



Davies
Howe
Partners
LLP

Lawyers

The Fifth Floor
99 Spadina Ave
Toronto, Ontario
M5V 3P8

T 416.977.7088
F 416.977.8931
davieshowe.com

Please refer to: **Mark Flowers**
e-mail: markf@davieshowe.com
File No. 702070

October 11, 2012

By E-Mail to pgmc@toronto.ca

City of Toronto, Planning and Growth Management Committee
Toronto City Hall, 10th Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Merle MacDonald, Committee Secretariat

Dear Ms. MacDonald:

**Re: Proposed Official Plan Amendment to Adopt New Heritage and
Public Realm Policies (Draft Official Plan Amendment No. 199)
Item PG18.2 (October 12, 2012)
1095909 Ontario Limited**

We are counsel to 1095909 Ontario Limited.

Our client has an interest in lands on the north side of Dupont Street, west of Spadina Road, municipally known as 328, 330, 332, 344 and 358 Dupont Street (the "Lands").

We understand that at its meeting on October 12, 2012, Planning and Growth Management Committee will be considering a staff report from the Chief Planner and Executive Director, City Planning Division, dated September 20, 2012, which recommends the adoption of new heritage and public realm policies for the City's Official Plan, substantially in the form of a draft Official Plan Amendment that is attached to the report.

We are writing to express our client's objection to the City's proposed Official Plan Amendment and, in particular, the proposed inclusion of provisions in the draft Amendment that purport to protect views to Casa Loma from a location at the southeast corner of Dupont Street and Kendal Avenue, which is directly opposite the Lands.



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First, there is no apparent justification to select the southeast corner of Dupont Street and Kendal Avenue, either on its own or in relation to any other location along Dupont Street west of Spadina Road, as a vantage point from which to identify a significant view.

Second, and perhaps even more important, there is no existing view of Casa Loma from the southeast corner of Dupont Street and Kendal Avenue to protect. As illustrated by the attached image taken from the southeast corner of Dupont Street and Kendal Avenue and looking in a northeasterly direction (i.e., in the direction of Casa Loma), no portion of Casa Loma is visible from this location. Instead, any view that might otherwise exist is entirely obstructed by the existing three-storey commercial building on the Lands at 332 Dupont Street.

It is also noteworthy, by way of background, that on May 31, 2010 our client filed an Official Plan Amendment application with the City to redesignate the Lands, as well as the adjacent lands at 374 Dupont Street, from *Employment Areas* to *Mixed Use Areas*, in order to facilitate the redevelopment of the Lands for a mixed-use development containing both commercial and residential uses. In response to the application, City Planning staff authored a report recommending refusal.

Due to the City's failure to approve our client's proposed Official Plan Amendment within the stipulated time periods set out in the *Planning Act*, we appealed the Official Plan Amendment application to the Ontario Municipal Board (the "Board") by letter dated June 1, 2011.

However, despite the passage of more than sixteen months, a hearing has not yet been held by the Board as a result of the City's repeated and ongoing efforts to defeat our client's application without a full hearing. First, the City initiated an application to the Superior Court of Justice, challenging our client's right to appeal the application to the Board. The City's request was heard by the Court in December 2011 and subsequently dismissed, with costs in the amount of approximately \$25,000 ordered payable by the City to our client.

The City then brought a preliminary motion at the Board, again challenging our client's right to appeal the application. That motion was heard in June 2012, and a decision is pending.

Given this history and the timing of our client's Official Plan Amendment application, it is our position that our client's application, together with any subsequent related applications to permit the proposed redevelopment, should not be subject to any new Official Plan policies that were not in effect as of May 2010.



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In light of the above, we request that the Committee:

1. Direct staff to provide us with a written analysis to explain why they identified a view of Casa Loma from the southeast corner of Dupont Street and Kendal Avenue as a significant view worthy of protection, including any images they have that illustrate an existing view of any portion of Casa Loma from this location; and
2. Direct staff to remove all references to a view of Casa Loma from the intersection of Dupont Street and Kendal Avenue from the draft Official Plan Amendment.

My colleague, Aaron Platt, will be in attendance at the Committee meeting to speak to this matter and we thank you, in advance, for your consideration of this submission.

Yours truly,

DAVIES HOWE PARTNERS LLP

A handwritten signature in blue ink, reading "Mark R. Flowers".

Mark R. Flowers
Professional Corporation

encl.

copy Client
Peter Smith, Bousfields Inc.



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