁶¹ Vanderburgh, Baranoski, Various citizens, Jacobson-10-15 min walk!

Mr. Noskiewicz intimated that it was a 5-10 minute stroll. Of course he didn't measure it or walk it. I prefer Jacobson's assertion that it is a 10-15 minute stroll to walk the 1km from the theater to the new lot on the east side. Something which I am sure theater goers will look forward to after a couple of drinks, walking to their car in the dark!

The evidence from the photographs⁶² is that Lakeport Road parking is either severely restricted, paid (\$10), metered, or just plain unavailable, which forces all theater guests into one of two areas, either the lakeside lot or the residential overflow. Main Street is also not an option since parking there is also restricted parking from the core to Elgin and therefore is not suitable for theater goers either, which means that the neighborhood will be the only realistic option left.

However, we also can not ignore the fourth wave which consists of a variety of users particularly for events, which we have heard are numerous both

⁶² Exhibit 276

in the park and the town⁶³. The carnival, Regatta, fireworks and lest we forget, Mr. Kirkland's boast of a Hogan's Square which can hold 1600 people which by itself when divided by 2.4 equals 666 spaces on their own for exhibits and concerts, all afternoon and evening functions not late night functions. In addition to this they also do not take into account all the current commercial and restaurant space outside of the development, but yet covered by the parking exemption, let alone, any future expansion which we see ongoing⁶⁴. For example the new 40 seat patio in front of Maries⁶⁵ or any other planned expansions⁶⁶. Also as part of the fourth wave we would have a community of some 160 individuals living in a condo as well as potentially 140 staying in a hotel who although they may have a place to park, will still have to be fit into the traffic flow which according to the direct evidence of Port residents⁶⁷ is already severely restricted.

⁶³ 5D Tab 4—2.0 to 2.7

⁶⁴ BA Group Study, Exhibit 30 page 32, 3184-2746. 884 seats not controlled by PVDC yet covered by parking exemption.

⁶⁵ Exhibit 220.

⁶⁶ Note: TAB 2 BA Consulting regarding other PDVC holdings which are not part of this application

⁶⁷ Vanderburgh, Baranoski, Fisher and various others. Dart et al.

This Perfect Storm will collide on weekend afternoons particularly but also during the week to a far greater extent than the developer or external experts who do not know this community would have you believe. The experts who come in and measure and leave simply do not know how Port operates the way residents do. The qualities of their observations are suspect at best and make little common sense. Even the TESD falls prey to this thinking when they use existing patterns and apply them forward to a completely new set of circumstances⁶⁸.

As already mentioned, the BA parking study observations were done on **off** days weather wise and certainly not made during any special events and were before school was out. Second, extrapolations⁶⁹ made from the data are simplistically formulaic and their conclusions are absurd even to the untrained eye.

Volume VII Tab 2 BA Study Page 22 is a chart you should take a long look at with your calculator because it epitomizes what's wrong with Mr. Middleboro's

⁶⁸ May 8, 2006 Report Page 139.

⁶⁹ Pg 38 Exhibit 30.

formulaic approach to parking demand without any local knowledge to refine the accuracy of the report.

- a) Mr. Middleboro didn't gather all the information himself and shared miss-information with the city and Mr. Grubb and they all accept the veracity of each others' observations.
- b) Observations were done on off weather days in a beach front town before school is out.
- c) These observations are then used to project future use. For example a 5% occupancy on a summer Saturday afternoon? It may be correct for that particular day but is inappropriate for future use⁷⁰ unless they are planning for failure.
- d) The study reduces the city's normal formulas to attain lower outcomes (2.15/1000 instead of 5.26/1000 square feet which is the city's normal policy)⁷¹.
- e) Night seats (2746) are used to project afternoon use of (700).

⁷⁰ Exhibit 30 page. 38

⁷¹ Exhibit 30 page. 37

f) It takes no account of the changing nature of Port, and what the development is proposed to actually do.

g) Further gives no credit to existing retail or theater parking uses.

I.E. Existing 100 Seat Theater / 2.4 = 42 autos.

884 non PVDC seats/2.4 = 368 autos.

The problem is that Mr. Chapman and Mr. Smart base their decisions on that poor data and come to their conclusions based on them which merely compounds the errors. Mr. Chapman's assertion that the problem only exists 60 days a year belies the above impending storm and is something he simply borrows from Mr. Grubb who has little evidence exempt a couple of observations and anecdotal information which is no better than my witnesses.

First **all** my witnesses and many other citizens who are opposed to this development, believe that the problem is currently, much more than 60 days a year, it only causes "complaints" 60 days a year. Even **IF** Mr. Chapman was correct and that were the case, the goals of this project itself are designed to increase that scope as Mr. Kirkland indicated "an effort to expand the shoulder

season". In order for the parking studies to have any numerical credibility they have to deny the success of their own project.

I have little to no confidence in how this entire parking study was done. The numbers are so fluid as to be unusable and the conclusions based on those numbers often defy common sense. Mr. Chapman even on the face of his own numbers where capacity is almost doubled by demand (380 capacity vs. 335 shortage) appears to gloss over any impact on the residents of Port⁷². So eager is he to make sure that parking is not a barrier to economic development that his only argument is that overflow is normal in a beach front town. This development is not "normal" in a beach front town.

The photographic evidence⁷³ are both taken on summer weekends clearly show the Lakeside Parking lot is currently full **without** the development. This is not to be confused with the fact that parking is only a "problem" 60 days a year as alleged by Mr. Chapman, because according to evidence provided by Mr. Smart that is largely complaint driven, which doesn't mean that the lot isn't full a

⁷² Exhibit 5E, Tab 6 page 238.

⁷³ Sept 2, 2007 exhibit 30 and August 30, 2008 exhibit 276

lot more of that time or that backing up into the neighborhood isn't already common. We heard a lot of citizens' talk about park search and congestion on the weekends. This can only mean that Port residents already face both significant backing up of parking into their community as well as traffic congestion during the day. The evidence of Mr. Vanderburgh combined with the photographic evidence clearly showed parking backed up well past Elgin Street and traffic backed up Main Street, both into the park to the east and back up Main Street to the west at times as far back as Elgin⁷⁴. That is today! At same time as other proposed uses are coming on stream.

As common sense will tell you competition for parking will only increase and the pleasure of losing late night parties will be offset by vast increases in afternoon parking and traffic over a much longer period. The implications of a full Lakeside parking lot on August 30, 2008 should not be lost on anyone. This was not an event weekend nor was it a particularly hot day, nor was there any volleyball activity nor was anyone on the My Cottage patio and the Port Mansion

⁷⁴ Exhibit 276.

Theater was not open⁷⁵. These were the normal recreational users of the citywide park and pier. St. Catharines citizens and guests utilizing **their** own beach front.

Now add wave 2, 3, and 4 to that equation. Something has to give. Either the development and existing businesses will have grave difficulty getting clients to the site⁷⁶ or the theater goers will have to be bussed in or walk a considerable distance, or special events will have to be moved elsewhere. Most likely the scenario however is that women and children in the park, seniors walking on the pier or there just watching the boats or teens playing on the beach will have their **access denied**. There is no other option in these cases and the most vulnerable among us will lose their access to their beloved Port. Mr. Noskiewicz cross examined my witnesses about Mr. Chapman's contention that it is unreasonable to build parking lots for peak parking periods and that lots may sit empty for the rest of the year. First of all no evidence was led that the parking lots sit empty currently, and in fact this development is apparently designed to change that

⁷⁵ James Vanderburgh Evidence (Note: I was with him).

⁷⁶ 100 meter radius required for area parking 16.65.1

dynamic. Second, there is a large difference in what you call peaks in terms of how high or how broad they are.

The residents are used to a crush of automobiles on occasional event times during the year, (regattas, fireworks etc...) and we agree that it will be impossible to provide parking for those special occasional events; however these peaks will lengthen and broaden significantly and make it into an every day occurrence. Theaters, commercial, and restaurants are not occasional events. That was not the bargain we had with the city nor was it the intention of the city's parking exemption whose goals of revitalization were much more modest⁷⁷.

Let's review the potentials: Wave 1 is recreational use. The evidence is that the lot is full. 252 spaces in Lakeside Lot plus 320 to past Elgin today.⁷⁸ Wave 2 is commercial, 99 plus 292 equals 391 additional (or 35 + 292=327). Wave 3 is theater, 120 to 173 or more spaces additional (city has only proposed 104). Wave 4 is difficult to quantify and difficult to build parking for however all of those potentialities will be additional on top of the first three waves.

⁷⁷ Baranoski- Re; Ideas behind exemption on this type of development never anticipated.

⁷⁸ Chapman.

Mr. Chapman would have us believe that the Lakeside Lot is empty 300 days of the year. There is however no evidence to support that and plenty of evidence from citizens who have indicated that this is not the case. The Lakeside lot may not always be 100% full but it would be very fair to characterize it as one of the busiest parking lots in the city from May to October. The only other public lot available in Port is the Rennie Park lot which is at capacity 12 months of the year⁷⁹.

With respect to the Port parking study by Mr. Grubb we also wish to raise doubt about the accuracy of his data which has formed the base data for this entire project. In exhibit 110 on the East harbor he blithely states that there are 816 spaces without any regard for what is actually going on there⁸⁰. In fact the TESD couldn't even stomach that and stated 700 plus when they reported to council on May 8, 2006 and Mr. Middleboro's evidence on the stand was 580, according to my notes. Mr. Chapman and the TESD then claims 130 public spaces available in the marina city lot. Whereas the actual count by Mr.

⁷⁹ Vanderburgh, Jacobson under cross "wasn't surprised at my suggestion that the Lot was full in January". Due to Tim Hortons. Exhibit 276 photos of Lot.

⁸⁰ Exhibit 276 continued.

Vanderburgh and myself was 58 plus 13 which equals 71. The photographic evidence also showed that they were full today. With these widely conflicting numbers there is little credibility on any expert advice in this regard. We know that traffic and parking is less than an exact science⁸¹. How are we as citizens to have any confidence in the numbers we are being given? In an area as hard up for parking as Port Dalhousie, 80 spaces one way or the other is a huge differential. There appears to be as little concern for accuracy as there is for residents.

The various solutions proposed for parking also give us little comfort as they also fall into the realm of dreams. Mr. Kirkland's proposal taken from the BA consulting report shows the Lakeside lot expanded by 34 spaces utilizing the same footprint⁸². In order to do this however they have to create more green space on the north side and pave over green space on the south and east side. In addition to that the spaces need to be narrowed to 2.6 meters which is less than wise in a busy turnover lot with seniors and children. Interestingly the condo

⁸¹ Jane Jacobs. "The Coming Dark Age" pg. 72.

⁸² Note: the evidence of up to 50 spaces was on a larger foot print. Exhibit 13, Tab 6-PK-2-R.

dwellers will have the full 2.75 meter spaces according to Mr. Kirkland while the citizens are proposed to make do with 2.6 meter spaces.

The proposal with respect to East harbor parking is barely addressed, certainly there are no guarantees for residents and pipe dreams of water taxies, and shuttle services are unrealistic solutions aimed at placating the public. In fact they have already been tried and failed. The operational expenses are simply too high for sustained use. Since there is no Sec 37 agreement to protect us as part of this proposal the citizens are left with nothing except the fall out.

Port Dalhousie Neighborhood Plan

The PDNP is a very important document to the citizens of Port. The evidence of Ms. Fisher was clear, the PDNP is the city's agreement that the residents support and outlines how the Port Dalhousie community will be developed. It pre-dates the Heritage designation and I think it is fair comment that this type of development was not anticipated by this plan and even the city planner agrees with that assessment⁸³. Any fair reading of the entire document makes it clear that the city is not living up the agreement. In fact the proposed amendments directly contradict the various elements of the plan.

This entire project is hung on the hooks of 16.92D which is a notwithstanding provision and is purely economically driven and not planning driven. It is an escape valve through which this entire project is being shoved. What's stops someone else from using that same loophole? It is often said that we should make rules in good times for bad so that we aren't blown to and fro by the winds of change but that is exactly what is happening here. We communally

⁸³ Chapman

made the rules; its just that certain people don't want to live by them. The residents of Port Dalhousie have to live by these rules as well and they would be quickly told by the planning department that their project doesn't conform if they were to try it. The only thing that is different here is the scale. When it comes down to it, this is about money and for that we are asked to sell our community, our heritage and our enjoyment. It is simply too large, it won't work, and it is too much of an imposition on our community. The developer urges you to view the entire document through the lens of 16.92D that in my respectful submission is a reach at best. If you accept that then almost anything can be justified and waived purely for economic vitality and regional tourism. In fact 16.92D should be read in the context of the purpose of the plan itself not vice versa. It is a "what if" clause which allows for minor variations to meet the purpose not to be the sole focus of a development. How does it meet the purpose clauses as laid out in paragraphs 3, 6, 8, 9, 10 or 14? If the PDNP didn't anticipate this type of project then the plan shouldn't be used like this until you have a plan that does. Forcing development via an OMB process puts the cart before the horse. Mr. Noskiewicz

urges you as does Mr. Chapman that it should be a balancing and weighing of the two as if they have equal weight. I don't understand how a notwithstanding provision has equal weight with the purpose and General Policies. It is and should be an escape valve to make a minimum adjustment not an balancing or equivalency.

Port is a special place for residents, as you have heard over and over, but not only for Port but also for the city and the region as a whole. It has the only and best public beach on the south side of Lake Ontario and therefore any loss of access spoils the enjoyment for all residents of the region. Port Dalhousie residents' desire development that is compatible as defined in the plan and the vast majority don't find this development compatible and will certainly not appreciate the increase traffic and volume generated by this development of which they will be helpless victims.

How can this development protect the neighbors from the negative effects of traffic and parking related to the commercial core (16.2)? The evidence clearly shows that it won't. The policy of the plan is clearly to provide off street parking

for new development unless it would be adversely affect as set out in 16.65. The fact that the proposed by law uses the not withstanding provision boldly states that it doesn't meet this criteria. In 16.41 to 16.42 under the parks policies, the plan points to the centrality of Lakeside Park as a city wide amenity to meet the needs of a wide variety of St. Catharines citizens, different ages groups etc. If you look under the definition of a city wide park (pg 24/27) it clearly states that the facilities should be readily accessible to the entire community by means of "public transit and automobile". The evidence however that is the proposed conflict of uses will destroy that accessibility. The evidence further is that it is already difficult to access today as many witnesses have said. In 16.65 the plan points out that adequate parking will be required. Clearly that is not the case otherwise the developer wouldn't be depending on the cash in lieu provision which other than providing the city with income, changes nothing because there is no area to create parking within 100 meters of the site as intended by 16.65.1 or recommended by planners. It doesn't exist. The developer recognized that by asking for an exemption from that too.

Port Dalhousie Neighborhood plan in 16.57 calls for the minimizing of traffic conflicts which result from the proximity of the residential area to the core. This development does exactly the opposite. It means more traffic into the residential zone for parking search. The sheer volume of activity anticipated will also add to traffic congestion for resident access in and out of St.Catharines, something which witnesses said was already a problem⁸⁴. It only requires plain common sense to be applied to this issue to understand this. You can't have a 235 stall garage and an "acknowledged" 195 vehicle shortage and not understand that. Parking experts from Toronto have a different comprehension of what is acceptable traffic flow in an urban area vs. a village such as Port Dalhousie.

It is a given the fact that condo residents will also have to leave Port Dalhousie to shop for all of their basic needs including groceries, fuel, hardware, drug store, etc... which will add to the traffic. Condo residents also can't eat out

⁸⁴ Ms. Fisher et al.

all the time in Port even those some of the business community would like them to do so, but that will likely wear thin very quickly.

Port Dalhousie and the plan governing its development will be essentially gutted. The village will be a village no longer but a shopping destination (as if we needed one more) and a mixed use development which will overwhelm the town and make it difficult for all prospective users including the developer.

Conclusion

In conclusion I urge this board to just say No. The project is too large in both scale and volumetrics. It is for a village and a designated heritage district too large an intervention. The proposed by-law, 2006-228 breaks too many rules, it is too inconsiderate of the residents of Port Dalhousie and breaks too many promises to this community. It will so substantially alter the character to Port Dalhousie as to make it unrecognizable.

A mixed use development in Port can be a positive thing in itself, especially if it results in the repair and maintenance of heritage buildings which have been allowed to deteriorate over the last “lost years” of Port. Unfortunately this particular development goes too far, doesn’t fit, and the price we as citizens of St. Catharines and Port Dalhousie have to pay is too high. There are no guaranteed positive additions of amenities for the community that we don’t already have. Mr. Kirkland was clear he really has nothing to say outside of the 1.2 acre site. The rest is simply a dream which may or may not be realized in our lifetime.

After reviewing the evidence there are things that are guaranteed, namely that the traffic will increase, the parking will get worse, and our access to the Park and Pier will be comprised. Saying “No” will not destroy development. The development community will come wherever there is money to be made. What saying “No” will do is to give us back control over development in our community instead of handing it over to others.

If you say “yes” we simply ask that you make sure that the developer will provide parking onsite based on what their own parking expert observed. 2.4 people per vehicle and that this be provided onsite. To do less is to impose a burden above and beyond the misguided parking exemption which though legal was never meant for this type of development. We ask that you withhold your decision until a parking proposal acceptable to the city is finalized.

Tab One: Comments with response to PVDC Argument:

During argument Mr. Noskiewicz made reference to the fact that I didn't call any expert testimony. The reason is two-fold. First there were six attempts to hire a traffic expert from as far away as Toronto. However, either they had a conflict of interest or it became obvious that while they were sympathetic they didn't want to upset relationships with municipalities or potential developments by representing a single citizen. Second, the cost for one citizen was too high and I don't believe one should have to mortgage their home to attend at the OMB. The possibility of subpoena was open to me but would have been ultimately self-defeating:

10.1.2

Acknowledgement that traffic will increase does not tell you the scale of the increase. The reason that all expert parties agreed on so much is that they depended on each other's information and advice. This means they also shared their mutual ignorance. None of them live in Port or experience the issues they were discussing. If the foundations are rotten the whole building is in jeopardy.

10.1.7

Obviously I disagree since I share Jane Jacob's view of traffic experts.

When many residents are saying the same thing and we have widely disparate numbers from experts and actual counts, then the experts anecdotal evidence is no better than ours.

10.2.2

Just because traffic overflow is of a better quality during the day doesn't mean that residents are not concerned about increased patterns of overflow in excess of what they are used to for longer periods of time than what they are used to.

10.2.3

The beach front analogy is lost because of the uniqueness of this proposal. Most beach fronts deal with beach traffic, not mixed use developments, theaters, condos, or even carousels and marinas. The comparators that I am aware of that Mr. Grubb uses in his parking study (exhibit 110 page 11) don't have all the amenities or the volumes described here in such

a restricted area. In fact you have no evidence before you that these locations are comparable to Port Dalhousie's proposed mix of uses.

10.2.4

When you ask these types of questions it all depends on the understanding of the witnesses of the types of peaks you mean. I can even agree to the proposition put forward by Mr. Noskiewicz except we widely disagree on our definition of peaks. Six months of the year is not a peak. It is motherhood to say that additional off site parking will be beneficial to the public, especially when you already have clear and agreed to existing shortages.

10.2.5

The hotel and the condo do meet the by-law, however it is unrealistic and unfair to expect a gated garage to be useful for any other purpose. The volume of the garage still adds considerably to the traffic.

10.2.6

When comparing Port Dalhousie to downtown, it should be noted that many downtowns have public parking garages to make up for the lack of on-street parking. The evidence of Mr. Baranoski was clear. The Port Dalhousie parking committee had no anticipation of this size of development as they were largely trying to revitalize what was existing. I strongly disagree that 20 spaces will accommodate the new development. There is no logical justification for this even the developer's parking study stated 35 and I disagree with that for reasons already stated.

10.2.7

Mr. Noskiewicz acknowledges that there are differences of opinion between the experts. However there was less difference of opinion with respect to the volume of automobiles anticipated. The city's by-law requirement of 104 spaces was not designed for a theater and is well less their own estimate of 120 spaces which is an average calculation already and is largely dependent on the

percentage of bus travelers, for which there is little more than a guess and who also don't have a place to stand or park⁸⁵. (Exhibit 276)

10.4

There appears to be an underlying premise that if the parking is not problematic today that with the additional development it will remain not problematic. That argument attempts to argue a zero impact of this entire development and totally ignores the fact that this is additional to the current acknowledged shortage. The residents of Port Dalhousie have never agreed that their neighborhood could be used as an ever expanding parking lot, in fact if an ROPP's program were to be introduced for afternoons, this project would be dead in the water.

⁸⁵ Exhibit 276