

November 15, 2013

Planning and Growth Management Committee  
c/o Ms. Nancy Martins  
10<sup>th</sup> Floor, West Tower, City Hall  
100 Queen Street West  
Toronto, Ontario M5H 2N2

Dear Chair and Committee Members:

**Re: *November 21 Special Public Meeting***  
***Five-Year Official Plan Review/Municipal Comprehensive Review***  
***328, 330, 332, 344, 358, 374 and 388 Dupont Street***

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We are planning consultants to Freed Developments Ltd. and Re-Dev Corporation, who have entered into agreements to purchase lands at 374 and 388 Dupont Street, located on the north side of Dupont Street, west of Spadina Road. Our client has acquired an interest in the adjacent lands to the east, municipally known as 328, 330, 332, 344 and 358 Dupont Street. For the purpose of clarity, the above-noted lands will be collectively referred to in this letter as the "subject lands".

The portion of the subject lands at 328, 330, 332, 344, 358 and 374 Dupont Street is the subject of an Official Plan Amendment application to redesignate the lands from *Employment Areas* to *Mixed Use Areas*. The application was filed on May 31, 2010, and was appealed to the Ontario Municipal Board on June 1, 2011 due to the City's failure to make a decision on the application within the prescribed time (OMB File PL110543). A hearing at the Ontario Municipal Board is currently pending. As well, a letter dated November 7, 2012 was submitted to the City by Davies Howe Partners on behalf of 1095909 Ontario Limited, in respect of the lands at 328, 330, 332, 344 and 358 Dupont Street, as input into the Five-Year Official Plan Review/Municipal Comprehensive Review.

The purpose of the subject letter is two-fold:

1. to formally request redesignation of the subject lands, including the lands at 374 and 388 Dupont Street as well as the lands at 328, 330, 332, 344 and 358 Dupont Street, from *Employment Areas* to *Mixed Use Areas* as part of the Official Plan Review/Municipal Comprehensive Review process, for the reasons set out in detail in this letter; and

2. to provide comments on draft Official Plan Amendment (OPA) 231 with respect to *Economic Health and Employment Land Policies and Employment Area Policies and Designations*, which was released on October 31<sup>st</sup>.

### **Policy Context**

The subject property is designated *Employment Areas* in the Official Plan and is located within the *Downtown and Central Waterfront*.

Policy 2.2.6(5) of the Growth Plan, which requires the preparation of a “municipal comprehensive review” in order to permit the conversion of lands within an “employment area” to non-employment uses, is not applicable to the subject lands, given that it is located within the *Downtown*. Policy 2.2.6(6) specifically provides that Policy 2.2.6(5) does not apply in downtown areas and regeneration areas and that, instead, Policy 1.3.2 of the Provincial Policy Statement continues to apply.

However, in our opinion, Policy 1.3.2 of the Provincial Policy Statement is not applicable to the subject lands, given that they are not located within an “employment area” as defined for the purposes of the Provincial Policy Statement (or the Growth Plan). The Provincial Policy Statement and the Growth Plan define an “employment area” as:

*“ . . . those areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities”.*

The reference in the definition to “clusters” reflects the fact that the policies are concerned not with each and every individual parcel of land that may be designated for employment purposes, but rather with strategic employment areas (typically, large employment districts which are characterized by purely employment-oriented uses).

In this regard, the City of Toronto has taken the approach that lands that are identified as *Employment Districts* on Map 2 are the strategic employment areas which equate to “employment areas” as defined by the Provincial Policy Statement and the Growth Plan. It follows, therefore, that lands which are designated as *Employment Areas* on the Land Use Plan, but are not included within an *Employment District*, are not “employment areas” within the meaning of either the Provincial Policy Statement or the Growth Plan; accordingly, a “(municipal) comprehensive review” is not required in order to permit a conversion to non-employment uses in such cases. Our opinion in this regard has been confirmed by

decisions of the Ontario Municipal Board and the Courts in respect of the application at 2205 Sheppard Avenue East.

### **Land Use Context**

The subject property is located within a mixed-use corridor which extends along the north side of Dupont Street, south of the CP rail line, generally between Davenport Road and Lansdowne Avenue. The Annex residential neighbourhood is located to the south, with a mixed-use area consisting of residential, institutional and public utility uses located to the north of the CP rail corridor.

The north side of Dupont Street forms part of what was once a large band of industrial lands along the north and south sides of the CP rail line, which stretched across midtown Toronto from the Dundas Street West/Dupont Street junction in the west to Davenport Road in the east. The majority of the former industrial properties have been redeveloped for residential, commercial and institutional purposes over the last 30-40 years, including the following:

- the Frankel-Lambert neighbourhood west of Christie Street, a large-scale residential redevelopment of the former Frankel Steel operation undertaken by the City of Toronto and Cityhome in the early 1980s
- Castle Hill, a 91-unit townhouse development on the former Sealtest Dairy Plant site (built late 1980s/early 1990s)
- a 98-unit street townhouse development (Acores Avenue/Minho Boulevard) on a 2.3 hectare site of a former Bell Canada storage warehouse and truck depot at 1090 Shaw Street (approved 1997)
- a 6-storey loft-style condominium building (Madison Avenue Lofts), which was developed on a 1.0 hectare site formerly containing Toronto Hydro industrial buildings at 700 Huron Street (2008).

There have been several recent retail developments in the area, including the LCBO at 232 Dupont Street, Shoppers Drug Mart at 292 Dupont Street, Loblaws at 650 Dupont Street and Sobeys at 840 Dupont Street.

The current uses along the north side of Dupont Street from Davenport Road to Bathurst Street, which are located in the *Downtown*, include a mix of uses including restaurants, retail stores, automotive repair, office uses, gas stations and residential uses. There is only one existing industrial operation in the area, located at 275 Albany Avenue (Wing's Food Products). The character of the Dupont Street corridor beyond Bathurst Street to the west is similar to the section east of Bathurst, with a mix of commercial and residential uses.

The Dupont Street corridor is an isolated *Employment Areas* designation that is not part of a larger strategic employment district, typically characterized by purely employment-oriented uses. The existing *Employment Areas* designation, and the current zoning, do not permit many of the current uses that exist in the area today, including the stand-alone residential uses and the mixed-use buildings.

### **Rationale**

In our opinion, the redesignation of the subject lands from *Employment Areas* to *Mixed Use Areas* is appropriate and desirable for the following reasons:

- the current *Employment Areas* designation is an obsolete vestige of an extensive industrial area which formerly existed on the north and south sides of the CP rail line, but which has been incrementally redeveloped over the past 30 years for a mix of residential, commercial and institutional uses;
- the *Employment Areas* designation does not recognize the existing mix of uses on the subject lands and in the *Employment Areas* designation to the east and west, which is characterized by a sizeable residential component in combination with neighbourhood-serving commercial uses, with virtually no industrial uses;
- the *Employment Areas* designation effectively frustrates any meaningful intensification and redevelopment in the area, which is of particular concern for the portion of the *Employment Areas* in proximity to the Dupont Subway Station, within which intensification is supported and promoted by Provincial and Official Plan policies;
- in contrast, the proposed *Mixed Use Areas* designation would appropriately recognize the existing mix of uses in the area on the north side of Dupont Street and would facilitate reinvestment in existing mixed-use and residential buildings; and
- the proposed *Mixed Use Areas* designation would allow appropriate redevelopment and intensification to occur, consistent with the intensification policies of the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe and the Toronto Official Plan which are applicable given the location in the *Downtown and Central Waterfront* and within convenient walking distance of the Dupont Subway Station.

In summary, it is our opinion that the proposed redesignation of the subject lands to

*Mixed Use Areas* would be compatible with surrounding land uses, would not adversely affect the viability of any employment uses in the vicinity, and would be consistent with the objectives and policies of the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, and the City of Toronto Official Plan, all of which promote intensification in built-up areas in proximity to public transit.

### **Comments on Draft Official Plan Amendment 231 (OPA 231)**

We have reviewed the City's draft Official Plan Amendment 231 and the accompanying staff report dated November 5, 2013. We note that the draft Official Plan Amendment proposes the following changes with respect to the subject lands:

- redesignation of the subject lands from *Employment Areas* to *Regeneration Areas* along the Dupont Street frontage and to *General Employment Areas* for the portion of the lands within 30 metres of the CP Rail corridor; and
- introduction of Site and Area Specific Policy 212, with new provisions that would require to require the creation of a Secondary Plan or a Site and Area Specific Policy (SASP) for the Dupont Street Corridor for that part of the lands which are designated as *Regeneration Areas*, to set out matters to be addressed during the process to create the Secondary Plan or SASP and to set out interim development criteria including a prohibition on development that includes residential uses until the study is complete and the Secondary Plan or SASP is in-force.

We wish to note our client's objection to the proposed changes described above, for the following reasons:

1. We are of the opinion that a *Mixed Use Areas* designation, as requested, is preferable to a *Regeneration Areas*, as recommended by staff. In our opinion, the appropriate policies can and should be put in place for the Dupont Street corridor now through the policies applying to the *Mixed Use Areas* designation and any appropriate site and area specific policies. Given the long, narrow configuration of the Dupont Street corridor and the resulting inability to introduce new streets and blocks, there is limited rationale for the type of further study that would typically be required pursuant to a *Regeneration Areas* designation.
2. Notwithstanding the foregoing, if a *Regeneration Areas* designation were to be applied, it should be applied across the full depth of the Dupont Street corridor from Dupont Street to the CP rail line. In our opinion, staff's proposal for a split-designation of *Regeneration Areas* and *General Employment Areas* is contrary to fundamental planning objectives related to comprehensive planning and the

efficient use of land.

In our experience, a variety of approaches to rail setbacks have been approved across the City, including the use of crash walls and a variety of intervening buffer uses and vertical as well as horizontal separation from the rail corridor. Staff's recommendation with respect to the imposition of two discrete land use designations appears to be pre-judging the outcome of discussions regarding such approaches, rather than taking a comprehensive approach to the planning of the corridor. In our opinion, the preferable approach is as articulated in proposed Policy 1(h) ("identify appropriate rail corridor buffering measures to the satisfaction of the relevant railway authorities") and Policy 1(e) i.e.

*"Assess the feasibility of locations for mixed use development. Any mixed use development that proposes to introduce sensitive and/or non-employment uses shall only occur on sites that can accommodate the appropriate buffering and/or rail safety measures as may be required along with any required set-backs from Dupont Street in order to accommodate streetscaping initiatives . . ."*

3. In this regard, the imposition of two separate land use designations within a narrow corridor will constrain comprehensive and efficient site design by dividing the Dupont Street corridor into two separate and discrete land use precincts, each with limited depth.
4. Furthermore, staff's proposal to restrict the uses in the *General Employment Areas* designation to those permitted in the underlying designation and "parking that supports the employment uses of the area" (either at grade or in a structure), roads and utilities, and rail safety measures (i.e. berms, crash walls, etc.) is overly restrictive and is, in fact, less permissive than the permissions indicated in the November 5<sup>th</sup> staff report (i.e. including "rail safety measures, parking and roads for the portion of the site designated as a *Regeneration Area*").
5. Similarly, staff's proposal in Policy 1(a) to require the application of "the mid-rise guidelines" appears to unnecessarily pre-judge the outcome of the *Regeneration Area* study. Depending on the resolution of the rail setback approach as described above, buildings taller than what may be permitted by a strict application of the City's current mid-rise guidelines may be determined to be appropriate and desirable within the corridor. As well, it is our opinion that it is inappropriate for Official Plan policies to require the application of non-statutory design guidelines, particularly ones such as the mid-rise guidelines, which are

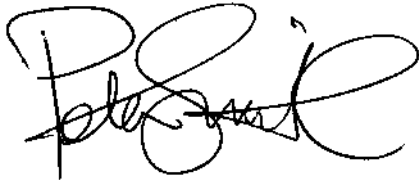
currently in a test period and have not yet been adopted by Council in their final form.

We understand that staff's recommendations as set out in draft Official Plan Amendment 231 will be considered at the Special Public Meeting of Planning and Growth Management Committee on November 21, 2013. Please include this letter as our official objection on behalf of Freed Developments Ltd. and Re-Dev Corporation regarding staff's recommendations for the subject lands at 328, 330, 332, 344, 358, 374 and 388 Dupont Street.

Thank you for your consideration of the foregoing comments. Should you require any additional information, please do not hesitate to contact me or Kate Cooper of our office.

Yours very truly,

**Bousfields Inc.**



Peter F. Smith B.E.S., MCIP, RPP

cc: Kerri Voumvakis – Director, Strategic Initiatives, Policy & Analysis  
Peter Freed – Freed Developments Ltd.  
Adam Brown – Sherman Brown Dryer Karol