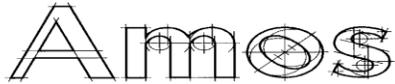


Appendix “M”
Janet E. Amos Letter dated January 29, 2008



January 29, 2008

Mr. Ralph Scheunemann, P. Eng.
Planning Engineer, Engineering Department
City of Barrie
70 Collier Street
P.O. Box 400
Barrie ON L4M 4T5

Dear Mr. Scheunemann

**Re: Class Environmental Assessment Requirements for Bryne Drive
City of Barrie**

I am pleased to submit my report to you concerning the requirements for the City of Barrie pursuant to the Environmental Assessment Act (EA Act) and the Municipal Engineers Association (MEA) Class Environmental Assessment for Municipal Projects, 2000, as amended in 2007 (Class EA).

This report is further to our meeting with Smart Centres' representatives on January 15, 2008 and my letter to you dated September 20, 2005.

As I understand your request, you have asked me to review the Bryne Drive Class EA (Master Plan) Study prepared by the City of Barrie in December 2005 and a new application by Smart Centres for development along a revised Bryne Drive corridor between Caplan Avenue and Harvie Road. I have reviewed the information supplied by you and am pleased to provide you with a professional opinion as to the applicability of the EA Act and the Class EA with regard to the following questions:

- 1) Since Bryne Drive northerly extension is a Schedule "C" project if it is being undertaken by a private sector developer (non-residential) what are their requirements for completing the Class EA?
- 2) Given that the City of Barrie has undertaken a Phase 1 & 2 Master Plan for Bryne Drive construction projects what is an appropriate means for amending one of the projects listed therein?
- 3) If a project is amended as outlined in item 2 above, what are the requirements for completing the Class EA?

1.0 Professional Qualifications

The focus of my career, spanning over twenty years, has been on environmental planning and the role of land use planning and the EA process in Ontario. I prepared a thesis on Social Impact Assessment in EA in Ontario and received my Masters in Arts (Planning) from the University of Waterloo while working for the Ministry of the Environment as an Environmental Planner in the EA Branch.

I gained extensive experience with Planning Act applications as a planner with the Ministry of Municipal Affairs and Housing, a variety of municipalities and a residential developer.

As the Environmental Approvals Coordinator for the Region of Halton, I conducted and participated in a number of task forces on the MEA Class EA from 1993 to 2001. In 1993-94 I lead a task force on the introduction of the private sector developers' designation which concluded with an amendment to the 1993 Class EA. In the late 1990's I lead another task force on revisions to the 2000 Class EA which resulted in the introduction of the integrated approach and numerous other changes. I have spoken extensively on this topic to such diverse groups as the Building Industry and Land Development Association (formerly Urban Development Institute) and the Ontario Society for Environmental Management and published several articles. In addition to my current consulting practice, I offer day long training courses for professionals in the practice of municipal Class EA.

2.0 References

I have reviewed this case with reference to the EA Act, Planning Act, the Class EA, 2000, as amended in 2007 and Ontario Regulations 345/93 (private sector developers) and 344 (general) to the Environmental Assessment Act. The City provided me with a copy of the December 2005 Bryne Drive and Commerce Park Drive Master Plan ("Master Plan") and all the appendices.

3.0 Background

In the 2005 Master Plan the City of Barrie identified the preferred solutions for roadway improvements for portions of Bryne Drive and Commerce Park Drive south of Maplevue and a new northern connection of Bryne Drive between Caplan Avenue and Essa Road. The need for these improvements was based on a 1999 transportation study completed for the City of Barrie which identified the need for additional north-south capacity along the Bryne Drive corridor. These roads are collector or arterial roads.

The City of Barrie completed the Bryne Drive Class EA Master Plan in accordance with Master Plan Approach #1 as set out in the Class EA (see page 4-2). In this approach, a

Master Plan is completed to the conclusion of Phase 2 of the Class EA planning process. No Notice of Completion is issued and the Master Plan is typically made available for public review and comments.

In the case where the City acts as proponent of a project, in order to complete a Schedule B project listed in the Master Plan, the City would have to issue a Notice of Completion specifying each project. For Schedule C projects, the City committed to undertake Phases 3 and 4 of the planning process and issue a Notice of Completion (see Master Plan page 39).

The City's Master Plan identified each of the projects listed in the Master Plan that could be completed and implemented as an independent project. That is, each of the proposed projects which are subject of the Bryne Drive Class EA Master Plan could be implemented by either a private sector developer, group of developers or by the City of Barrie. The procedures for implementation are set out in the Master Plan (see Master Plan page 39).

It is my understanding that private sector developers have already undertaken the southerly Commerce Park Drive link independently in order to enhance the speed of the proposed development which relied on the construction of this link.

In addition, the City of Barrie and the Ministry of Transportation are undertaking a study to address the possible design and construction of a new interchange between Essa Road and Mapleview Drive to accommodate high traffic volumes in the areas east and west of Highway 400. In 2005, you anticipated that the MTO planning study was likely to be released in the fall of 2005. This study will describe how the proposed link of Bryne Drive at Harvie Road may be affected by this future interchange. MTO has not yet determined the location of an interchange in the area of Harvie Road. The City, however, has indicated that a crossing of Highway 400 at Harvie Road is necessary and for this purpose has completed a Highway 400 Crossings Class EA Study.

4.0 Class EA Requirements

Projects by municipalities and other public bodies are subject to the EA Act unless specifically exempted by regulation. Works by private sector developers are exempt from the EA Act unless specifically designated by regulation.

Ontario Regulation 345/93 is a regulation pursuant to the EA Act which sets out the specific requirements for a private sector developer to be subject to the EA Act. This regulation designated certain undertakings by private sector developers as subject to Section 5(1) of the EA Act, requiring compliance with the provisions of the Class EA. A copy of this regulation is attached.

As you know, the Class EA addresses the municipal construction of collector and arterial roads. Every new collector and arterial road must be considered as either

Schedule “B” or “C” depending on the cost (i.e., less than or more than \$2.2 million, respectively).

In accordance with Ontario Regulation 345/93, a private sector developer is subject to the Class EA where they are:

- conducting a project listed in Schedule “C” of the Class EA; and,
- the project is provided for residents of a municipality

Interpretation of this regulation by Ministry of Environment legal staff is that the second point noted above means *residential development*. Using this accepted interpretation means that only private sector developers constructing Schedule “C” projects for *residential development* are subject to the EA Act pursuant to the provision of Ontario Regulation 345/93. Developers are not subject to the EA Act for projects related to commercial, industrial and institutional uses. (See also page A-41 of the Class EA for a reference to this interpretation.)

Therefore, it is appropriate that if a private sector developer were to act as proponent (in place of the City of Barrie) of one or more of the road projects listed in the Bryne Drive Class EA Master Plan, they would *not* be required to comply with the Class EA since the road projects will serve commercial projects.

In considering whether the City or a private sector developer should assume the role as the proponent for any given project listed in the Class EA, I am satisfied that the City has considered the definition of proponent, as established in Section 1(1) of the EA Act. The definition of proponent is:

“a person who,

- (a) carries out or proposes to carry out an undertaking, or*
- (b) is the owner or person having charge, management or control of an undertaking”*

As discussed with you at the meeting on January 15, 2008, the City of Barrie has taken the initiative to prepare the Bryne Drive Class EA Master Plan in order to address Phases 1 and 2 of the Class EA planning process. At any time, dependent upon concurrence with the City of Barrie and the private sector developer(s), the private sector developers could act as the proponent for one or more of Bryne Drive Class EA Master Plan projects.

As outlined in my letter of September 2005, the decision as to *who* will act a proponent is often based on a variety of considerations including:

- Environmental sensitivity of project;
- Time and cost resources;
- Public input and acceptance;

- Access to study resources;
- Desire to complete project on a specified timeline;
- Requirements of development; and,
- Class EA schedule.

In either case, municipal or private proponent, both parties will be involved in the planning process undertaken. In addition, it should be noted that the relevant agencies will be contacted and the public advised.

5.0 Questions from City of Barrie

5.1. Since Bryne Drive northerly extension is a Schedule “C” project, if it is being undertaken by a private sector developer (non-residential) what are the requirements for completing the Class EA?

The private sector developer for a non-residential project listed in Schedule C is not subject to the Class EA and thus, there are no Class EA requirements to address. All of the normal Planning Act and other statutory provisions would still apply and there may be a lengthy review and permitting process required by the agencies and other parties involved.

The City has established that the Bryne Drive northerly extension alignment through the Bryne Drive Class EA Master Plan and as long as this is followed there should be no need for additional Class EA study. The City’s Master Plan is clear (see Master Plan, page 42) that development related projects will proceed in this manner.

5.2. Given that the City of Barrie has undertaken a Phase 1 & 2 Master Plan for Bryne Drive construction projects, what is an appropriate means for amending one of the projects listed therein?

As discussed at our January 15, 2008 meeting, in my opinion it is incumbent upon the City to revise and update its Master Plan prior to amending one of the projects listed in the 2005 Master Plan. As the City established the need to see all projects together in a Master Plan approach, so too the City should review proposed changes to projects in a Master Plan approach. This will ensure that a comprehensive review is undertaken to establish the overall scope and location of each project.

For this purpose, a Master Plan Review could be undertaken to provide the appropriate documentation. The process for a Master Plan Review is set out in the Class EA at Appendix 4 (see page 4-3). This section refers reader to the sections of the Class EA dealing with revisions to Project Files and Environmental Study Reports (Sections A.4.1.1 and A.4.2.2). This is discussed in more detail below.

5.3. If a project is amended as outlined in 5.2 above, what are the requirements for completing the Class EA?

In order that the Class EA review process is comprehensive, the City should advise the public and agencies about the Master Plan review. A Public Information Centre is not mandatory and would only be held at the discretion of the City.

I recommend the City undertake the following steps:

- List the specific projects or project components which are under review and why (note: this list will identify the interdependent portions such as Bryne Drive north and south of Harvie Road even if only one portion is to be constructed at a time);
- Identify and undertake any additional studies which will be required to support the proposed revisions (e.g., new study area, updated traffic data, new input from MTO, etc.);
- Establish terms of reference for the Review including a task by task approach and a consultation plan;
- Review and update the problem statement if required;
- Identify alternatives to the project under review;
- Evaluate the proposed revisions and any alternatives to the proposed revisions;
- Contact appropriate/relevant agencies and stakeholders to advise of study and any action requested from them (use previous mailing list and any new contacts as needed);
- Optional Public Open House or local stakeholders' meeting;
- Document review in a Master Plan Review document (see below);
- Notify public of Phase 2 opportunity to comment on the specific revisions proposed (same as notice of Master Plan in 2005 – this is not a Notice of Completion per the Class EA); and,
- Seek City Council authorization.

The Review documentation should contain, at a minimum, the following (see Class EA page A-72):

- Describe the circumstances necessitating the change;
- Environmental implications of the change; and,
- What can and will be done to mitigate any negative impacts.

Should the City decide to proceed to phases 3 and 4 of the Class EA planning process, a Notice of Completion would be issued along with the Master Plan and Master Plan Review for public review. This would be the first and only opportunity for requests for Part II Orders.

If the private sector developer conducts the implementation of the project, no Notice of Completion would be required and no opportunity for a Part II Order is provided.

6.0 Summary of Professional Opinion

Schedule “B” and “C” requirements for Class EA work undertaken by private sector developers for non-residential development

Schedule “B” and “C” projects carried out by a private sector developer for non-residential development are not subject to the provisions of the Class EA. The municipality is subject completing the Class EA planning process for any projects listed in the Class EA for which they are the proponent.

Piece-mealing

In my opinion, the Bryne Drive extension project has been planned simultaneously with its interdependent parts in order to avoid risk of piece-mealing. The proposed Bryne Drive northerly extension could be constructed separately from the remaining components listed in the Bryne Drive Class EA Master Plan without risk of piece-mealing once the Phase 2 Master Plan Review by the City has identified the location for the alignment.

Revisions to the Bryne Drive Class EA Master Plan

In my opinion, the City of Barrie should consider a Master Plan Review to address proposed changes to projects identified in the Bryne Drive Class EA Master Plan, 2005. This approach is helpful to ensure that big picture planning of interrelated projects is done together even though they may be implemented separately over time by private sector developers.

I am pleased to provide my professional opinion on this matter. If I can provide additional assistance or answer questions, please contact me.

Yours truly,



Janet E. Amos, MCIP, RPP
Amos Environment + Planning