
AIRD & BERLIS LLP

Barristers and Solicitors

Eileen P. K. Costello
Direct: 416.865.4740
E-mail: ecostello@airdberlis.com

November 20, 2013

BY EMAIL

File No. 112044

Planning and Growth Management Committee
Toronto City Hall
100 Queen St. W.
10th Floor, West Tower
Toronto, ON M5H 2N2

Attn: Nancy Martins, Committee Administrator

Dear Chair and Members of Planning and Growth Management Committee:

Re: Item PG 28.2 - City of Toronto Official Plan and Municipal Comprehensive Reviews: Amendments to the Official Plan for Economic Health and Employment Lands Policies and Designations and Recommendations on Conversion Requests (Ward All – Statutory: *Planning Act*, RSO 1990) Staff Report Dated November 5, 2013

This correspondence is further to previous correspondence provided to the City of Toronto by Aird & Berlis LLP on behalf of our client, First Capital Asset Management (“First Capital”) which, along with its affiliated companies, is the owner of a number of commercial properties throughout the City of Toronto.

The purpose of this letter is to provide you with our comments on the November 5, 2013 staff report and the proposed Official Plan Amendment attached thereto.

In previous correspondence, we have written in respect of specific properties which are owned by our client and which have been the subject of review by City staff in this process. According to our review of the proposed designations found in the August 20, 2013 staff report, the lands owned by First Capital in the City of Toronto, with the exception of those noted below, are all proposed to be designated Mixed Use or General Employment and such designations are generally acceptable to our client.

The following comments, both in respect of the specific sites and the policies referenced, remain outstanding.

19 Industrial Street

With respect to the property municipally known as 19 Industrial Street, we reiterate the submissions made in our July 29 and November 19, 2013 letters to City staff that this property, recently acquired by our client to be used in conjunction with its existing land

holdings at 85, 111 and 115 Laird Drive as well as the westerly portion of 20 Esander Drive, ought to be designated as **General Employment** (rather than Core Employment) as is the remainder of the lands owned by our client in the immediate vicinity. It is our client's request that there be consistency in the Official Plan designation for the entirety of its land holdings. To do otherwise unduly restricts the redevelopment of this presently vacant parcel for higher density employment uses, as has occurred on the rest of our client's holdings in the area.

51 and 85 Hanna Avenue

With respect to the lands municipally known as 51 and 85 Hanna Avenue, we are having difficulty reconciling the proposed mapping found on Map 43 with the current land configurations and uses in the area. Both of our client's properties have been improved with a variety of office, commercial, retail and other uses. In our respectful submission, a continuation of the Mixed Use Areas designation currently being shown for a majority of the Liberty Village area east of Hanna Avenue is a more appropriate designation for our client's lands. Additionally, extending the Mixed Use designation to these properties creates a logical boundary, as contrasted with that currently proposed which provides for an extension of the General Employment Area designation into an otherwise coherent Mixed Use quadrant. **We would reiterate our request previously made that the properties at 85 and 51 Hanna Avenue be designated as Mixed Use** so as to provide greater consistency in land use designation and therefore policy framework for this quadrant of Liberty Village.

Draft Official Plan Policy Language

In addition to the comments with respect to those sites above, we also have the following additional comments with respect to the Draft Official Plan policies as contained in Appendix 1 to the November 5, 2013 staff report.

We reiterate our comments with respect to the language found in policies 2.2.4.1, 2.2.4.3 and 2.2.4.4 which contain different language to characterize the type of activity intended for Employment Areas. We have previously advised that the reference to a "broad array of economic activities" (as found in 2.2.4.4) appears consistent with the Provincial Policy Statement and Growth Plan and is more appropriate.

Section 2.2.4.2 includes a list of objectives for the Employment Areas designation. We would reiterate our previous suggestion that "accommodating sufficient populations serving retail and commercial uses" should also be included within these goals.

With respect to section 3.5.1.2(b), we again suggest that the use of the term "employment" or "economic activity" is preferable to the use of the term "business", which in our view, appears to reference individual establishments or particular users.

In Section 3.5.1.6 reference is made to new office development being “promoted”. We have previously requested clarification on what tools the City intends to use to promote new office development and whether incentives or minimum standards will be proposed. We would reiterate our request for that clarification.

Section 3.5.1.9 would require the replacement, on site or on a second site in conjunction with the redevelopment, of existing office space in the event there is a minimum of 1000 m² of office. In our opinion, as presently conceived this policy would prevent the assembly of otherwise underperforming low density sites for higher density and employment generating mixed use developments.

In Section 3.5.3.1(d), and throughout the proposed policies, reference is made to retail opportunities occurring in a form which promotes “pedestrian and transit use”. As we have previously indicated, we would observe that some forms of retail, and especially large format retail or retailers of certain types of goods, are reliant on automobile use. The draft policies are entirely silent on these important types of retail uses and are deficient in that regard.

In our previous correspondence, we had requested clarification as to how the City intends to implement section 3.5.3.1(e) which speaks to encouraging the selling of “fresh food”. It remains unclear what the definition of “fresh” would be, whether there would be a ratio of “fresh” to “non-fresh” foods and how such ratios, if implemented, would be monitored. In addition, it is unclear to us what would constitute “non-fresh” food. Clarification continues to be sought with respect to these policies.

Section 3.5.3.2(d) makes reference to encouraging “more intensive formats” of retailing. We remain unclear as to what is intended by “more intensive” and what that would be referenced against on any particular site. Additionally, our previous comments with respect to recognizing operational and logistical constraints of large format retail operators are missing in this section.

With respect to Section 3.5.3.4 and reference to retail development on “large sites” we continue to seek clarification as to what the City contemplates is a threshold or range for a “large site”. In our view, the characterization of a site as “large” is entirely contextual and depends most certainly on the location of that site.

Section 4.6.2 includes reference to the maximum size being “set out in the applicable Zoning By-law”. In our view, this provides inappropriate guidance in respect of an official plan policy and we reiterate our request for clarification as to what maximum size is being contemplated in these policies.

Section 4.6.4 includes reference to many urban design considerations, including the provision of a two storey built form and the location of buildings with street frontage. In our opinion, these policies do not provide sufficient recognition to the operational constraints experienced by large format retailers and moreover, it remains unclear to us

November 20, 2013

Page 4

how these policies would be applied to existing sites which contemplate phased development.

Day Nurseries


In previous correspondence, and both as a general comment and with respect to particular sites, we have written on behalf of First Capital to advocate for the inclusion of day nursery uses as contemplated uses within lands designated for commercial development. As we have previously explained, First Capital has found that the inclusion of day nurseries is an important use; both to serve employers and employees in the immediate vicinity, as well as to provide for an appropriate mix of use in community scaled commercial centres.

Based on our review of the draft policies, and specifically the definition of “sensitive land uses”, it appears that day nurseries will be prohibited in all Employment Areas. In our view, such an approach, especially for lands designated General Employment, ignores the fact that providing appropriate and accessible daycare facilities in employment areas is supportive of the employment function of those areas.

We trust the above comments will be considered prior to the Committee’s consideration of the draft Official Plan Amendment.

Yours truly,

AIRD & BERLIS LLP


Eileen P. K. Costello
EPC/sh

c: Paul Bain/Keri Voumvakis, City of Toronto
Jennifer Arezes/Alicia Kuntz, First Capital Asset Management
Ron Richards, R.G. Richards and Associates

15799061.1