

Developer Exploits Current Zoning

BPE Development (BPE) has a proposed commercial development at 2285 Battersea Road in Glenburnie. Details of the project can be found at <https://www.2285battersea-unityproject.ca/>. Work has been going on for months, much to the consternation of local residents.

The current zoning of this property is governed by the Kingston Township Zoning Bylaw 76-26; an integral part of the City of Kinston's Official Plan. This property is zoned A2 (General Agricultural Zone). The BPE proposed commercial development is not consistent with any of the 13 non-residential uses in this zoning as detailed at section 10 of the bylaw.

Discussions with the City Planning Department indicate that one can apparently dig until their heart's content on property that is zoned A2. The City Planning Department also indicates that they have no legal alternative but to approve qualified permit applications under the current zoning, notwithstanding that they have a sound understanding of what this proposed commercial development project is and that it will require rezoning and an amendment to the City's Official Plan. While this legal interpretation is hard to fathom, it allows the developer to conduct a significant amount of work prior to making an application for re-zoning and an Official Plan amendment.

BPE has been doing extensive work on the two adjoining properties registered in its name since early spring, having broken the noise by-law on numerous occasions by commencing work too early. There are at least four major excavations underway or completed: one for the foundation for the relocation of the small barn (building permit has been issued); two others in the area of the house; and another at the southeast corner of the property for a retaining pond. The City also issued BPE an entrance permit for an entrance for a "residential driveway" from Unity Rd. The rock breaking for this entrance has been completed, but the "driveway" has yet to be completed.

BPE has presented the excavations in the area of the house as preparation for "an addition to the house". This is a fabrication. A review of the project plan clearly indicates that they are excavations for new construction for the project. Similarly, the "residential driveway" is another fabrication. This is intended to be an access road to be used for deliveries and access to staff parking. City staff seem willing to accept these fabrications, thus allowing the developer to exploit current zoning to do as much work as possible before even submitting an application for rezoning and Official Plan amendment.

Doing all this preparatory work is a significant financial risk to the developer; one that BPE has clearly acknowledged. It would seem that BPE and its financial supporters have deep pockets. What hasn't been acknowledged though is the risk to the property and the neighbourhood. Local residents have suffered through excessive noise and increased construction traffic throughout the summer and fall and the property has transformed to the point that it is hard to see how it might revert back to its previous state as farm house and hayfield.

Water is a significant issue in this area. Schedule 11A of the City's Official Plan identifies this area as an area of moderate to very high ground water sensitivity. Schedule 11B indicates that the area is highly vulnerable from a source water protection perspective.

BPE has drilled three new wells on this site, well below the depth of most other wells in the area. There have been three pump tests conducted to date, but the full results have not yet been made available. Notwithstanding, there are at least three properties within the general area of this site that have seen a significant change in the chemistry in the water from their wells since the BPE wells were drilled.

Most recently, BPE submitted an application to move the lot line between the two lots. The lot line adjustment is proposed to facilitate an addition to the existing single-detached dwelling. The application also states that there will be “no change in land use”. Once again we have a fabrication being presented when the applicant’s real purpose is readily available for all to see on the project website. Not surprisingly, there were a number of objections submitted to the consent application requiring that it be considered at a Public Meeting before the City of Kingston Committee of Adjustment. That meeting took place this past Monday, March 19th. Those in opposition to the application were present, but the applicant’s representative was late, so the matter had to be referred to a later date – a waste of time for those who were present to make their objections and a sign of contempt on the part of BPE to the Committee of Adjustment.

BPE has, and continues to exploit the current zoning of this property to conduct as much preparatory work as possible for its project. Sadly, City staff, either wittingly or unwittingly, continue to accept BPE’s fabrications with respect to ongoing work instead of accepting BPE’s stated intentions for this property as presented on the project’s website. City staff can and should do better.

BPE “talks the talk” of being a good neighbour, but certainly is not “walking the walk”. Notwithstanding the concerns of the community, BPE continues to exploit the current zoning to conduct as much work as possible on this development prior to being constrained by the formal Development Review Process. Sadly, the City lets them do that.