



EXPECT THE BEST

December 13, 2013

Mayor Rob Ford and Members of Council
c/o Toronto City Clerk
13th Floor West Tower, City Hall
100 Queen Street West
Toronto M5H 2N2

Delivered By Email and Registered Mail

Dear Mayor Ford and Members of Council:

**Re: Proposed Official Plan Amendment No. 231 (“OPA 231”), PG28.2
500 Sheppard Avenue East (the “Subject Property”)**

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We represent Mallpaks Developments Limited, the owner of the Subject Property. The Subject Property is located at the north-west corner of Bayview and Sheppard, proximate to the Bayview subway station.

Objection to OPA 231

The purpose of this letter is to (a) advise City Council (“Council”) that our client objects to the proposed policies contained in OPA 231, for the reasons set out below, and (b) request that Council not adopt OPA 231 in the form currently drafted.

Proposed Redevelopment of the Subject Property

A 3,821 m² 3-storey commercial building comprising office and commercial space currently occupies the Subject Property, with a portion of the commercial/office space currently vacant.

In March of 2011, our Client submitted applications for official plan and rezoning amendments (the “Applications”) to permit the redevelopment of the Subject Property for a mixed use project containing residential uses and office/retail space. The Applications, which were revised in March 2013 in response to the City’s request for an on-site parkland dedication, propose an office/retail space component of 2,998 m². In our respectful submission, this represents a significant commitment on the part of our client to retaining employment uses on site consistent with market demand.

Prevailing Planning Policy Framework

The Subject Property is designated as *Mixed Use Areas* on Land Use Plan Map 16 to the *Toronto Official Plan*, with the Sheppard Avenue frontage designated as an *Avenue* on Map 2: Urban Structure.

The Subject Property is also located within the *Sheppard East Subway Secondary Plan Area*, where it is located within a *Key Development Area* and, in particular, the *Bayview Node: Teagarden Court/Mallingham Court/Clairtrell Road Area*. The *Secondary Plan* establishes incentives in the form of density exemptions for certain works or facilities to be provided in connection with a development proposal.

The *Secondary Plan* policies contain the following policies applicable to the Subject Property and City Council's consideration of OPA 231.

- development of land designated as *Mixed Use Areas* may be permitted to develop primarily for residential uses, but with opportunity provided for non-residential uses such as retail and offices along the Sheppard Avenue frontage [Policy 4.1.(a)].
- The Bayview subway station of the *Bayview Node* will be a **residential development node [emphasis added]** providing opportunities for new residential uses with a mix and range of housing, with residential development intended to enhance the destination shopping and employment at the Bayview Village Shopping Centre [Policy 9.4.2.A.].
- The *Teagarden Court/Mallingham Court/Clairtrell Road Area* is to be **developed primarily with residential uses [emphasis added]** in keeping with the characteristics of the Bayview Node [Policy 9.4.2.2.1].

Based on the prevailing *Secondary Plan* land use policies, as well as the general *Mixed Use Areas* and *Employment Areas* policies of the *Toronto Official Plan*, residential development on the Subject Property is currently permitted to occur alone or in combination with non-residential uses. Our client is under no obligation to redevelop the site with office or other non-residential uses.

The Adverse Impacts of OPA 231

Our Client objects to OPA 231 in its entirety, and in particular to proposed Sections and policies:

1. Section 3.5.1 and Policies 3.5.1.6 and 3.5.1.9, which require the retention and expansion of office/employment space on properties with over 1,000 m² of existing office/employment space where residential development is proposed in a *Mixed Use Area* within 500 metres of an existing or approved subway system.

This is a significant departure from the original intent of *Mixed Use Areas*, the applicable *Sheppard East Subway Corridor Secondary Plan* policies and the approach embodied in Official Plan Amendment No. 94 (OPA 94) adopted by Council in August of 2010. OPA 94 would afford an applicant in *Mixed Use Areas* the opportunity to confirm the amount of retail commercial space that must be provided in the new development in order to: alleviate the impact of the loss of such space on the local neighbourhood; or, to justify not retaining or replacing any of the existing space. It would be appropriate to incorporate this type of a needs analysis to review the specific contextual and locational characteristics of individual sites in the OPA 231 policies.

2. These proposed policies are thus inflexible and not practicable as they fail to address the market demand for such space. It is our client's position that, should OPA 231 be used to review the Applications, excess and unoccupied office space would need to be provided on the Subject Property as part of the mixed use redevelopment proposal. Consequently, OPA 231 places an unfair onus and burden on developers, and it does not represent efficient or sustainable planning. Again, OPA 231 should provide an applicant with the opportunity to submit a market demand analysis to determine the need and amount of office/employment space warranted having regard to contextual, locational and individual site characteristics that vary across the City.

3. Policy 2.4.5, which requires that "subway and underground light rapid transit stations will be integrated into multi-storey developments wherever it is technically feasible" (emphasis added). This policy is problematic since it:

- (a) is too vague. We are not sure what "technically feasible" means, but we do know that this could be interpreted broadly and unreasonably so as to render any development as feasible;
- (b) will create undue logistical problems and delays related to securing approval from the Toronto Transit Commission, and perhaps the City, where a redevelopment site is separated from a subway station by intervening City-owned lands, as is the case with the Subject Property;
- (c) would be too expensive to implement. The cost of such a connection from the Bayview station to the Subject Property would far outweigh any utility/benefit of the connection; and
- (d) is not desirable for the residents of such developments as it would allow non-residents access to the proposed development, which would significantly compromise the safety of the apartment residents.

While these policies may be well-intentioned, for the above and other reasons, they do not represent good planning.

Fair Process Concerns

Given that the Applications were submitted to, and deemed to be complete by, the City in 2011, the legal status of the Applications under the *Clergy* principle followed by the Ontario Municipal Board is that they are not subject to OPA 231.

Unfortunately however, at a meeting held last week between City Planning Staff and our client's consultants, staff indicated that they would have regard to the OPA 231 policies in their review of the Applications. As a result, and out of an abundance of caution, we must object to OPA 231 in its entirety on behalf of our client.

Another concern is that neither our client nor its planning consultants, Sorensen Gravely Lowes Planning Associates Inc., were given formal individual notice from the City of the scheduled 12 November 2013 statutory public meeting respecting OPA 231, despite the fact that the Applications pertain to a *Mixed Use Areas* site located within 500 m of an existing subway station. This lack of notice is particularly troubling given the indication by staff that assessment of the Applications would have regard to OPA 231. Based on lack of individual notice provided by the City of Toronto, our client did not present the concerns/submissions contained in this letter in person at the statutory meeting. This has placed our client at a distinct disadvantage in having its concerns communicated to and understood by Planning & Growth Management Committee City and City Council.

Request

As a result of the above concerns, we respectfully request that City Council:

1. not approve and adopt OPA 231, but rather direct staff to consult with our Client on the concerns expressed in this letter;
2. confirm in writing that OPA 231 will not apply to any consideration of the Applications by City staff or Council or alternatively, that OPA 231 be amended to include a site-specific exemption for the Subject Property; and.
3. include the undersigned on the circulation list to be notified of any meetings, appeals and other information concerning OPA 231 or any other matter affecting the development potential of the Subject Property.

Thank you in advance of for your considerations of our requests. Should you have any questions regarding the above please do not hesitate to contact the writer.

Yours very truly,

Blaney McMurtry LLP

A handwritten signature in black ink, appearing to read 'MK' with a stylized flourish.

Marc Kemerer
MPK/mk

c. J. Keesmaat/P.Bain/Client/C. Munroe