

LOCAL OFFICIAL PLAN AMENDMENT 46, CITY OF KANATA

COMMITTEE RECOMMENDATION

That Council approve Amendment 46 to the City of Kanata's Official Plan as modified by the Approval Page attached as Annex 1 (to the Planning and Development Approvals Commissioner's report dated 28 June 1999), and that staff be directed to issue the required "notice of decision".

DOCUMENTATION

1. Planning and Environment Committee Coordinator's report dated 31 Aug 99 is immediately attached.
2. Planning and Development Approvals Commissioner's report dated 15 Feb 99 immediately follows.
3. Planning and Development Approvals Commissioner's report dated 28 Jun 99 follows.
4. Extract of Minute, 23 Feb 99 and Extract of Draft Minute, 13 Jul 99, follow and include a record of the vote.

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. 03 07-99-0119
Your File/V/Réf.

DATE 31 August 1999

TO/DEST. Chair and Members of Council

FROM/EXP. Coordinator, Planning and Environment Committee

SUBJECT/OBJET **LOCAL OFFICIAL PLAN AMENDMENT 46, CITY OF
KANATA**

COMMITTEE RECOMMENDATION

That Council approve Amendment 46 to the City of Kanata's Official Plan as modified by the Approval Page attached as Annex 1 (to the Planning and Development Approvals Commissioner's report dated 28 June 1999), and that staff be directed to issue the required "notice of decision".

BACKGROUND

On 23 February 1999, Planning and Environment Committee considered a report from the Planning and Development Approvals Commissioner dated 15 February 1999 and approved the following.

That Planning and Environment Committee recommend that Council approve Amendment 46 to the City of Kanata's Official Plan as modified by the Approval Page attached as Annex 1 (as amended by the following); and that staff be directed to issue the required "notice of decision";

- 1) **That Modification No.1 Section 2 be amended by replacing it with the following: Implementing zoning-by-law amendments shall establish standards for a Retail Warehouse, Large Retail Warehouse and Planned Retail centre, including minimum and maximum lot area, parking and loading requirements as well as gross leasable area, building height, setback and landscaping provisions, but, subject to subsection 6 herein, site specific zoning by-law amendments shall be required to permit such uses .**

Subsequent to the Planning and Environment Committee meeting, the Ontario Municipal Board requested that Kanata LOPA 46 not be sent to Council, pending the outcome of mediation.

On 13 July 1999, Planning and Environment Committee considered a report from the Planning and Development Approvals Commissioner dated 28 June 1999, entitled "Ontario Municipal Board Update, Local Official Plan Amendments 45 and 46, City of Kanata". The Committee approved the staff recommendations, as follows:

- 1. That the Planning and Environment Committee delete Modification No. 2 from its 23 February 1999 recommendation to Council on Amendment No. 46 to the City of Kanata's Official Plan.**
- 2. That Planning and Environment Committee continue to defer Council consideration of the recommendations on Amendment No. 46 to the City of Kanata's Official Plan until after the Ontario Municipal Board has concluded its mediation process.**

The Approval Page (Annex 1) attached to this report (28 June 1999) incorporated the amendments approved by Committee at their meeting of 23 February 1999.

The Ontario Municipal Board has concluded its mediation process and Kanata LOPA 46 will be the subject of an Ontario Municipal Board hearing scheduled to begin 22 September 1999. Council is therefore requested to consider the Committee's recommendation for Kanata LOPA 46 at its meeting of 08 September 1999.

*Approved by
Dawn Whelan*

Our File/N/Réf. (25) 14-98.0034
Your File/V/Réf.

DATE 15 February 1999

TO/DEST. Co-ordinator, Planning & Environment Committee

FROM/EXP. Planning & Development Approvals Commissioner

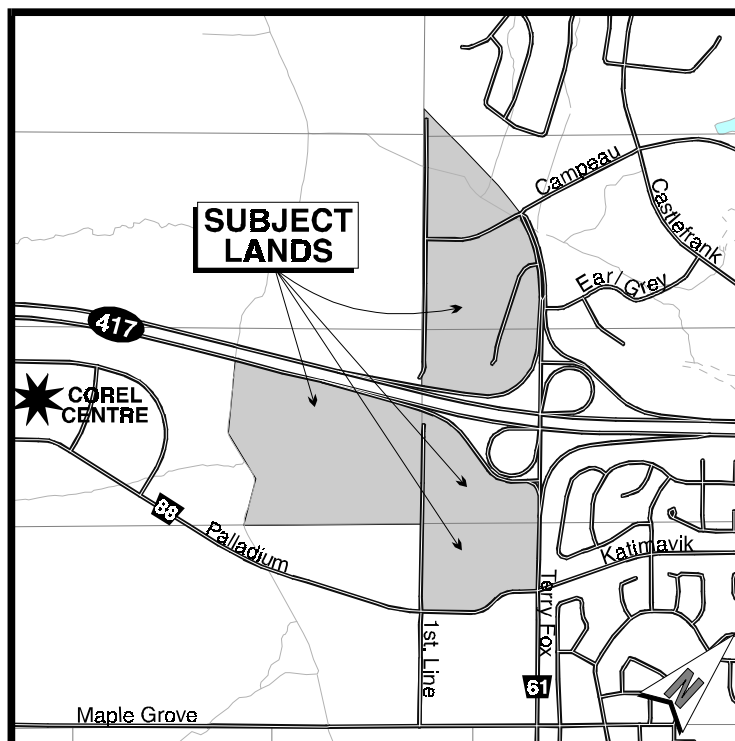
SUBJECT/OBJET **LOCAL OFFICIAL PLAN AMENDMENT 46**
CITY OF KANATA

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend that Council approve Amendment 46 to the City of Kanata's Official Plan as modified by the Approval Page attached as Annex 1 and that staff be directed to issue the required "notice of decision".

BACKGROUND

The City of Kanata adopted local Official Plan Amendment (LOPA) 46 on 12 Jan. 1999 and subsequently submitted same to the Region for approval under Section 17 of the Planning Act, 1990 on 25 Jan. 1999 (Annex 2).



Kanata's LOPA 46 establishes new retail and business park policies for Kanata's business park and industrial areas. The policies of Kanata's LOPA 46 were drafted to replace those established through Kanata's LOPAs 32 and 36, two LOPAs which attempted to introduce policies which would permit retail warehousing in the Terry Fox Business Park. This process began five years ago and has now consumed a considerable amount of Kanata's and stakeholder resources in an attempt to forge a consensus on implementable retail policies for Kanata's business parks and industrial areas. In support of this process, Kanata commissioned/partnered on the following retail studies:

- Commercial Uses Policy Study on Retail Warehouses Kanata 1993 by John Winter Assoc. Ltd.
- Commercial Policy Study, City of Kanata, March 1994, by Arni Faintuck & Assoc. Ltd.
- Kanata Town Centre Development Strategy, 21 July 1997, by DI Design & Development Consultants Ltd.
- Study of Retail Uses in Employment Areas, City of Kanata, 3 March 1998, by Coopers & Lybrand and Lloyd Phillips & Assoc.
- Employment and Commercial Land Use Study, City of Kanata, Nov. 1998, by Malone Given Parsons and Fotenn Consultants Inc.

Owing to the very competitive development interests involved in this process, Kanata LOPAs 32, 36 and 46 have been dogged by disputes. Kanata's LOPAs 32 and 36 were referred to the Ontario Municipal Board (OMB) by Regional Council on 11 Dec. 1996 and 21 Apr. 1997 respectively. Kanata's LOPA 36 followed on 21 Apr. 1997. After numerous delays in dealing with the matters surrounding LOPAs 32 and 36, at a 14 Dec. 1998 pre-hearing conference, the OMB requested that Kanata bring forward an adopted version of LOPA 46 rather than the series of modifications to Kanata's LOPAs 32 and 36 which had been adopted by Kanata Council on 17 Nov. 1998. In this manner, LOPA 46 can be properly put before the OMB through a conventional appeal process under Section 17(24) of the Planning Act (Bill 20 version).

In addition to the referral of Kanata LOPAs 32 and 36 to the OMB, Penex Kanata Ltd.'s (Penex) and Taggart Management Inc.'s unapproved LOPA applications have been appealed to the OMB as well as Kanata's zoning by-law amendments (ZBLA) 33-95, 34-95, 73-96, 151-98 and a proposed ZBLA from the Loblaws Group of Cos. (Loblaws). As Kanata's LOPA 46 has attracted objections to its adoption and by extension its approval, it is anticipated that it too will be appealed to the OMB. Nevertheless, in the interim it is a disputed LOPA and consistent with Regional By-law 53-1995 (i.e., the staff delegation by-law), LOPA 46 must be brought before Planning and Environment Committee and Council for a decision.

In its 19 Jan. 1998 order on the above-noted matters, the OMB indicated that it would conduct three days of mediation beginning on 2 Mar. 1999. If another pre-hearing is necessary it will be

held on 27 Apr. 1999. The OMB has scheduled 5.5 weeks for a hearing, if required, starting on 22 Sept. 1999. This report is to establish the position of Planning and Environment Committee and Council so that staff have direction in the preparation and giving of evidence before the OMB on Kanata's LOPA 46.

THE AMENDMENT

The purpose of Kanata's LOPA 46 is to establish policies governing retailing and business park uses in Kanata's business parks and industrial areas. In particular, Kanata's LOPA 46 proposes the following:

1. introducing new policies in Section 5.7.5.5 of Kanata's Official Plan for the "Low Density Employment Area" in the portion of the Terry Fox Business Park north and west of the Highway 417 Terry Fox Dr. interchange as well as the southeast quadrant of the Kanata Town Centre north of Hearst Way;
2. adding new policies in Section 5.8 for retail warehouse uses in the Kanata North and South Business Parks, the Terry Fox Business Park and the Edgewater Business Park;
3. adding a new subsection 6.9.4 to Kanata's Official Plan to spell out policies for retail warehouse uses in business parks; and
4. incorporating new definitions in Section 11 of Kanata's Official Plan for the terms: Accessory Commercial Development, Business Park Retail Outlet, Home Renovation Centre, Large Retail Warehouse, Planned Commercial Service Centre, Planned Retail Centre and Retail Warehouse.

As proposed, Kanata's LOPA 46 will enable the development of a broader array and scale of retail uses in Kanata's business parks and industrial areas.

AGENCY & STAKEHOLDER COMMENTS

Kanata's LOPA 46 was circulated to a number of external agencies by Kanata staff. This circulation was not repeated by Regional staff but still resulted in a number of comments and objections from landowners inside and outside of Kanata's business parks and industrial areas. Although there were no objections received from any of the technical review agencies or utilities, objections were noted by Penex; Loblaws; Sun Life Assurance Co. (Sun Life); Gilpaul Investments Inc., Mapfox Holdings Ltd., 764703 Ontario Inc. and 709519 Ontario Ltd; North American Realty Acquisition Corp. (North American); and Colonnade Developments Ltd. (Colonnade). These objections are addressed under the "OBJECTIONS" heading.

Gilpaul Investments Inc., Mapfox Holdings Ltd., 764703 Ontario Inc. and 709519 Ontario Ltd.

Janet Bradley, a solicitor with Gowling, Strathy & Henderson, represents Gilpaul Investments Inc., Mapfox Holdings Ltd., 764703 Ontario Inc. and 709519 Ontario Ltd all of whom are owners of property in the Terry Fox Business Park. Ms. Bradley's clients are generally satisfied with the adopted version of Kanata's LOPA 46 as it removes the land use controls on retailing in the Terry Fox Business Park that they found onerous and inconsistent with their understanding of what was permitted under the prevailing ZBLA.

Ms. Bradley has indicated that her clients have serious concerns about the restrictions recommended be placed on their lands by the Coopers & Lybrand Study. Ms. Bradley argues that such restrictions will stymie healthy competition in the retail market place. In support of her clients concerns, Ms. Bradley emphasises that her clients have made significant investments in infrastructure and now want to capitalise on this investment under the rights accorded under the prevailing zoning.

Ms. Bradley's has raised questions about Kanata's diligence in implementing its Official Plan policies with respect to development on Penex's "Regional Shopping Centre" site by allowing in excess of 25,000 sq. m of retail GLA before a market study is completed which demonstrates that the existing form of retailing will not jeopardise development of the third phase of the "Regional Shopping Centre". Ms. Bradley's clients believe that Kanata cannot contemplate placing limits on retail development in the Terry Fox Business Park while violating Kanata Official Plan policy on Penex's "Regional Shopping Centre" site.

Notwithstanding Ms. Bradley's client's support for Kanata's LOPA 46, Ms. Bradley has recently asked for relief from the 45% GLA limit placed on food and household products in "Large Retail Warehouses"; the 20% GLA restriction placed on "Accessory Commercial Development"; the addition of a "Planned Commercial Service Centre", Business Park Retail Outlet, Accessory Commercial Uses and Planned Retail Centres as permitted uses on her client's lands south of Palladium Dr. but still within the Terry Fox Business Park.

Comment

Kanata staff have rejected all of Ms. Bradley's suggested revisions to the policies of LOPA 46. As Ms. Bradley's requested revisions would have the effect of further loosening the policy framework for retail warehousing in Kanata's business parks, Regional staff do not support her request either.

Corel Centre

The Corel Centre is supportive of the Coopers & Lybrand Study and favours the new GLA threshold policies and the protection for the third phase of Penex's "Regional Shopping Centre". The Corel Centre would also like to see more clarification on the definition of "accessory retail" which Coopers and Lybrand has not forwarded.

Imperial Oil & GEC Simpson Realty Inc.

Imperial Oil owns land on the northeast corner of the Campeau Dr. Terry Fox Dr. intersection addressed by Kanata's LOPA 45 and ZBLA 151-98, both of which are under appeal to the OMB. Kanata's LOPA 45 proposes to redesignate and zone the subject lands for a "Community Commercial" centre. Imperial Oil expressed concern that their property interests had not been addressed by the Coopers & Lybrand study as they are outside the Terry Fox Business Park and the Regional Shopping Centre.

OBJECTIONS

In the course of Kanata's circulation of and deliberations on LOPA 46, objections were received from Penex, Loblaws, Sun Life, North American and Colonnade. A summary of these objections follows. Due to the volume of correspondence received during the preparation of Kanata's LOPA 46, only a summary of the nature of the objections/comments are noted in this report. In order to reduce the number of attachments to this report the copies of the letters of objection were not attached but are available from the Planning & Development Approvals Dept.

Penex

Dennis Eberhard of Penex has noted Penex's strong support for the conclusions of the Coopers and Lybrand report with respect to the business park retailing threatening the viability of retailing on the "Regional Shopping Centre" site. Not surprisingly, Penex strongly opposed the policies of the adopted version of Kanata's LOPA 46 owing to the absence of effective land use controls which will protect the retail primacy of the "Regional Shopping Centre" site from retail uses in Kanata's business parks.

Loblaws

Steve Zakem of Aird & Berlis, Loblaws solicitor, has indicated that Loblaws supports the general thrust of the Coopers and Lybrand report as it recognises the importance of retailing to the Kanata Town Centre and that it should be given a chance to develop. Loblaws points out that expensive infrastructure costs front-ended by Penex on the Regional Shopping Centre site will be jeopardised if retailing is allowed to flourish in Kanata's business parks. Given the job growth of Kanata's high technology industry, Loblaws believes Kanata ought to preserve business parks for office commercial uses. Loblaws urges Kanata to uphold the requirement for a market study and site specific ZBLA for retail warehousing in Kanata's business parks. Further, Loblaws requests that Kanata Council remove the provisions that have been interpreted to permit retail warehousing in the Terry Fox Business Park. Loblaws oppose the adopted version of Kanata's LOPA 46 as it removes the most effective land use controls on retailing in Kanata's business parks and undermines the retail primacy of Penex's "Regional Shopping Centre".

Sun Life

Michael Polowin of McCarthy Tetrault, Sun Life's solicitor, has indicated that his client opposes Kanata's LOPA 46 as it does not impose land use controls on retailing in Kanata's business parks.

Sun Life fears that poorly controlled retail warehouse development in Kanata's business parks will undermine their investment in Hazeldean Mall and Penex's investment in the "Regional Shopping Centre". Conversely, Sun Life supports the conclusions of the Coopers & Lybrand Study.

North American

Patrick Devine of Goodman and Carr, North American's solicitor, expressed concern over the inadequate and improper consultative process leading up to the presentation of the Coopers & Lybrand Study. Mr. Devine insists that Kanata must have more than one site zoned for retail warehousing to permit market competition. North American believes that their lands at the southwest corner of the Highway 417 Terry Fox Dr. interchange are ideal for retail warehousing purposes in view of its location and visibility. North American do not support the findings of the Coopers & Lybrand Study but support the general intent of Kanata's LOPA 46 with the exception of the extent of the "Special Industrial (MR-2)" designation.

Colonnade

Cal Kirkpatrick representing Colonnade Developments and the Canadian Imperial Bank of Commerce, voiced his opposition to Kanata's LOPA 46 in that it introduces uses which are incompatible with Kanata's original and Colonnade's current vision for the Terry Fox Business Park. Mr. Kirkpatrick warned Kanata Council that they are risking the "retailization" of the Terry Fox Business Park by adopting LOPA 46. Mr. Kirkpatrick underscored that the proposed site plan approval process is a poor substitute to a more rigorous market study review, transportation study and secondary plan. Insofar as the secondary plan is concerned, Mr. Kirkpatrick voiced his support for this exercise in that it would assist in identifying how high-technology business parks and retail warehousing can co-exist.

STAFF COMMENT

The lands which are the subject of Kanata's LOPA 46 are designated "Business Park" on Schedule 'B' of the 1997 Regional Official Plan (ROP). The policies associated with these designations permit retailing as well as a number of complementary business park uses including office commercial development. The Region's interest in Kanata's LOPA 46 is based on the policies of Section 4.7 of the 1997 ROP that have not been appealed to the OMB. However, in view of the fact that Section 4.7, Policy 7 of the 1997 ROP has been appealed to the OMB, Section 3.2.3.2, Policy 7 of the 1988 ROP prevails. This policy permits retail development up to 10,000 sq. m GLA until a "Regional Shopping Centre" of 50,000 sq. m is established in the Kanata Town Centre. Penex's "Regional Shopping Centre" has yet to achieve the 50,000 sq. m GLA threshold and as a result no other shopping centre may be developed within Kanata beyond 10,000 sq. m GLA.

The basis for the ROP retail policies is to create a retail hierarchy in each urban centre which satisfies the need for goods and services of the target populations. Both ROPs also speak to the importance of establishing a significant retail presence in town centres and protecting the retail primacy of "Regional Shopping Centres" against premature development of shopping centres over 10,000 sq. m GLA. The 10,000 sq. m GLA threshold is important because it represents a scale of shopping centre that traditionally has offered goods and services of a daily or weekly nature (e.g.,

food, personal services, etc.), hence the term “Neighbourhood Shopping Centre”. As “Neighbourhood Shopping Centres” have not typically attracted the same mix of tenants as “Regional Shopping Centres”, it was thought that this scale of retail development would not compete with “Regional Shopping Centres” for higher order retail tenants.

Another dimension to retail development in the suburban town centres is transit. Nowhere is this more critical than where “Regional Shopping Centres” are cornerstones in the development of suburban town centres. A consistent objective in both ROPs is the integration of a transitway station into the design of suburban “Regional Shopping Centres”. Penex’s “Regional Shopping Centre” in the Kanata Town Centre is no exception and this development has the added feature of a park & ride lot immediately adjacent to the transitway station. Through the approval and registration of Penex’s “Regional Shopping Centre” subdivision application (i.e., 06T-89017), Regional staff secured provisions which will result in the transitway station and park and ride lot becoming integral components of the third phase of the “Regional Shopping Centre” in the fullness of time. These additional infrastructure costs have now been reflected in the rents charged and land values for Penex’s “Regional Shopping Centre”.

The advent of retail warehousing has changed retailing significantly. This fact has been reported on extensively by Kanata’s numerous retail consultants as well as the retail consultants retained by the Region to advise on policy matters germane to the 1997 ROP and the OMB mediation or hearing to resolve Kanata’s retail policy impasse. Although it is difficult to get unanimity amongst retail consultants, there is mounting evidence that suggests if retail warehousing is allowed to develop on relatively inexpensive business park or industrial lands unfettered by appropriate land use controls, it can have a devastating impact on fledgling and traditional town centres. What’s more, Coopers & Lybrand and Malone Given Parsons have cautioned that Kanata may undermine its ability to offer an adequate supply of lands suitable for high technology businesses if these same lands are developed for retail purposes.

The Coopers & Lybrand Study noted that pressure to develop competing retail uses in business parks on the periphery of the Kanata Town Centre has already resulted in the opening of a Canadian Tire and Staples/Business Depot, two retail uses which could have effectively served as anchors for Penex’s “Regional Shopping Centre”. This situation led Coopers & Lybrand to conclude that the high infrastructure costs and shortage of available anchor tenants for Penex’s “Regional Shopping Centre” has created a situation where it is vulnerable to competition from retail warehouse development in Kanata’s business parks.

Coopers & Lybrand recommended Kanata impose a number of land use controls on retail development in business parks and industrial areas. A number of these lands use controls were proposed by a 27 Oct. 1998 staff report. However, these were not adopted by Kanata Council on the 17 Nov. 1998. Regional staff believe that Kanata staff’s 27 Oct. 1998 recommendations were reasonable and appropriate given Coopers & Lybrand’s findings and the Region’s interests in Kanata exercising its jurisdiction to protect its existing retail hierarchy while accommodating new retail uses in a sensitive and responsible manner. Accordingly, Regional staff recommend that two modifications be made to Kanata’s LOPA 46 to ensure that it conforms with the ROP and that the implementing ZBLAs for LOPA 46 be amended to establish that retail warehousing may be permitted in Kanata’s business parks and industrial areas but only by further site specific ZBLA detailing, maximum lot area, GLA, coverage, setbacks, heights, etc.

PROPOSED MODIFICATIONS

Modification No. 1

PART B - THE AMENDMENT, Details, Part E, be modified by deleting the policies of Section 6.9.4 and replacing them with the following:

1. The submission and acceptance by the City of Kanata of:
 - a) a market study that demonstrates there will be no adverse impact on the Regional Shopping Centre in the Kanata Town Centre and other significant retail nodes until such time as the Regional Shopping Centre achieves 50,000 sq. m of gross leasable floor area, at which time, this requirement will only be imposed at the discretion of the City.
 - b) a site plan application under Section 41 of the Planning Act.
 - c) a traffic impact study to identify what roadway/intersection modifications are required to support the scale of development proposed.
 - d) other information as may be required by the City.
2. A site specific zoning by-law amendments shall be required for a Retail Warehouse, Large Retail Warehouse and a Planned Retail Centre shall be required to establish minimum and maximum lot area, parking and loading requirements as well as gross leasable area, building height, setback and landscaping provisions.
3. An internal restaurant is permitted as an accessory use.
4. The maximum gross leasable floor area for Retail Warehouse, Large Retail Warehouse and Planned Retail Centre uses shall not exceed 10,000 sq. m per lot if located in any Business Park as defined in the City of Kanata Official Plan. This policy shall apply until the Regional Scale Retail Facility as defined in the RMOC Official Plan, located in the Kanata Town Centre, develops 50,000 sq. m gross leasable floor area. When this threshold has been met, Retail Warehouses, Large Retail Warehouses and Planned Commercial Centres can exceed 10,000 sq. m of gross leasable floor area but not the lesser of 35,000 sq. m of gross leasable floor area or the maximum gross leasable floor area permitted in the site specific implementing zoning by-law.
5. The City of Kanata shall require or undertake the preparation of a secondary plan for the business parks where retail warehouses are proposed, to establish how best to interface retail warehousing with traditional office commercial uses through an appropriate pattern of land use and roads; confirm infrastructure requirements including alignments; as well as create design guidelines for architecture, signage, landscaping, and lighting.”

6. Retail Warehouses and Planned Retail Centres shall not be permitted in Kanata's business parks and industrial areas for a period of three years following the date the Ontario Municipal Board approves LOPA 46 and the implementing zoning by-law amendments.

Comment

Modification No. 1 proposes to reinstate the requirements for a market study, traffic study and a secondary plan for retail warehousing in Kanata's business parks that had been recommended to Kanata Council on 27 Oct. 1998 by Kanata staff. Kanata's staff recommendations in this regard were generally consistent with the findings of the Coopers & Lybrand Study. This study recognised that introducing retail warehousing in Kanata's business parks in general, and the Terry Fox Business Park in particular, is a delicate issue given that maintaining the retail primacy of the "Regional Shopping Centre" in the Kanata Town Centre remains a priority in both the Region's and Kanata's Official Plans. Consequently, Coopers & Lybrand recommended that retail warehousing in business parks be permitted but that such proposals be subject to planning policies such as the requirement for a market study to assess the impact on the "Regional Shopping Centre" in the Kanata Town Centre as well as other significant retail nodes (e.g., Hazeldean Mall) and a traffic study.

Coopers & Lybrand also recommended the imposition of other planning policies including the imposition of the requirement for a site specific ZBLA; a master concept plan, a GLA minimum of 1,858 sq. m (20,000 sq. ft.); a minimum lot are of 1.65 ha (4 ac.) and a maximum of two uses per lot; and phasing scheme where retail warehousing would not be allowed into Kanata's business parks until either 30,000 sq. m (323,000 sq. ft.) of gross leasable floor area is constructed on the third phase of the "Regional Shopping Centre" or three years from the date Kanata Council adopts this provision in the implementing ZBLA. Coopers & Lybrand also recommended that food retailing, warehouse membership clubs (e.g., Price Club/Costco) and department stores not be permitted in Kanata's business parks and industrial areas. Kanata staff did not recommend implementing the maximum use per retail warehouse lot policy, nor the phasing policy, nor the prohibition on warehouse membership clubs as these policies were perceived to be too onerous. Nevertheless, Kanata staff did recommend prohibiting department stores and supermarkets from the business parks and industrial areas. Although Regional staff agree with Kanata's staff approach to most of these matters, Coopers & Lybrand's phasing scheme does have merit in creating an environment which will nurture the development of Penex's "Regional Shopping Centre" but rather than using GLA as the tool to determine the appropriate timing of retail warehouse development in Kanata's business parks and industrial areas Regional staff recommend a three year period for reasons of clarity and certainty.

Whereas Kanata staff had originally recommended the imposition of a holding zone on Kanata's business parks to regulate the development of retail warehouses until the study requirements were satisfied, Regional staff are recommending that site specific ZBLAs be required to ensure that future decisions of Kanata Council with respect to the appropriateness of the zoning for retail warehousing in business parks be subject to OMB appeal if warranted. This approach will satisfy the concerns of Kanata's existing retailers. Should this policy be upheld, it would require further amendment to the proposed ZBLAs designed to implement Kanata's LOPA 46.

Coopers & Lybrand's recommendation with respect to the minimum size of retail warehousing (i.e., 20,000 sq. ft.) is addressed through proposed Modification No. 2.

Modification No. 2

PART B - THE AMENDMENT, Details, Part F, Section 7, Retail Warehouse, Point 2, be modified by deleting reference to 20,000 sq. ft. and replacing it with 30,000 sq. ft.

Comment

Since Kanata staff began consulting with external agencies on appropriate land use policies for retail warehousing, Regional staff have consistently encouraged Kanata to increase the minimum threshold for retail warehousing from 1,858 sq. m (20,000 sq. ft.) GLA as it was deemed too low to afford effective protection for Penex's "Regional Shopping Centre" from market encroachment by retail warehouses. Regional staff were recently advised by Scott Morgan, a retail consultant retained to assist in the preparations for the anticipated OMB hearing on Kanata's retail policies, that the 1,858 sq. m (20,000 sq. ft.) GLA threshold does not adequately address the trends in the size of tenants currently being attracted to "Regional Shopping Centres". Moreover, the OMB has already rendered a decision (i.e., on the Invar development) in favour of the Region of Durham's argument that 2,787 sq. m (30,000 sq. ft.) was an appropriate minimum threshold for retail warehouse development. Consistent with the OMB's Invar decision, Regional staff are prepared to support a 2,787 sq. m (30,000 sq. ft.) GLA minimum threshold for retail warehouses.

CONSULTATION

The required public meeting under Section 17(15) of the Planning Act, 1990 was held on 27 Oct. 1998. In addition to the formal public meeting, Kanata Council conducted public discussions regarding LOPA 46 on 17 Nov. 1998 and 12 Jan. 1998. Moreover, numerous stakeholder sessions have taken place in conjunction with the various retail studies Kanata has undertaken in preparation for an anticipated OMB hearing(s). Various representatives of the retail development community and public have spoken in favour and in opposition to Kanata's LOPA 46. These parties have been informed of the date and time that Planning and Environment Committee will deal with Kanata's LOPA 46.

FINANCIAL IMPLICATIONS

The approval of Kanata's LOPA 46 will facilitate the development of retail and business park uses in Kanata's business parks and industrial areas with all the attendant development charge and property tax revenue accruing to the Region. As Kanata's LOPA 46 represents the successor document to Kanata's LOPAs 32 and 36 which have already been referred to the OMB, LOPA 46 could be joined to these other LOPAs in time for the OMB pre-hearing in Apr. 1999. Regional staff time will be required to participate in the OMB's mediation session on Kanata's LOPA 46 as well as prepare and give evidence on Kanata's LOPA 46 at the OMB pre-hearing and hearing if matters cannot be resolved through mediation.

In the event that the OMB hearing does indeed take place in Sept. 1999, additional consultant resources will be required to present marketing evidence to the OMB beyond that presently within

the Legal Dept. budget. Following the Apr. 1999 OMB pre-hearing, a further report dealing with the need for additional resources will be submitted to Planning and Environment Committee and Council if the scheduling of the hearing has not changed.

*Approved by
N. Tunnacliffe, MCIP, RPP*

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our Files/N/Réf. 14-98.0034 & 14-98.0038
Your File/V/Réf.

DATE 28 June 1999

TO/DEST. Co-ordinator, Planning & Environment Committee

FROM/EXP. Planning & Development Approvals Commissioner

SUBJECT/OBJET **ONTARIO MUNICIPAL BOARD UPDATE
LOCAL OFFICIAL PLAN AMENDMENTS 45 & 46
CITY OF KANATA**

DEPARTMENTAL RECOMMENDATIONS

1. **That the Planning and Environment Committee delete Modification No. 2 from its 23 February 1999 recommendation to Council on Amendment No. 46 to the City of Kanata's Official Plan.**

2. **That Planning and Environment Committee continue to defer Council consideration of the recommendations on Amendment No. 46 to the City of Kanata's Official Plan until after the Ontario Municipal Board has concluded its mediation process.**

BACKGROUND

Planning and Environment Committee considered Kanata's local Official Plan Amendments (LOPAs) 45 and 46 on 23 Feb. 1999. At that time, PEC recommended that the Ontario Municipal Board (OMB) approve Kanata's LOPA 45 and that staff issue a "notice of decision" signalling Council's approval of Kanata's LOPA 46 with modifications. On 10 Mar. 1999, Council passed a resolution supporting the OMB's approval of Kanata's LOPA 45. Council has yet to act on PEC's recommendation on Kanata's LOPA 46 in deference to the OMB's 3 Mar. 1999 request that such action be deferred pending the outcome of mediation.

The OMB mediation on Kanata's LOPAs 45 & 46 went ahead as scheduled on 2 & 3 Mar. 1999. The 4 Mar. 1999 mediation day was postponed to 10 Mar. 1999 owing to inclement weather. In spite of 3 days of mediation on the issues surrounding Kanata's LOPAs 45 and 46, none of the disputes were successfully resolved. Consequently, the OMB arranged for a pre-hearing conference call with all the parties on 17 June 1999. This pre-hearing also failed to resolve any of the disputes associated with Kanata's LOPAs 45 and 46. Another round of mediation has been

scheduled for 21, 22 and 23 July 1999. If this second round of mediation does not resolve any of the disputes, a five and a half week OMB hearing is scheduled to begin on 22 Sept. 1999.

STAFF COMMENT

Through the mediation and pre-hearing process, staff have had an opportunity to reflect on the recommendations contained in the report on Kanata's LOPA 46. Over this same period, staff have discussed a number of issues regarding retail warehousing in Kanata with Scott Morgan, the retail consultant assisting staff with preparations for an OMB hearing. In particular, the issue of the minimum gross leasable area (GLA) for retail warehouses.

Staff's 15 Feb. 1999 report to PEC recommended that the minimum GLA for retail warehouses be established at 30,000 sq. ft. based on the then understanding of an earlier OMB decision in the Region of Durham on the Invar development. As a result of further review of the OMB's "Invar" decision as well as consultations with Scott Morgan, staff are now prepared to recommend that Modification No. 2 be deleted and the minimum GLA for retail warehouses in Kanata stand at 20,000 sq. ft. as originally presented in Kanata's LOPA 46 (see revised approval page and LOPA 46 extract attached as Annexes 1 and 2).

Regional staff further recommend that PEC continue to defer Council's consideration of the recommendations contained in staff's report on Kanata's LOPA 46 as well as this report until the OMB has concluded its mediation process on 21, 22 and 23 July 1999. Should there be a need to report back to PEC on the OMB's July 1999 mediation, this will be done at the first meeting of PEC in Sept. 1999. If there is no need to report back to PEC, staff expect the OMB will want Council to establish its position on Kanata's LOPA 46 prior to the start of the scheduled OMB hearing beginning on 22 Sept. 1999.

CONSULTATION

The issue of the minimum GLA for retail warehouses in the City of Kanata has been discussed with the stakeholders involved in the OMB hearing on Kanata's retail policies. Staff understand that the stakeholders support the deletion of Modification No. 2. These same stakeholders have been informed that this report will be before Regional PEC on the 13 July 1999.

FINANCIAL IMPLICATIONS

The approval of the recommendations contained in this report will have the effect of reducing the points of legitimate dispute between the Region and Kanata over Kanata's retail policies. This situation should translate into incrementally lower costs for the preparation and defence of the Region's position at the OMB.

Approved by
N. Tunnacliffe, MCIP, RPP

LOCAL OFFICIAL PLAN AMENDMENT 46, CITY OF KANATA

- Planning and Development Approvals Commissioner's report dated 15 Feb 99

Andrew Hope, Senior Project Manager, Development Approvals - District 3, provided Committee with an overview of the staff report. Mr. Hope drew the Committee's attention to part 6 of Modification 1 (pages 74 and 78 of the staff report) and noted the words "Large Retail Warehouses" had been inadvertently included and advised they should be removed.

Councillor Munter noted staff were basically saying the Terry Fox Business Park was suppose to be a "Business Park" with offices, etc. and not a proliferation of retail uses, for at least three years until the Kanata Town Centre is up and running. Mr. Hope confirmed this, with the exception of large retail warehouse uses such as Price Club/Cosco. The Councillor stated this exception concerned him. Mr. Hope advised the Regional Shopping Centre principals have indicated that retail warehouse uses the scale of Price Club could not be accommodated on that site. It is a retail form that there appears to be demand in the market place for and staff felt the only other possible location for this type of retail use would be in the business park. As well, based on the pattern of development in the Terry Fox Business Park (e.g. the Home Depot Store), it would be difficult to argue that a similar sized retail warehouse would not be compatible with the existing facilities.

In response to further questions from Councillor Munter, Mr. Hope advised that (as per a staff report from the City of Kanata) 36,925 square metres of gross leasable retail space, will have been built at the end of 1999.

Responding to questions from Councillor Hume concerning large retail warehouses, Mr. Hope advised, if Amendment 46 is approved, it would be staff's recommendation that existing zoning on the site be replaced. He went on to say the zoning by-law would establish standards for Retail Warehouses, Large Retail Warehouses and Planned Retail Centres but the use would have to be approved through a site-specific zoning by-law amendment. Councillor Hume then asked if the current zoning by-law would allow a Price Club/Cosco on the subject site. Mr. Hope said he would argue that it did not and pointed out Home Depot was able to locate there under a provision related to home renovation centres.

The Committee then heard from the following delegations.

Robin McKay, Planner, City of Kanata provided Committee with a history of this matter and noted it began in 1992 when Price Club expressed an interest in coming into Kanata. Kanata Council, wanting to fill a deficit of this type of retail and wishing to plan for this "new format retailer" decided to look at this comprehensively. Kanata staff brought forward two amendments, OPA 32 and 36, which zoned 250 acres of land (almost all of the Terry Fox Business Park and the north half of the Regional Shopping Centre site) as Big Box Retail. These OPAs were appealed by Loblaws.

Mr. McKay felt it important to note in 1989, the Terry Fox Business Park was zoned for box retailing; both the Kanata Official Plan and Regional Official Plan allowed retail warehousing.

The zoning that is in place today allows stores such as Canadian Tire and Home Depot; what Kanata is trying to do is widen the zoning and take a comprehensive approach.

The speaker went on to say in 1997 Kanata settled with the owners of the Regional Shopping Centre over the issue of Canadian Tire and Home Depot, rather than proceeding through the Divisional Court hearing. Kanata agreed to do a comprehensive study paid for by the City; Coopers and Lybrand and Lloyd Phillips were hired to do a full market analysis. When this was completed in early 1998, staff took the position (similar to Regional staff's) that what was originally zoned (i.e. 250 acres) was too ambitious. In LOPA 46, 70 acres (as opposed to 250 acres) close to Highway 417 would be zoned for box retailing, while the traditional business park uses would be on Palladium Drive.

He explained Kanata's justification for zoning this type of retail beside a planned Regional Shopping Centre, was that it was concerned about having a store such as Price Club as part of the Regional Shopping Centre as this was not how Kanata Council envisioned the Centre and as well, it would not support the Region's transit objectives. Mr. McKay advised that Kanata, in conjunction with Regional staff, have undertaken another study on the Regional Shopping Centre site to determine the form that building should take and to decide whether to allow this new format to be part of that Centre. The owners of the Regional Shopping Centre site want to build an unenclosed mall, a collection of box stores and they are looking for the same permissions allowed in the business park.

Mr. McKay went on to say Kanata Council has done exhaustive studies and their position was to zone 70 acres for box retailing, as of right, in the Terry Fox Business Park. Kanata staff felt this was too liberal and felt controls should be in place and measures taken to prevent every big box retail application from being appealed to the OMB. He said if the Committee approved the staff recommendation with regard to site specific zoning, then Kanata would be dragged into OMB hearings for each application and he advised Kanata would ask the OMB to withdraw the Amendment. Kanata staff's position was that the land should be zoned for the uses and a holding symbol used; studies would be undertaken by the proponent and it would be up to Kanata Council (with no appeal rights for anyone) to decide whether each use would impact on the Regional Shopping Centre and whether or not it should be allowed.

In summary, Mr. McKay stated he believed Kanata Council would agree to the modifications proposed by Regional staff, with the exception of the site-specific zoning by-laws and the three year moratorium on Retail Warehouses and Planned Retail Centres.

Councillor Munter noted Kanata is a "hot real estate market" and if the Terry Fox Business Park was not allowed to put in large retail uses, the value of the land would still be quite high. Mr. McKay said with the retail permission, the value of the land in the Business Park would be a lot higher. He said the current permissions allow restricted retail such as Home Depot, appliance centres and carpet stores and he estimated the land (with these uses) would sell for \$200,000 per acre. For more traditional uses, such as industrial uses, values within the business park have been as low as \$60,000 per acre.

Michael Polowin, Solicitor, McCarthy Tetrault and Nancy Meloche, Planner appeared before the Committee on behalf of Sunlife (the owner of Hazeldean Mall), CIBC Development Corporation (the owner of land in the Terry Fox Business Park) and 790519 Ontario Inc. (the owner of the land on which Home Depot has been built). Mr. Polowin advised his clients support the staff recommendation completely. He offered the opinion that Kanata Council, went against what was recommended by their staff and consultants and basically gave in to the landowners for uncontrolled retail development.

He said the proposed 700,000 square feet of retail space in the Terry Fox Business Park, together with 500,000 square feet yet to be built on the Regional Shopping Centre site and the 100,000 square feet proposed by Taggart (LOPA 45) adds up to an additional 1.3 million square feet of new retail being allowed into Kanata without control. Mr. Polowin opined once this amendment is passed by the OMB, building permits could be issued the next day for this 1.3 million square feet of retail space. He submitted if landowners are wrong and the community cannot absorb 1.3 million square feet of new retail development, the Regional Shopping Centre will not be finished, the Terry Fox Business Park will not support the growth in jobs that is behind all of the economic projections that say retailing at that level is necessary and existing retail (i.e. the Hazeldean Mall) will die.

Mr. Polowin said he was sure others would say there was no Regional interest in this matter, however, he submitted the Region does have an interest in protecting the primacy of the Regional Shopping Centre, the Terry Fox Business Park employment centre and existing retailers. There are numerous policies in the ROP that speak to these issues and others such as transit objectives. In addition, Committee and Council are not limited to considering an amendment as to conformity with the ROP but also as the approval authority for the Minister of Municipal Affairs and Housing, regard must be had for the Planning Act and decide whether or not this is good planning. Mr. Polowin stated that uncontrolled retail development is not good planning.

The speaker then read from a letter to City of Kanata Council from his clients dated 17 November 1998, which related an event whereby a high technology firm immediately rejected a site in the Terry Fox Business Park as a possible location for its 250,000 square feet campus, as soon as it realized a Home Depot store was located in this business park.

Mr. Polowin then commented on Mr. McKay's proposal to use a holding by-law, and offered this would give Kanata the unilateral right to allow retail development. He felt in doing this, Kanata would decide the market studies were unnecessary and proceed to approve all retail development. A site specific zoning by-law gives third party landowners to put the market and traffic studies to the test; if Kanata does not want to be involved at the OMB, they do not have to be. He urged the Committee to approve the staff recommendations and not allow the amendment proposed by Mr. McKay.

At Councillor Munter's request, Nick Tunnacliffe, Commissioner, Planning and Development Approvals Department confirmed the statements made by Mr. Pollowin, with regard to approving the LOPA, were correct.

Councillor Munter then asked the delegation if any of the measures proposed by Regional staff sterilize the land. Mr. Pollowin answered that none of these measures prevent anything.

Roslyn Houser, Goodman, Phillips & Vineberg appeared before the Committee on behalf of Penex Kanata Ltd., the owners of the land on which the Regional Shopping Centre is located. Ms. Houser expressed her support for the staff recommendations and in particular, the modifications they are recommending be made to LOPA 46.

Ms. Houser went on to note this Amendment was a culmination of many years of very detailed and careful consideration by Kanata's consultants and staff as to the manner in which to introduce retail onto lands that are industrially designated. At the same time, exercising the appropriate controls so as not to undermine the carefully planned existing commercial structure (including the unbuilt Regional Shopping Centre).

The speaker advised there is a shortage of available anchor tenants; she referred to previous speakers comments as to capacity and need in Kanata for retail however, there is not an unlimited supply of anchor tenants. Ms. House noted if these anchor tenants go to the Business park or other neighbourhood commercial facilities, then they are not available to go into the Regional Shopping Centre.

Ms. Houser, referring to a chart provided to members of the Committee (held on file with the Regional Clerk) gave a chronology of the events related to this item. She noted if one contrasted the recommendations of the Coopers and Lybrand study (March 1998) with the Kanata LOPA 46, there was a dramatic difference. LOPA 46, as approved by Kanata Council would allow as of right development for 700,000 square feet of new retail in the Terry Fox Business Park (without any controls, studies or secondary plans).

Referring to a comment made by Mr. McKay with respect to how onerous it would be to subject Kanata Council to the process of site-specific rezonings for individual retail stores, Ms. Houser said she had been involved in commercial planning across the Province. She advised she had never heard of a municipal council saying (for a commercial application) they were not interested in scrutinizing the impacts it would have or of a council arbitrarily deciding to lift a holding zoning and excluding all other stakeholders. Ms. Houser said she was confident the OMB would never approve of this, as it is so contrary to the process set out in the Planning Act.

Ms. Houser drew the Committee's attention to her letter dated 23 February 1999 (held on file with the Regional Clerk), and asked that the Committee support her suggested replacement wording for Modification 1, section 2. Mr. Hope confirmed staff did not have a problem with this wording.

Committee Chair Hunter noted Regional Shopping Centres were defined in the 1980's, with the "traditional mall" with traditional anchor tenants, etc. in mind. He asked the delegation why the Region should be protecting Regional Shopping Centres if they are not building a Regional Shopping Centre per se (i.e. the stores usually found around a Regional Shopping Centre are now being put in the Regional Shopping Centres). Ms. Houser pointed out that "retail" has changed and there has not been an enclosed Regional Shopping Centre built since the 1980's. However, this does not mean there are not Regional Shopping Centre uses (i.e. they have changed in format but not function). Retailers can better serve their customers in larger outlets without the high rents of internal malls. Ms. Houser stated her client wants to meet the needs of its tenants and consumers in a very innovative way, not in the manner of South Keys.

In response to questions from Councillor Hume, Ms. Houser explained her client's plans for the Kanata Regional Shopping Centre, noting instead of having a long strip building with a sea of parking and no emphasis on pedestrians (as at South Keys), Penex is proposing a "City walk" concept with strong pedestrian linkages, trees and landscaping. It will be so different from South Keys, they are not comparable.

Janet Bradley, Gowlings and David Kardish Ms. Bradley advised she and Mr. Kardish were representing a number of landowners in the Terry Fox Business Park and she provided members of the Committee with a copy of the map contained in the staff report (page 91 of the staff report) highlighted to show her clients' lands.

Ms. Bradley noted her clients' lands in sections A and C on the map, have, since the 1980's been zoned for a form of big box use (e.g. home renovations store, furniture store, appliance store and other similar uses) and since 1989 (when they bought their land) her clients have never applied for an amendment to the Official Plan or Zoning By-law nor have they appealed anyone else's.

As a result of the zoning that has been on this land, Ms. Bradley pointed out there is a Canadian Tire store, a Staples (formerly Business Depot), a bank and a large Ford Dealership. She noted the commercial node, both east and west of Terry Fox Drive, is functioning very well. The lands south of Highway 417 (where the Home Depot is located) have fully registered plans of subdivision and development is well under way with the services installed and the roads constructed. Ms. Bradley said LOPA 46 continues this ongoing plan. She offered LOPA 46 does not permit unrestricted retail development but rather it is quite rigidly controlled retail in that it would not allow any development under 20,000 square feet. Ms. Bradley pointed out stores such as Winners, Danier or Harry Rosen would not be located on this land; only large users of space such as Home Depot, which is 22,000 square feet. She noted the zoning in place prior to LOPA 46 allowed retail uses of less than 20,000 square feet.

Ms. Bradley went on to address the three areas of the staff recommendations that were most problematic for her clients. First, the increase in minimum size from 20,000 to 30,000 square

feet would restrict most of the big box stores (which are commonly between 20,000 and 30,000 square feet) such as the Future Shop. Second, the three year moratorium from the day of OMB approval which would likely be 2003. She noted the Regional interest has always been a form of protection for the Regional Shopping Centre, until that node reached 50,000 square metres. In the staff recommendation, there is no connection between the three year moratorium and the 50,000 square metres. The third issue is the site specific zoning that will be required for every single building.

The speaker noted there is only one policy in the ROP that applies to this circumstance; that is the policy that says until there is 50,000 square metres of retail space on the Town Centre lands there shall be no other 10,000 square metre retail facility. The intent of this was to have the Regional Shopping Centre up and running and not have other shopping centres of 10,000 square metres that would take away from the Regional Shopping Centre. Ms. Bradley offered that LOPA 46 took this Regional policy into account and she referred to page 85 of the staff report, Section 6.9.4.3 of LOPA 46. As well, on page 71, the 2nd last paragraph staff refer to the fact that “no other shopping centre may be developed”. The speaker offered that her clients have no interest in developing a shopping centre; they want to develop big box stores greater than 20,000 square feet.

Ms. Bradley referred to her letter dated 22 Feb 1999 (held on file with the Regional Clerk) to which was attached a letter dated 7 Jan 1998 to Regional staff, which confirmed advise from them that if her clients were to build four big box stores in a row (each under 10,000 square metres) they would not be considered a “shopping centre” as long as they were individual facilities, on individual lots.

In concluding her remarks, Ms. Bradley noted the Regional Shopping Centre is very close to reaching the 50,000 square metres and in fact, if the hotel that is being developed on this site were included, it would be well over 50,000 square metres of development. She submitted the Region no longer needs to protect the Regional Shopping Centre as it is now an identifiable node. In her opinion, it would appear the only reason for staff’s modifications to LOPA 46 is to encourage big box stores to locate on the Regional Shopping Centre site because they would be prevented everywhere else. Ms. Bradley questioned whether this was really what the Committee wanted to see happen. She asked that the recommendations of staff not be adopted but rather that LOPA 46 be approved as proposed by Kanata Council. In particular, Ms. Bradley urged the Committee not to approve the three year moratorium, the increase from 20,000 to 30,000 square feet and the site specific zoning by-laws.

Mr. Kardish, referencing comments made by Mr. Pollowin, noted he sold the land to the CIBC Development Corporation and they were well aware of Home Depot being located there when they purchased the land. He went on to point out the Coopers and Lybrand study, referred to by Mr. Pollowin, indicated over the next eleven years, there would be a demand for 1,973,000 square feet of new retail space in Kanata. As well, this study identified a 56 year supply of business park land in the City of Kanata and they felt the 70 acres of land to be designated for big box retail in the Terry Fox Business Park was justified.

In conclusion, Mr. Kardish stated his group of landowners has not objected to any other developers' actions in Kanata, but rather throughout this process, they have been forced to defend themselves in a "rear guard action". He felt this was not fair nor reasonable given the over one million dollars that has been invested in services for these lands, based on the belief these landowners had certain rights of development.

Peter Vice, Vice and Hunter, advised he was appearing on behalf of his client who owns 22 acres in the Terry Fox Business Park (14 proposed for retail and 8 acres for business park) and referenced as section B on the map on page 91 of the staff report. Mr. Vice indicated he supported the statements made by Ms. Bradley and stated his client would be satisfied if the submissions made by Ms. Bradley were acted upon by the Committee.

Mr. Vice then advised his client entered into an agreement with the Salvation Army for this land, which was to be the west campus of the Grace Hospital. When the Grace decided not to proceed, his client optioned the lands from them. At that time, Kanata was dealing with LOPAs 32 and 36; if LOPA 36 were in place all 22 acres of Mr. Vice's client's land could have retail on it. Mr. Vice also pointed out it was Loblaws that appealed LOPAs 32 and 36 and the implementing zoning by-laws and neither Mr. Pollowin's or Ms. Houser's clients were party to that.

Mr. Vice felt the position of Kanata Council to be the most reasonable position and offered there is no need for a 3 year moratorium, the site specific zoning by-law or the increase from 20,000 to 30,000 square feet. Mr. Vice noted the staff report only refers to the Coopers and Lybrand report but there were a number of other studies that were undertaken and Kanata looked at all of these. With respect to a comment made by Mr. Pollowin regarding his contention that Ms. Bradley and Mr. Vice would argue there was "no Regional Interest", Mr. Vice stated in fact there is a Regional interest. That being the Regional Shopping Centre, however, it has attained 50,000 square metres and all of the other matters are of local interest.

In response to questions from Councillor Hume, Mr. Vice offered that having the requirement of a minimum size of 20,000 square feet for retail development in the business park would address Mr. Pollowin's concerns about the two sites competing for the same tenants. With leave of the Committee, Mr. Pollowin responded to this and stated the 20,000 to 30,000 square foot requirement would not address the concern of Hazeldean Mall with respect to the poaching of tenants and, by way of example, noted Zellers is 100,000 square feet.

Having heard from all public delegations, the matter was returned to Committee.

Referring to comments made by Mr. Vice that the position of Kanata Council was most reasonable, Councillor Munter felt it important to note that Kanata Council did not have a position. They basically were worn down by all of the conflict, disregarded the advise of their staff and consultants and chose to send LOPA 46 off to the OMB and let them make a decision on it. Councillor Munter opined that Regional staff, in their proposed modifications, were

trying to put in place some ground rules to protect the Regional interest, as well as good planning principles.

The Councillor felt it important for the Committee to keep in mind that Hazeldean Mall, is an established shopping centre in the Kanata Town Centre and pursuant to Section 4.7.1 of the ROP, protecting this retail concentration is important and in the Regional interest. As well, Terry Fox Drive, which is a Regional Road, is unable to handle the traffic it has now. If more big box retail stores are located here, the Region will be asked to put more money in the budget to expand Terry Fox Drive. This is not in the Region's 10 year plan and some other project would have to be displaced to accommodate this.

Councillor Munter noted the Terry Fox Business Park has extraordinary economic development potential and he felt limiting this potential marginally for 3 years in order to accomplish some other very important planning goals would not be an unreasonable request. He indicated he would be moving an amendment to reinstate in the report, the moratorium for three years on "large retail warehouses" and he urged the Committee to support his amendment and the staff recommendations.

Councillor Hume stated he had sympathy for Hazeldean Mall but he said he was not interested in restricting development or taking away someone's rights so that big box retailing can go in the Regional Shopping Centre. He questioned what could be done to protect Hazeldean Mall without implementing punitive measures. Mr. Hope urged the Committee to consider the package of modifications proposed by staff which he felt would help protect Hazeldean Mall. He said he did not view the site specific zoning by-law requirement as a punitive measure. As well, he expressed concern about the proposal for a holding zone, which could be argued is an abuse of the appeal process.

The Committee then considered the motions before it.

Moved by A. Munter

That the report be amended to reinstate the moratorium for three years on "large retail warehouses" as originally presented in the text of the report.

LOST

NAYS: M. Bellemare, P. Hume, W. Stewart, G. Hunter....4

YEAS: A. Munter....1

Councillor Stewart agreed to move the wording suggested by Ms. Houser in her letter of 23 February 1999 with respect to Modification No. 1, Section 2.

Moved by W. Stewart

That Modification No. 1 Section 2 be amended by replacing it with the following:

Implementing zoning-by-law amendments shall establish standards for a Retail Warehouse, Large Retail Warehouse and Planned Retail centre, including minimum and maximum lot area, parking and loading requirements as well as gross leasable area, building height, setback and landscaping provisions, but, subject to subsection 6 herein, site specific zoning by-law amendments shall be required to permit such uses .

CARRIED

(P. Hume dissented)

The Committee then considered the staff recommendations as amended.

That Planning and Environment Committee recommend that Council approve Amendment 46 to the City of Kanata's Official Plan as modified by the Approval Page attached as Annex 1 (as amended by the following) and that staff be directed to issue the required "notice of decision":

1. That Modification No.1 Section 2 be amended by replacing it with the following:

Implementing zoning-by-law amendments shall establish standards for a Retail Warehouse, Large Retail Warehouse and Planned Retail centre, including minimum and maximum lot area, parking and loading requirements as well as gross leasable area, building height, setback and landscaping provisions, but, subject to subsection 6 herein, site specific zoning by-law amendments shall be required to permit such uses .

CARRIED as amended

(P. Hume dissented.)

Tim Marc, Manager, Planning and Development Law, noted because of the Ontario Municipal Board mediation beginning on 2 March 1999, staff would be taking the unusual position of taking forward the position of Planning and Environment Committee as the position of the Region. Mr. Marc stated staff felt it was more important to allow this item to go to Council in regular course and be considered in full on 10 March 1999, as opposed to rushing it on to Council's budget meeting on 24 February 1999.

ONTARIO MUNICIPAL BOARD UPDATE LOCAL OFFICIAL PLAN
AMENDMENTS 45 & 46 CITY OF KANATA

-Planning & Development Approvals Commissioner's report dated 28 Jun 99

Andrew Hope, Senior Project Manager, Development Approvals Division provided an overview of the staff report.

Councillor Legendre questioned why the Committee should be concerned whether the gross leaseable area (GLA) for retail warehouses in Kanata is 20,000 or 30,000 square feet. Mr. Hope indicated some believe the higher the number, the more protection afforded to the Regional Shopping Centre (RSC); while others are of the opinion the higher the number, the less likely the RSC will achieve the critical mass expected without the help of a retail warehouse on the RSC site itself.

Mr. Hope explained staff arrived at the 30,000 sq. ft. figure honestly, believing there had been an Ontario Municipal Board (OMB) decision on a development in the Region of Durham (the "Invar" decision). When staff further considered the implications of that decision, they came to the conclusion it did not say precisely what was first thought and are now prepared to agree that 20,000 sq. ft. is a suitable limit for a retail warehouse. He said this does not mean a retail warehouse could not exceed that but rather it is the minimum size for retail warehouses in the City of Kanata business park. If the size of a retail warehouse were to drop below 20,000 sq. ft. then uses which could go into the Regional Shopping Centre, would be going in the business park and this would not be conducive to the maturation of the RSC.

Responding to further questions from Councillor Legendre, Mr. Hope advised staff, in recommending that retail warehouses have a GLA of 30,000 sq. ft., were attempting to create an environment that would lead to the development of the RSC and achieve the objectives in the ROP. He said at 30,000 sq. ft., the retail warehouses would be of a size which would not go into the RSC and staff were of the opinion a defense could be advanced for it. Mr. Hope advised initially staff, in their haste to prepare the report for Committee due to the impending OMB mediation session, had not thoroughly read the Invar decision, but had relied on the opinion of the Region's retail consultant. After a more in-depth review of the Invar decision, staff were less certain of how defensible that argument would be and are now prepared to support a GLA of 20,000 sq. ft. He noted as well, staff have subsequently received a number of similar opinions from credible retail consultants hired by other parties to the OMB hearing.

At Councillor Legendre's request, Alexia Taschereau-Moncion, Solicitor, Regional Legal Department advised the Invar decision initially seemed to reflect a higher proportion than 20,000 sq. ft. however, upon reading the decision in greater depth, it did indicate that 20,000 sq. ft. was a suitable amount of GLA. For this reason, and after entering into the OMB mediation session, staff are recommending the GLA be changed. She confirmed the Invar decision related to a municipality similar in size to the Region.

Councillor Munter noted staff had previously advised that an operation of 20,000 sq. ft. should not go in the business park, but rather it should go in the RSC. He felt staff, in recommending the GLA of 20,000 sq. ft. were now “caving in”. Mr. Hope disagreed staff were caving in but rather were trying to forge a compromise acceptable to all concerned. He felt it would not be a constructive use of staff time to continue to argue for the 30,000 sq. ft. when they were not confident the OMB would support it, based on the precedent of its previous decisions.

Michael Polowin, Solicitor for Sun Life Assurance Company. of Canada, owners of the Hazeldean Mall and for CIBC Development Corporation owners of land in the Terry Fox Business Park. Mr. Polowin expressed support for staff’s position. He said his clients had no particular position with respect to the 20,000 sq. ft. GLA versus the 30,000 sq. ft. however, he was before Committee to ensure there were no changes to the wider issues contained in the modifications approved by the Committee in February.

Robert Howe, Solicitor, Goodman, Phillips & Vineberg appeared before Committee on behalf of Pen-Ex Kanata Limited the owners of the vacant portion of the Regional Shopping Centre in Kanata. Mr. Howe informed Committee his client had no objection to the staff recommendation. Mr. Howe reserved the right to address Committee, should any portion of the Amendment previously approved by Committee, be reopened.

Councillor Munter advised he would be dissenting on Recommendation 1. He said although the actions of all parties to reach a compromise were commendable, he felt the goal of channeling the smaller retailers into the Town Centre was still very important.

The Committee then considered the staff recommendations.

- 1. That the Planning and Environment Committee delete Modification No. 2 from its 23 February 1999 recommendation to Council on Amendment No. 46 to the City of Kanata’s Official Plan.**
- 2. That Planning and Environment Committee continue to defer Council consideration of the recommendations on Amendment No. 46 to the City of Kanata’s Official Plan until after the Ontario Municipal Board has concluded its mediation process.**

CARRIED

(A. Munter dissented on
recommendation No. 1)