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2013 MAR 22 P 4: 11

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PG21.1.257

March 22, 2013

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VIA E-MAIL & REGULAR MAIL

File 99999.99904

Chair and Members of Council
City of Toronto
Toronto City Hall
100 Queen Street West
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Toronto, Ontario M5H 2N2

Attention: Ulli Watkiss

Dear Ms. Watkiss:

Re: **Proposed new City of Toronto Comprehensive Zoning By-law**

1. **721 Eastern Avenue, Toronto**
2. **30 Booth Avenue, Toronto**
3. **777 Kipling Avenue, Toronto**

We are counsel for the following landowners with regard to their respective properties (collectively referred to as the "three sites"), in the City of Toronto (the "City"). Particulars of each of the sites and their ownership are as follows:

- (i) 721 Eastern Avenue, owned by 2006199 Ontario Ltd.;
- (ii) 30 Booth Avenue, owned by 1079744 Ontario Ltd.; and
- (iii) 777 Kipling Avenue, owned by 2225108 Ontario Inc.

Our clients have an ongoing interest in the City's processing of its proposed new City-Wide Comprehensive Zoning By-law ("CWZBL") and as such have sought our advice and recommendations respecting the effect of the CWZBL on each of the sites.

We have conducted a preliminary review of the November 8, 2012 draft version of the CWZBL as well as the additional by-law changes contained in Staff Reports dated January 22, 2013 and February 26, 2013 (collectively referred to as the "current draft CWZBL"). The purpose of this correspondence is to register our clients' concerns with the current draft CWZBL as it relates to each of the sites.

The three sites are all currently occupied and used for film studio and related uses. Site improvements are ongoing on a daily basis involving constant building permit requests. The three sites are proposed to be zoned Employment (E) wherein a Production Studio is a permitted use. The City should also be aware that the nature of our clients' business is such that outdoor/open storage is currently provided on the three sites as an ancillary and necessary element of the principal use.

PROPERTY SPECIFIC COMMENTS

1. 721 Eastern Avenue, Toronto (the "Eastern Avenue site") and 30 Booth Street, Toronto (the "Booth Avenue site")

Both the Eastern Avenue site and the Booth Avenue site currently have the same zoning under the existing Comprehensive Zoning By-law 438-86, namely I2 D5. This zoning permits a maximum density of five (5) times the area of the lot. Both sites are currently being used for film production.

The Eastern Avenue site is currently subject to Permissive Exceptions 12(1) 160 and 12(1) 307, and to Restrictive Exception 12(2) 270.

The Booth Avenue site is currently subject to Permissive Exceptions 12(1) 307 and to Restrictive Exception 12(2) 270, in addition to By-law 130-08.

Under the current draft CWZBL, these two sites are proposed to be zoned Employment (E), with a density of five times the area of the lot. A "Production Studio" will be a permitted use, which is defined to mean:

"premises used for producing live broadcasts, motion pictures, or audio or video recordings or transmissions. The mass reproduction of film or recordings is not a Production Studio"

In our view, the definition of Production Studio is insufficient for the purposes of these two sites (and the site at 777 Kipling Avenue, discussed below), for the following reasons.

Under the current Zoning By-law No. 438-86, a film studio is classified under the definition of a "communication and broadcasting establishment". This use is defined as:

"communications and broadcasting establishment"

"means a *lot*, building or structure for radio or television broadcasting; cable television operations; motion picture film, audio or video production, leasing and distribution; location filming management;"

In our view, the "communication and broadcasting establishment" use better defines the existing uses on the three sites. A significant component of film production also includes a filming management use. The new "Production Studio" definition therefore eliminates a use previously permitted.

In respect of the carry forward of the existing site-specific provisions or prevailing by-laws/sections, it appears that the current draft CWZBL adequately captures those elements.

Further, both the Eastern Avenue site and the Booth Avenue site will be subject to Exception 314 which provides the following:

"The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions: (None Apply)

Prevailing By-laws and Prevailing Sections:

(A) City of Toronto By-law 130-08."

Other than the exclusion of Permissive Exception 12(1) 307, which applies to both the Eastern Avenue site and the Booth Avenue site, the above Exception 314 appears adequate. We request that the exclusion noted be corrected and carried forward in Exception 314. Permissive Exception 12(1) 307 provides the following:

"307. to prevent the use of a building or structure on a *lot* in a I1 or I2 district provided that:

- (i) the same purpose or purposes were permitted on the *lot* on July 20, 1993;
- (ii) the building or structure was lawfully on the *lot* and lawfully used in whole or in part for the same purpose or purposes on July 20, 1993; and

- (iii) the provisions of this by-law except for section 9(1)(f) are compiled with."

2. 777 Kipling Avenue, Toronto (the "Kipling Avenue site")

The Kipling Avenue site is currently zoned Class 2 Industrial Zone (I.C2) pursuant to the former City of Etobicoke Zoning Code. This site is currently used for film studio uses.

Pursuant to the current draft CWZBL, the Kipling Avenue site is proposed to be zoned Employment (E), subject to a density maximum of one times the area of the lot. As indicated above, a Production Studio is a permitted use.

Under the existing zoning, there are no height and density limits applicable to the permitted uses other than to a business, professional and administrative offices, which are limited to a maximum floor space index of 0.6 times the area of the lot and a maximum height of 5 storeys. The current draft CWZBL imposes a one times the area of the lot as a density. We request that this general density cap be removed from the Kipling Avenue site in the new CWZBL.

GENERAL CONCERNS REGARDING THE CURRENT DRAFT CWZBL

In our respectful submission, there are some significant changes to the underlying and existing zoning rights in the current draft version of the CWZBL, which could potentially have significant adverse impacts on the three sites. These are summarized as follows:

1. New Zoning Standards

Our clients have concerns with the significant changes proposed to the zoning standards in the current draft CWZBL, as reflected in parking/loading, setbacks, frontage, use permissions, building heights and landscape standards. In our opinion, these new zoning standards could have significant potential adverse impacts on our clients' existing property rights respecting the possible redevelopment of the three sites.

2. Site-Specific Zoning By-laws

Complex site-specific zoning by-law amendments are currently recommended to be listed in the current draft CWZBL as a "Prevailing By-law" or "Prevailing Section", which will continue in force and prevail to the extent of any conflict between the site-specific zoning provisions and the new CWZBL. Until such time as we can fully confirm the existing zoning of the three sites

(including the applicable referenced prevailing provisions), we take this opportunity to confirm that our clients are opposed to the current recommendations and would ask that the three sites instead remain as areas excluded from the proposed CWZBL at this time (i.e., "NOT PART OF THIS BY-LAW" category). This request is being made in order to avoid any conflict between the three sites' current zoning rights and that proposed in the CWZBL.

3. Open Storage

The CWZBL proposes to permit open storage in the Employment (E) Zone, subject to Condition 10, which states the following:

"Open Storage"

- (A) In an E zone, **open storage** must:
 - (i) be in combination with a permitted **manufacturing use**;
 - (ii) not be located in a yard of a **lot** that abuts a **lot** in the Residential Zone category or the Residential Apartment Zone category;
 - (iii) not be located in the **front yard** of the **lot**;
 - (iv) be a minimum of 7.5 metres from any **lot** line;
 - (v) be less than 30% of the **lot area**;
 - (vi) be less than the permitted maximum height of a **building** on the **lot**; and
 - (vii) be enclosed by a fence.
- (B) In an E zone, **open storage** may contain **recyclable material** and waste.

"Open Storage" is a defined term and it means:

"the use of **premises** for keeping or storing goods, commodities, containers or equipment other than in a wholly enclosed **building**. **Public parking**, or the parking or storing of **vehicles** in a **vehicle depot** or in a required **parking space**, is not **Open Storage**".

Each of the three sites provides storage of different kind on the premises, mostly related to the on-going production as part of the film studio uses, now defined as a "Production Studio". Under the current draft CWZBL, a "Production Studio" is not a manufacturing use. A manufacturing use is separately defined to mean:

"the use of premises for fabricating, processing, assembling, package, producing or making goods or commodities, and it includes repair of such goods or commodities."

As such, the existing open storage use on each of the three sites might be impacted if the above standards were to apply on subsequent building permit applications.

CONCLUSION

For all of the above reasons, we recommend that the three sites not be included in the new CWZBL.

Please accept this correspondence as our clients' written comments filed prior to Council enactment of the CWZBL for the purposes of registering the three sites' current zoning and reserving our clients' *Planning Act* appeal rights, if necessary. We reserve the right to further supplement our concern as the CWZBL evolves, especially since we are not aware what further amendments (and to which provisions of the CWZBL) may be made by Staff and Council which could have zoning impacts on each of the sites.

Please also accept this correspondence as our formal request that we be provided with any Staff Reports, Council and/or Committee's resolutions, and Notice of Decision by the City under s. 34(18) of the *Planning Act* with respect to the CWZBL.

Thank you for your attention to this matter. Should you have any questions or require clarification, please contact Paul Chronis, Senior Planner in our office, at (416) 947-5069.

Yours truly,



C. J. Tzekas

CJT:PC:d

cc: Joe D'Abramo, City of Toronto
Paul Chronis, WeirFoulds LLP
Clients