

From: **Lindsay Lambert** <m.lindsaylambert@gmail.com>
Date: Tue, Aug 21, 2018 at 1:59 PM
Subject: Re: Opposition to Zibi development.
To: "Letters (ott)" <letters@ottawacitizen.com>

Dear Ms. Spencer:

Randy Boswell contacted you regarding my opposition to the proposed Zibi development on Chaudiere & Albert Islands. The developer has been asserting that the site is largely privately-owned in fee simple as the reason that they can build there without restriction. The National Capital Commission and City of Ottawa have been backing them up. This is false: It is all Public Crown Land which has been occupied industrially under Licenses of Occupancy and Leases only. It is effectively being stolen from all Canadians. According to Jacques Greber's *Plan for the National Capital*, it is to be our central park. I have a formal Legal Opinion by Ottawa Barrister Douglas Adams that the Government is violating public trust in permitting private development.

You have published two of my Letters in the past, but this will be too long and involved. Mr. Boswell indicated that you are willing to assign a reporter to the story. I will be very grateful for this, as it's information that your readers should be aware of.

I have researched the legal, ownership and administrative history of the Chaudiere Islands:

- On August 25th, 1854, the Government of the Province of Canada approved an Order-in-Council reserving these Islands among others for Public Purposes, along with part of Lot 39 on the Ottawa shoreline. (The latter is on LeBreton Flats.)

- Section 108 of *The British North America Act (1867)* states that "The Public Works and Property of each Province, enumerated in the Third Schedule of this Act, shall be the property of Canada." Two items from this Schedule apply here:

5. Rivers and Lake improvements.

10. ... lands set apart for general Public Purposes.

- This is reinforced in *An Act respecting certain Works on the Ottawa River*, which was assented to in 1870 and is still in force. This Statute establishes that Parliament has exclusive authority over everything in or on the Ottawa River, irrespective of whether it is for the purpose of public utility or not, or constructed by the government or private interests. It all "shall be held to be works for the general advantage of Canada."

Chaudiere & Albert Islands are Crown Land administered for the greater public good. Parliament has the prerogative to revisit this, overturn the legislation and pass new laws approving private development, but they have not done so.

I consulted the primary documents at the National Archives regarding the industrialization of Chaudiere, Albert and Victoria Islands. They were surveyed in 1852 into Hydraulic Lots, where the river's flow can be harnessed for power, and Building Lots. These were made available to lumber entrepreneurs wishing to put them to immediate industrial use. They were not for speculation and rules were established to prevent this. The Government needed to build a dam and other infrastructure in order to proceed. To raise the funds, they held a limited and controlled sale of the Hydraulic Lots: These were

specifically for the construction of mills. The occupants then paid an annual rent for the water power that they used. They had to run their mill, pay their water lease and maintain their operations so as not to interfere with their neighbours, or the land reverted to the Crown. The Crown could also take them back "at any time for any Public Purpose." The Building Lots were treated separately and briefly. These were offered at 10 Pounds each on the condition that a building worth at least 100 Pounds be constructed within a year. If it wasn't done, they reverted to the Crown. It is again a special-purpose use. Unrestricted fee simple private ownership is not specified. These are Licenses of Occupancy. Due to ongoing legal disputes between the occupants and against the Crown, the Crown ultimately reclaimed the Hydraulic Lots in 1889 and reissued them under the current leases. The proviso that they could all be taken back for public purpose continued. The Building Lots remained as they were.

The Government took back the eastern end of Victoria Island in the 1920's for the Royal Canadian Air Force aircraft repair depot, which was decommissioned in 1962. The area is all Building Lots, but they followed the same rules as the Hydraulic Lots. I have a 1926 map of the Chaudiere Islands from the National Archives which identifies them all as Federal Government Property. According to the Service Ontario Land Registry in 2016, half of Albert Island was still Unpatented Land. It has never been officially assigned to anybody in any way.

The developer and the NCC have been claiming that the area of the Building Lots on Chaudiere & Albert Islands is private property. They have been asked to produce the original Land Deeds to prove fee simple private ownership, but haven't done so. If they had these, they would have been on the table long ago. Even if something exists, it would still be contravention of the legislation.

Here is some more administrative history:

- On May 21st, 1927, the Historic Sites and Monuments Board of Canada approved "that the Chaudiere Portage, Hull, be declared of national importance." A cairn with a bronze plaque was unveiled in 1937, but has since been removed. Parks Canada and the Historic Sites and Monuments Board currently identify the Portage by the peculiar term "National Historic Event," but this is a recent re-interpretation. The original correspondence regarding the designation refers to it as "an historic site" and the file folders are labelled as such. It is acknowledged as a pivotal location in Canada's history where explorers, missionaries, soldiers, fur traders and settlers all passed en-route from the St. Lawrence to the Great Lakes, the Prairies, the Rocky Mountains and beyond.

By calling the portage around the Chaudiere Falls a "National Historic Event," they don't have to take it into consideration as an Historic Site.

- In 1936, Prime Minister Mackenzie King commissioned Parisian urban planner Jacques Greber to submit a Master Plan for the long-term growth and development of the Capital Region. His *Plan for the National Capital* was published in 1950. Greber specifies on page 230 that "The most effective improvement will be the *central park at the Chaudiere Falls*" (his italics) once the "heavy and obnoxious industries" are gone. He continues on page 250 that this:

"is properly a *restitution* scheme, the merits of which can be judged by a great many old prints, which show how impressive was the original setting of the Chaudiere Falls, the Ottawa River banks and the whole of Parliament Hill. Such proposal aims to give a more

dignified environment to the representative buildings of the nation, and is more particularly a matter of national pride...

The restoration of the Chaudiere islands to their primitive beauty and wildness, is perhaps the theme of greatest importance, from the aesthetic point of view --- the theme that will appeal, not only to local citizens, but to all Canadians who take pride in their country and its institutions."

- The National Capital Commission was established in 1958 "to implement Greber's recommendations." These are their own words from the timeline accompanying "Capital Vision: Shaping the future of Canada's Capital" in the October, 2011, *Canadian Geographic*. It announces the joint cross-country consultation by the NCC and The Royal Canadian Geographic Society to hear people's ideas for the future of Canada's Capital. In their findings, interest is expressed in seeing the Chaudiere Falls freed from the dam and the Islands re-naturalized as parklands in accordance with the vision of the respected Algonquin Elder William Commanda.

- In 1988, the National Capital Commission and Treasury Board of Canada designated the Chaudiere Islands as National Interest Land Mass (NILM). I obtained the documentation through an *Access to Information Act* request. It is quite clear: NILM lands "have high symbolic value for Canadians." They are "essential to the achievement of the NCC mandate to have the Capital communicate Canada to Canadians, serve as a meeting place for Canadians, and to safeguard and preserve the Capital for future generations." They are "to be retained by the NCC on behalf of the government in perpetuity." It is acknowledged that some NILM lands are privately-owned, but "the long-term intent of the NCC is to acquire these lands." The specified plan for the E.B. Eddy (Domtar) site is that "it is to remain in existing ownership until it becomes available or a land use change is suggested." This is a pre-approved imperative, not an option for future consideration.

- These long-term plans changed in 2012, when Domtar put their interests up for sale. Jacqueline Holzman was on the NCC's Board then, and Free The Falls member Pamela Schreiner recently spoke with her. She said "we understood at the time that it was private property." The Treasury Board was willing to fund the purchase, but balked when told that they would have to cover the cost of decontaminating the land as well. It was then decided to offer the site for private development so that the developer would do the clean-up at no cost to the public purse. Ms. Holzman was dismayed to learn that the Ottawa City Council has committed \$60,000,000.00 for brownfields remediation.

- On April 6th, 2017, the National Capital Commission's Board of Management approved private development on Chaudiere and Albert Islands. They did not have jurisdiction unless Parliament directed them, which I don't believe happened. Furthermore, Public Services and Procurement Canada administered the Crown Lands at the time, which they did not transfer to the NCC until later.

The City of Ottawa is complicit in approving the Zibi development as well:

- In 2008, the Ottawa City Council zoned the Islands as Parks and Open Space, in keeping with the Federal Government's plan.

- The Windmill Development Group's proposed redevelopment of the Domtar lands was announced in the April 24th, 2014, *Ottawa Citizen*, and headlined "Watson pledges to cut Domtar red tape". He is quoted as making sure that the development "doesn't get nibbled to death by process and red tape... We will work closely to make sure that we are rolling

out the red carpet and not the red tape." Red Tape is law, regulations, and requirements for public consultation which provide the necessary checks and balances in the system to ensure that it is not abused. Mr. Watson has unfortunately kept his promise:

- The City of Ottawa Planning Committee met on October 2nd, 2014, to consider the Windmill Development Group's application to re-zone "3 & 4 Booth Street (Chaudiere and Albert Islands)" from Parks and Open Space to Downtown Mixed Use to permit their project. The developer had held two public information & promotional events on December 11th, 2013, at the Museum of Civilization and June 24th, 2014, at the War Museum. These were announced retroactively as the City's official public consultations. This is not legitimate. They weren't advertised as such, no votes were taken, and there is nothing in the *Planning Act* or the City's own rules that permit them to delegate their responsibility to consult to a private organization. The only consultation held by the City was the Planning Committee meeting, for which the public were given only 10 days notice rather than the 20 required under the *Planning Act*. 43 individuals spoke, 38 against the re-zoning. They also received 76 written submissions in opposition. These were disregarded and ultimately explained away as being outside the official consultation period.

- The Ottawa City Council approved the re-zoning on October 8th, 2014, with only Somerset Ward Councillor Diane Holmes dissenting.

- Five people appealed this decision to the Ontario Municipal Board, including architect Douglas Cardinal and myself. The City's Senior Legal Council Timothy Marc filed a Notice of Motion two weeks before the June 3rd, 2015, pre-hearing, that the Board dismiss us without a hearing. The OMB can do this, but only under very narrow and limited circumstances. Mr. Marc chose the *Planning Act, R.S.O. 1990, c. P. 13, as amended*, Subclauses 17(45)(a)(1) and 34 (25)(a)(1) which state that the Board can dismiss an appeal in advance if "the reasons set out in the notice of appeal do not disclose any apparent planning ground upon which the Tribunal could allow all or part of the appeal." We all had apparent and valid planning grounds, and made further representations at the pre-hearing. I cited the planning evidence from Jacques Greber's Master Plan. Recording and photography were prohibited and no minutes or transcripts were taken, leaving no record of our arguments. Presiding Member Richard Makuch ultimately dismissed us. He didn't conclude that we lacked planning grounds, but that "the Appellants have failed that they have raised (sic) legitimate land use planning grounds upon which the Board could rely to allow their appeals." He overstepped his authority: The legitimacy of our grounds should have been adjudicated in a full hearing. They planned from the start to summarily dismiss us. Our subsequent appeals of this through the courts and the Ombudsman Ontario came to naught. The entire process was so corrupt that I wouldn't have believed it if I wasn't involved. This is a bare outline. I can elaborate and prove my assertions.

I unfortunately didn't know at the time that Parliament had exclusive authority over the Islands by Statute. I would have pointed out that the City Council lacked the jurisdiction to re-zone for private development, but suspect that Mr. Makuch would have ignored this as well.

- It was announced in the May 31st, 2018, *Ottawa Citizen* that Windmill Developments had applied for a \$60,000,000.00 brownfields remediation grant for the Zibi site, to be considered by the Finance Committee on June 5th. This provided 5 days public notice, less than the required 7 days. I made written and verbal representations:

The application was specifically for "3 & 4 Booth Street," as was the re-zoning. According to the *Region 03 Assessment Roll* for property taxes, these two street addresses comprise

about half of Chaudiere Island. There is also 6 Booth, also on Chaudiere. Albert Island is not included. I asked them what will happen with the remediation on the rest of the lands. (Could the ultimate bill be \$120,000,000.00? It's a good question.)

I asked if \$60,000,000.00 was truly necessary for the clean-up, and provided evidence showing otherwise: Windmill's August, 2014, *Phase I Environmental Site Assessment* includes 20 pages of analyses done in 1980 and 1981 by the Department of Indian and Northern Affairs Canada (Indian and Inuit Affairs Program). The stated "Reason for Involvement" is that it is "A reserve as defined in the Indian Act. The data came from the *Federal Registry of Contaminated Sites*. I corresponded with Indigenous and Northern Affairs Canada about this. Assistant Deputy Minister Sheilagh Murphy replied by letter on July 10th, 2017:

"I would... like to confirm that there are no contaminated sites on the Islands. The Federal Registry of Contaminated Sites that you note in your letter is in error on this point. The Department has since corrected this error. Thank you for prompting this correction"

The NCC's National Interest Land Mass documents include a Property Profile of the Chaudiere Island Hydraulic Lots. It is stated under Wider FLM Objectives - Environmental that "There are no environmental concerns with this site. The use of the property is compatible with surrounding land uses."

I spoke with a chemist, George Neville. He noted that the LeBreton Flats are filthy due to the presence of scrapyards and industries that left oil and PCBs in the soil. The pulp & paper operations on the Islands used chlorides and sulphides which are water-soluble and don't remain. I met with Jonathan Westeinde on February 2nd, 2015, and asked him what contamination was there. He replied that it "is in industrial fill that had been brought in." This makes no sense: Pollution isn't structural. Fill is broken concrete or stone used to level land or extend shorelines. If something came in with it, it's localized and can be removed.

I also pointed out that the City lacks jurisdiction to fund any land remediation. This responsibility belongs exclusively to Parliament under their own legislation. In spite of my information, the Ottawa City Council approved the brownfields grant unanimously on June 13th. Councillor McKenney, who was originally opposed, voted in favour after extracting a vague promise that the affordable housing component would be increased to 20% from the usual 7%. I don't believe for one minute that the developer will devote a fifth of their commercial project to non-profit housing. (It was stated during the Council meeting that they wouldn't provide *any* if the grant wasn't approved.)

It seems to me that the City Council just approved a major subsidy to a developer.

I am not opposed to development, but Chaudiere and Albert Islands are the wrong location:

The Chaudiere Falls and Islands, just upstream from the confluence of the Gatineau, Rideau and Ottawa Rivers, have been a sacred and peaceful Indigenous meeting place for at least 5,000 years. This is just the archaeological record, and there are older sites nearby. (It is documented in Randy Boswell's and Jean-Luc Pilon's paper, "Below the Falls; An Ancient Cultural Landscape in the Centre of (Canada's National Capital Region) Gatineau" in Vol. 39, 2015, of the *Canadian Journal of Archaeology*.) It's human history that predates Stonehenge and the Great Pyramid at Giza. People travelled here from huge distances and came continuously until they were pushed aside by European settlement and industry. The Chaudiere Falls then became Ottawa's oldest and most beloved tourist attraction,

considered second only to Niagara, until they were effaced by the construction of the Ring Dam across the entire span in 1908. Visitors bought postcards & souvenirs. Freed from the dam, with the Islands as our central park, they would be our greatest attraction again. We are the only national capital in the world with a major waterfall at its centre. Look at what the Rideau Canal brings, and it's just a man-made structure. Tourism generates long-term revenue.

Although the Chaudiere Falls and Islands are in Algonquin territory, they have always been considered a neutral place where anyone could meet. People would camp on the riverbanks, leave their weapons and bad intentions behind, and canoe to the Islands to gather in peace. Enemies met here. It was a place of communications and governance. It's a place without War, which might be unique on this planet. Canada is a peacekeeping nation. We should be celebrating this and showing it to the world, not building condos on it. According to Jacques Greber's introduction, his *Plan for the National Capital* was dedicated as Canada's memorial to the Second World War in lieu of a monument. I can't imagine a more fitting centre to a war memorial than Greber's park at the Chaudiere Falls. It's the ideal: It's a place of peace.

Justin Trudeau speaks of Truth & Reconciliation, Nation to Nation dialogue and the importance of Canada's relationship with Indigenous peoples. It's sadly all rhetoric which doesn't apply on the ground where it is needed. He could help make it real by returning the Chaudiere Islands to Algonquin stewardship. It's unceded Algonquin Territory after all. It could be re-established as the great Indigenous meeting place. People would have a place to stand and call home in our Nation's Capital. An Embassy and a Parliament. They would never be invisible here again. Canadians need to see this.

There was a proposal some years ago for the creation of a ceremonial route circling through Gatineau and Ottawa. The Ontario side was to symbolically represent the English presence and Quebec the French, with the Chaudiere Islands being Indigenous. It's a good and inclusive vision.

Leaving the Indigenous and historical significance aside, it *still* makes no sense to build a largely modernistic condo & commercial development in the middle of the Ottawa River as a counterpoint to Parliament Hill. It should be reclaimed as parkland now that the industrial use is past.

Yours sincerely,
Lindsay Lambert.

Good morning, Mr. Lindsay Lambert,

I congratulate you for this tremendous effort, which clearly have taken you, as a conscientious citizen many years of intensive research through all manner of archives to uncover what one of our Member of the Board of Directors & Vice-President, Clement N. Beauchamp, while Commissioner of the National Capital Commission and Batonnier, Barreau du Québec, had pointed out, after due diligence, that this whole area, is indeed Crown Land (as is also LeBreton Flats) and that the federal government had paid E B Eddy to vacate the lands within a timeline that they did not conform to.

I would also add that the Gatineau/Hull centre was assigned as a Reserve by Lower Canada and yet somehow by 1830, the military commander, apparently at his own initiative, built the first bridge below the Chaudière falls to enable Wright to gain foot access to a sluice and to a docking as well as other industrial premises (this comes from Colonel's Bytown's own map drawing) while ignoring the indigenous population's rights and residence.

The favouritism that appears to be reflected here is in violation of public trust.

Dr. A. Michrowsi