

41 Bellwood Avenue,  
Ottawa, ON K1S 1S6,  
December 27th, 2015.

Ms. Heather Conklin,  
Early Resolution Officer,  
Ombudsman Ontario,  
Bell Trinity Square,  
483 Bay Street, 10th Floor, South Tower,  
Toronto, ON M5G 2G9.

Re: Ontario Municipal Board Case Number: PL141340.

Dear Ms. Conklin:

As further to my letters of June 22nd and August 4th, Ontario Municipal Board Member Richard Makuch dismissed my OMB appeal on November 17th, along with those of the other four Appellants. He will not permit us to proceed to a full hearing. I have enclosed a copy of Mr. Makuch's document, and wish to appeal his decision to the Ombudsman Ontario.

I have not received a reply to my July 31st letter to the Chair of the OMB, asking them to reject the City of Ottawa's Notice of Motion to dismiss. It was also accepted into evidence on the final day of the August 16th - 19th pre-hearing, but does not appear in "The materials before the Board" listed by Mr. Makuch on pages 7 & 8 (20). He likewise doesn't include my July 24th letter to the City's Senior Legal Counsel, Timothy Marc, which I sent the Chair a copy of. I included copies of both with my last letter to you, but have enclosed them again.

In his Notice of Motion, Mr. Marc refers to the Planning Act, R.S.O. 1990, c. P. 13, as amended, Subclauses 17(45)(a)(i) and 34(25)(a)(i). These state that the OMB can dismiss an appeal without a full hearing if "the reasons... do not disclose any apparent planning ground" which the Board can consider either one way or the other. However, he presents his rationale for early dismissal less specifically as "the appeals do not disclose a basis upon which approval of the OPA and Zoning By-law could be refused" (8(21a)), which is far more open to interpretation.

Mr. Makuch does not acknowledge or respond to our individual planning grounds other than making the blanket statement that "The Board... found that the notices of appeal contain concerns that were clearly inaccurate... were not such that tests were met... (and) that it was not good enough in respect of certain issues to simply raise apprehensions." (22(65)). He concludes that "the Appellants have failed that they have raised legitimate land use planning grounds upon which the Board could rely to allow their appeals." (23(70)). Mr. Makuch does not provide any real evidence or arguments to support his claims. I would very much like to



know what he bases them on.

Unfortunately, we can't prove what we said or didn't say during the June 3rd - 4th and August 17th - 19th pre-hearings: Mr. Makuch told everybody that photography and recording were forbidden, and that no transcripts or records would be kept. It's as if our testimony never happened. (Larry McDermott's presentation on August 18th was particularly good. He is Algonquin, and was Mayor of a town. He engaged them using their own language, citing requirements in the Planning Act and other legislation that had not been met.)

Mr. Makuch concentrates more of arguing the issues of land title, which "is not relevant with respect to the planning considerations that the Board must address its mind to" (22(66)), and consultation. On page 20 (60) where he specifically addresses my appeal, he acknowledges my concern that the lands "are considered a significant historical district where First Nations have a significant and particular interest and that any redevelopment of the islands should be focused on transforming them into a national park system in line with the vision of the late Elder William Commanda." He does not dispute this as a planning matter, which is how I presented it. "He also alleges a lack of proper consultation with the public and that expressions of opposition were not considered.... The Board notes that not getting what one wants does not necessarily equate to a lack of consultation... (and) fails to see how the consultations that took place.. could be considered to be inadequate as it was not provided with any basis upon which it could reach that conclusion." I provided a basis, which I will describe.

I didn't speak much on the issue of consultation with the Algonquin, leaving that to more able Appellants. However, I would like to give you some information: The Ottawa River Valley watershed, atraddling Ontario and Quebec, is unceded Algonquin territory. The River is its centre, not a dividing line. There is one Algonquin First Nation in Ontario, and nine on the Quebec side. (There are also many non-Status Algonquin who are unaffiliated with a Reserve.) The Windmill Development Group actively lobbied the two closest First Nations, Pikwakanagan at Golden Lake in Ontario and Kitigan Zibi at Maniwaki in Quebec. They obtained letters of support from the Chief of Pikwakanagan and the Algonquins of Ontario, an unincorporated organization recognized by the Federal and Ontario Governments as having authority to negotiate Ontario land claims. On pages 14 - 15(35 - 37), Mr. Makuch deems that engagement with the AOO satisfies all requirements for consultation with the Algonquin.

The Algonquins of Ontario do not represent all Algonquin on this unceded territory, and their legitimacy is questionable. I have enclosed an analysis by Dr. Lynn Gehl, who is Algonquin and wrote her PH.D. thesis on the Ontario land claim process. Mr. Makuch asserts on page 16(42) that "the negotiations between the Federal Government, Provincial Government and Algonquins are focused on lands that are under federal jurisdiction/ownership and do not include lands that are privately owned at this time." He does not explain that the AOO are prohibited from claiming private lands under their mandate.



Mr. Makuch assures us on page 16(40) that "the proposed development has had input from the AOO and the Algonquins of Kitigan Zibi." Kitigan Zibi does not support it. All nine Quebec Algonquin First Nations oppose Windmill's project, and their resolution was approved on November 19th by the Assembly of First Nations Quebec - Labrador. This was seconded by Kitigan Zibi's Chief, Jean-Guy Whiteduck. It was subsequently adopted by the national Assembly of First Nations on December 8th. I have enclosed copies of the Chiefs' resolution and related media articles.

On the second page of the December 9th APT National News report, Jeff Westeinde of Windmill is quoted as saying "We are committed to ensuring there is a strong long-term benefit to any Algonquin community that want to participate with us.... There are several that do. Those that don't want to engage with us we respect their view and let them be.... We are a private developer developing private land." This is not consultation. Windmill has been telling Algonquin that they will develop as they please, but that people who support them will receive some financial benefit and recognition. They then maintain that they have the Algonquin on-side. Windmill is using standard divide & conquer tactics, in collaboration with the City of Ottawa and the OMB. Mr. Westeinde adds that "The Crown or no level of government is a partner in this development." He neglects to mention that some of the area is Crown Land, which the Federal Government is negotiating to transfer to them.

The shoreline, islands and waters of the Ottawa River between the Chaudière Falls and the Gatineau & Rideau Rivers have been an important Indigenous cultural landscape and sacred meeting place since time immemorial. This isn't just a fable or somebody's say-so. An archaeological study, "Below the Falls: An Ancient Cultural Landscape in the Centre of Canada's National Capital Region," will be published in the upcoming issue of the Canadian Journal of Archaeology, Vol. 39, No. 2. I have enclosed an announcement from the December 2nd Ottawa Citizen. Douglas Cardinal's Counsel, Michael Swinwood, presented an advance copy of the manuscript as evidence during the August pre-hearing. It isn't in "The materials before the Board," but Mr. Makuch responds on pages 15 - 16(39) that it "identifies the north shore of the Ottawa River between the Chaudière Falls and the mouth of the Gatineau River downstream... (and) that the lands under OPA 143 and Zoning By-law 20140395 are not in any way adjacent to the falls. The hydro lands abut the falls." I have enclosed two maps. Energy Ottawa may technically be directly adjacent to the site of the Chaudière Falls, which were effaced by the construction of the Ring Dam in 1908, but it is all Chaudière Island. Windmill certainly understands that they are in close proximity. I have enclosed a copy of an April 23rd, 2014, article from the Ottawa Citizen. They promise that they will, "for the first time in a century, give the public a close look at the spectacular Chaudière Falls, ... considered sacred to the Algonquin people... Windmill has plans to build a viewing platform at their edge with patios and restaurants located in nearby stone heritage buildings." A more recent one, from May 30th of this year, page 61, is headlined "Living by the Chaudière Falls. Windmill launches



condo sales on the former Domtar lands." There are more.

In Canada, we have one law for Indians and another for everyone else. The Supreme Court agrees that this is unceded Algonquin territory. If you or I had squatters on our land, we have access to due process to have them removed. Yet the Algonquin can't even get their sacred waterfall and islands back. I spoke with a James Bay Cree lady, whose ancestors also came here to meet and trade. She said "Look at all the churches, synagogues and mosques out there. Aren't we entitled to our church? Look at all the embassies out there. Aren't we entitled to our embassy?" Our Government has ratified the United Nations Declaration on the Rights of Indigenous Peoples. In Article 11(1), "Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites." According to Article 12(1), "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites." This was pointed out to Mr. Makuch, who replied that he was under no obligation to apply it.

As there are no transcriptions of the pre-hearings, I will relate what I said on August 18th. The first thing I did was ask Mr. Makuch if he was a Planner. He told me that he was not there to answer questions, but replied "no." I then objected to the fact that there would be no transcripts or records: "This is appropriate for a pre-hearing, which is informal, and where the parties just introduce themselves, establish protocol, and set a time for the actual hearing. However, we are considering the City's Notice of Motion, which is a legal matter. Transcripts and records must be kept." Mr. Makuch told me that they aren't required, but that I could have made arrangements for them in advance and paid the cost. (This was news to me.)

I protested that the general public have not been adequately informed. A basic example is that most don't know that Windmill's proposed development site is on Chaudière and Albert Islands. People have always identified the entire area as Victoria Island, which is properly adjacent and downstream. The government has told us this: I produced a photograph of the National Capital Commission "Victoria Island" sign that one encounters while crossing the river through the old Domtar works. It doesn't indicate anything else. To prove where it is located, I showed another taken from further back, with Windmill's "Zibi" advertising painted on the building just across the road behind it. When individuals object to development on Victoria Island, Windmill has replied that they are only building on Chaudière and Albert Islands. This confuses people, who aren't sure where they are. I mentioned to Mr. Marc before the proceedings that I wasn't aware that they existed before. He said that he knew about Chaudière, but not Albert. (The Victoria Island sign has since been removed.)



I described how Windmill and the City have been encouraging support for the development by promising everybody that they will finally be able to see the Chaudière Falls. They are presenting it as if they will be the spectacular natural wonder that they once were, rather than just the overflow from the 1908 dam. (From the April 23rd, 2014, Ottawa Citizen article that I already quoted, they "have long been locked behind closed gates and industrial buildings... (and) were at one time the second most-popular tourist site in Ontario, after Niagara Falls.") There are people who know about the Ring Dam who believe that it will be removed as part of Windmill's project. This isn't in the plan. People are being misled. They are entitled to straight information.

I just noticed on the second page of the Citizen report that they also misrepresent the previous zoning as "industrial," when it was Parks and Open Space.

I argued that, apart from the Algonquin, the general public haven't been properly consulted. Windmill held two public events to promote their development, on December 11th, 2013, at the Canadian Museum of Civilization and June 24th, 2014, at the Canadian War Museum. When the City of Ottawa Planning Committee met on October 2nd, 2014, to discuss the proposal to re-zone Chaudière and Albert Islands from Parks and Open Space to Downtown Mixed Use, it was announced that these were the City's official public consultation meetings. This surprised me, as they hadn't been advertised as such. The speaker stated that attendance had been about 900 and 200 respectively, and that people therefore supported Windmill's plans. This doesn't follow. No votes were taken. (Attendees were invited to fill out comment sheets. Very few were returned, and the results were mixed.)

Mr. Makuch refused to accept Douglas Cardinal's professional opinion affidavits as evidence, because he is also an Appellant and therefore biased (21(62)). I asked him to please apply the same standard to Windmill. They are the developer, and can't hold valid public consultations on behalf of the City. They are there to sell their project, and have no interest in considering opposition or alternatives. The only City of Ottawa consultation was the Planning Committee meeting. From their own records, 42 people addressed the assembly, 38 against re-zoning for development. They also received "about 72" written submissions in opposition. The Appellants were given copies of Windmill's comment sheets, but not these. We are all lacking an important part of the record. Mr. Makuch told me that I "should have cross-examined the City Planner." I replied that I expect to receive all the evidence as a matter of course.

Also on the subject of information, every Appellant brought up the issue of land title, including me. On June 3rd, City Planner John Smit, under cross-examination by Douglas Cardinal's Counsel, Michael Swinwood, stated that ownership of the land has no relevance in the City's decision to re-zone. One doesn't have to be an owner to request a zoning change. (Mr. Makuch also indicates



in 22(66) that it isn't a planning concern.) I maintained that it is very important to know the ownership. The one legal certainty we have is that the land is unceded Algonquin territory. The Supreme Court says so. Mr. Smit made statements regarding ownership in his affidavit and on June 3rd that are contradicted in Jeff Westeinde's affidavit and a letter that I received from the Ministry of Public Works and Government Services Canada. When he was cross-examined, Mr. Smit explained that he repeated what he had been told. I asserted that we are all working on hearsay, and that we all need to know exactly what we are dealing with. Part of it is Crown Land, which doesn't belong to Ottawa. It belongs to Canada, and the Federal Government is supposed to administer it on behalf of all Canadians. The City lacks jurisdiction. I want to see the old Crown hydraulic leases, and Domtar's original land deeds. If Domtar can't provide their proof of ownership, it is still Crown Land.

I told Mr. Makuch that I presented planning grounds in my OMB Appeal, and anyone who says otherwise isn't telling the truth. I also outlined these in my May 31st response to the City's Notice of Motion. (I have enclosed a copy.) I reminded him that Mr. Marc withheld my letter from the June pre-hearing, and I had to fight to get it into evidence. Mr. Makuch did not dispute my statements.

I asked Mr. Makuch if democracy is a planning ground. Mayor Jim Watson had invited people to submit ideas on a City website for how Ottawa can celebrate the 150th anniversary of Confederation. I produced the June 29th, 2015, Ottawa Citizen report of the results, and have enclosed a copy. The most popular suggestion was to free the Chaudière Falls and have Chaudière and Albert Islands as an eco-park. The on-line provision didn't last long, to the disappointment of those who wanted to add their support. I explained that many people over the years, both Indigenous and non-Indigenous, have been waiting for the industrial use to end, so the site can be reclaimed as parkland. The National Capital Commission under Jean Pigott wanted this in the 1980's, but the pulp & paper mills were still in operation. City of Ottawa politicians and Regional Chair Bob Chiarelli wanted the Chaudière Falls freed in 1998. (I have enclosed a copy of the newspaper article.) The City Council subsequently zoned Chaudière & Albert Islands as Parks and Open Space. They planned to have them as parkland. Such decisions aren't made on a whim. There is also the vision of Algonquin spiritual leader William Commanda for undamming the Falls, re-naturalizing the two Islands, and building an Indigenous peace and healing centre on Victoria Island. When Domtar closed the mills in 2007 and then put their interests up for sale, the NCC approached the Treasury Board for funding. They were turned down.

During cross-examination by Michael Swinwood on June 3rd, Mr. Smit declared that "None of the Appellants can provide valid planning objections because none of them are Practicing Professional Planners." He dismissed Douglas Cardinal, stating "He's an architect, not a Planner." I reminded Mr. Makuch of this, and said "You didn't pull him up on this absurdity. One doesn't have to be a Planner to



have planning concerns, in the same way that you don't need to be an architect to design a building or a lawyer to argue a legal case. Sir Christopher Wren, who designed St. Paul's Cathedral in London, was not an architect. This wasn't his field. If you follow his logic, City Councillors aren't qualified to vote on planning issues unless they are also Planners. By extension, if you buy into the City's line, you must excuse yourself because you are not a Planner." He was very angry with me. I immediately stated "I am only showing the absurdity of this."

Mr. Smit also declared on June 3rd that "None of the Appellants have paid for an expert opinion by a Practicing Professional Planner." I reminded Mr. Makuch of this, and said "I can do better than that." I showed him my original edition of Jacques Gréber's Plan for the National Capital, which I had already referred to in the June pre-hearing. (I have enclosed the pertinent copies.) It is the Federal Government's Master Plan for the long-term growth and development of the capital region. It gives us Confederation Square, the Greenbelt and the Queensway, among other details. I read from page 230 that "The most effective improvement will be the central park at the Chaudière Falls" once the "heavy and obnoxious industries" are gone. I explained that "this isn't just an opinion. It's a plan. It has been commissioned, paid for, and implemented. It hasn't been abrogated. When you speak to City Planners about Gréber's Plan, they hedge and say they don't really follow it any more. However, new developments have been negotiated within its framework in the past. When anyone proposes building on the Greenbelt, it always comes to the fore."

From 21(62), "The Board finds that the appeals, while well intended, consist of mere apprehensions raised by the Appellants that are not worthy of the adjudicative process of the Board... Appellants have an obligation at the time of filing their appeals to retain the necessary experts to support these. This was not done." I figure that Jacques Gréber, having been commissioned by Prime Minister Mackenzie King, is a credible expert.

I informed Mr. Makuch that "from the Introduction, Gréber's Master Plan was dedicated as Canada's National War Memorial to the Second World War. His park at the Chaudière Falls is its centre. I can't imagine a more fitting centre for a war memorial than this Indigenous sacred and peaceful meeting place that has been used for 5,000 years. It is a place without War, which might be unique in the world. It's the ideal."

I spoke of these and more, and had prepared copies of supporting documents to submit. Mr. Makuch refused to accept any of my evidence, stating that I "should have had it in before." I replied that I was responding to what their lawyer had said the previous day, and strongly reminded him that "a pre-hearing is supposed to be an informal process."

I had intended to discuss the details of my July 31st letter to the Chair of the Ontario Municipal Board, but didn't get to it.



Michael Swinwood entered it as evidence on August 19th. Again, it doesn't appear in "The materials before the Board."

When I spoke on June 3rd, I told people that an OMB Hearing is unnecessary, as there is a compromise solution which serves everybody's needs. I had proposed it to Jonathan Westeinde of Windmill in an e-mail on February 9th, 2015, and submitted a copy. (I have enclosed another.) This was accepted as evidence, and further copies were circulated. It likewise isn't listed in "The materials before the Board."

As I noted towards the beginning of this letter, Mr. Makuch concludes that "the Appellants have failed that they have raised legitimate planning grounds." It's interesting that he doesn't say "apparent planning grounds." Shouldn't our legitimacy be arbitrated in a full hearing? Mr. Makuch isn't a Planner, and by his own definition lacks the expertise to make such a judgement. How can the Board concur, especially when they don't have all the information before them? Mr. Makuch has controlled and limited the documentary evidence, and they don't have transcripts of our arguments in defence.

It is inconcievable that all the Appellants couldn't come up with at least one apparent and legitimate planning ground. I know that I presented a few, and I have a right to a fair and impartial OMB Hearing. We have a battle of visions here, and need to determine which is for the greater public good.

When the Ottawa City Council voted on October 8th, 2014, to re-zone Chaudière and Albert Islands, Councillor Diane Holmes, whose Ward they are in, dissented. I have enclosed a copy of the Ottawa Citizen report which gives some of her reasons. She has since retired from politics. I have attached e-mails that we exchanged last June, where she states her views on the conduct of the City's Planning Department. They have a culture of favouring development and disregarding public opposition. You can see this in your File No. 050967 regarding my 1987 - 1988 complaint, which you kindly sent me a copy of.

I will be very grateful for your help.

Yours sincerely,



M. Lindsay Lambert.