

July 9 delegation to the COTW on the "Callum Opinion" by David Bell

Thank you for accepting my delegation.

I am David Bell, speaking to you as a resident of 511 Charlotte St in Niagara-on-the-Lake, and as a core team member of SORE

I would like to address the legal opinion prepared by Callum Shedden and referred to as the Callum Opinion in the agenda of June 12th MHC meeting.

The stated purpose of the opinion was "to address the role of the Municipal Heritage Committee ("MHC") in Site Plan Applications in the Town of Niagara-on-the-Lake. It seems that there is confusion as to the role of the MHC in regard to the proposed development of the Randwood Estate."

The author then reviews the Planning Act, the Towns Site Plan Control By-law, and the Municipal Heritage Committee By-Law to come to the conclusion that despite the language in the Randwood site specific OPA51 passed by Council in 2011, which explicitly gives final approval over the design of any buildings on the Rand Estate to the Municipal Heritage Committee, the MHC does not have that authority. In other words, despite the crystal-clear language in OPA 51, Staff and Council appear to have made a "mistake" in 2011.

I'm not a lawyer, and that may in fact be a correct technical legal interpretation of OPA 51, but that conclusion raises a few obvious questions that SORE is asking itself and that I'd like to think Council is also asking:

1. Why did your predecessors in 2011 specifically put these words in the Romance Inn OPA?
2. What legal advice did the Town get at the time? And from whom? Did you have the same lawyer then?

Even if the Town did not get a legal opinion in 2011 before constructing OPA51, Council clearly had a reason for giving the MHC this responsibility. What was it? Several of you were on that 2011 Council. You must have some idea!

I am going to suggest the Council of 2011 recognized the controversial nature and importance of the proposal and the significance of the Rand Estate, and the inevitable interplay with and potential impact on a very significant heritage resource, so they wanted a qualified expert group to provide oversight of the final

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design of anything built on Randwood. If I'm wrong and you have another plausible explanation, please tell us tonight.

So today, while legally council may be able to substitute its judgement for that of the MHC, why would Council do that, having decided just 7 short years ago that it would defer to the MHC with respect to any building on the Rand Estate?

I respectfully submit to you that it was an understood and essential aspect of the conversion of the Rand Estate from estate residential to commercial use in 2011 that the MHC would be the ultimate safeguard of this precious piece of our cultural heritage. We further submit that Council should insist that the applicant get the MHC on-side with whatever it is proposing for the Rand Estate before it comes to this Council for approval. That would respect what everyone in the Town including this Council understood would be the process in 2011, rather than hiding behind a legal opinion now. And there would be no legal issue and no breach of trust with the community.

To support this line of thinking I will refer your attention to the HOLD provision that was put on the Zoning amendment in 2011. The justification of the Hold on the bylaw was addressed in CDS-11-099A Section 5. It sheds some interesting light on the common understanding at that time and I quote parts of Section 5:

5 Holding Zone and Site Plan Approval

The development approval process is complex.It is usual that on large development projects such as is being proposed for Randwood, site plan application and approval follow after Official Plan and Zoning By-law amendment applications are considered it is appropriate for site plan review and approval to follow after a decision has been made on the Official Plan and Zoning By-law amendments.

Nevertheless, to address a number of the public's concerns regarding the prematurity of considering a zoning by-law amendment without the full knowledge of the all site plan requirements and details, the draft zoning by-law amendment has been revised to place the lands in a Holding (H) Zone and provides that the Holding (H) Zone will not be lifted until such time as the applicant has received site plan approval from the Town.....

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.....The use of the Holding (H) Zone provides assurances that the zoning approval is not a fait accompli and final zoning approval will not take place until a further by-law is passed by Council to remove the Holding (H) Zone, which can only occur after the applicant has received site plan approval from the Town of Niagara-on-the-Lake.

In 2011, Council was aware this was a hugely controversial and important issue and they were trying to find a way to move this project forward and yet address the multitude of public concerns which included the impact on such an important heritage resource.

Agreements were made with the residents and put in place to this end. The HOLD agreement and the explicit provisions of OPA 51. This “Callum Opinion” taken alone seems to suggest that it is Staff’s position that Staff and Council should not honour the intent of those agreements made in 2011.

Is that Council’s position? Many of you were sitting at the table then. It's time for you to speak up.

Does Council wish to disregard the explicit agreement with the community in 2011 or does Council wish to honour the previous agreements made with the applicant, and the community?

I and SORE ask Council to do the following:

1. Through a motion, state that Council acknowledges the intent of the Romance Inn OPA and the Hold provision on the zoning bylaw for the Randwood property.
2. Direct staff to ensure that the spirit of the following OPA51 provision: *“approval of the final design and plans of any additions or new buildings shall be subject to approval by the Municipal Heritage Committee”* is respected by ensuring that the MHC is provided with an adequate opportunity to review and consider the Two Sisters resort proposal and provide its opinion to this Council before Council makes any decision as to whether it constitutes good planning or not.

Thank you.