



20 November 2013

Sent via E-mail to [pgmc@toronto.ca](mailto:pgmc@toronto.ca) and by fax to 416-392-1870

Members of Council and Members of the  
Planning and Growth Management Committee  
City of Toronto  
Toronto City Hall  
100 Queen Street West,  
Toronto, ON M5H 2N2

Attention: Nancy Martins, Administrator,  
Planning and Growth Management Committee

Dear Members of Council and the Planning and Growth Management Committee:

**Re: Item PG 28.2 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 Submissions on behalf of Revenue Properties Company Limited and Morguard Investments Limited**

We are solicitors for Revenue Properties Company Limited ("Revenue Properties"), owners of the properties located at 6464 Yonge Street ("Centerpoint Mall") and 45 Overlea Boulevard ("East York Town Centre") and Morguard Investments Limited, agent to Revenue Properties. Both properties are currently designated *Mixed Use Area* in the Toronto Official Plan.

We understand that at its meeting on 21 November 2013, the Planning and Growth Management Committee ("Planning Committee") will be considering a draft official plan amendment (OPA 231) which, amongst other things, amends the retail policies in Section 3.5.3 of the Toronto Official Plan. Staff have indicated in their reports that these new policies are a reframing of OPA 94, which was adopted by Council in 2010 and appealed to the Ontario Municipal Board by our clients and others.

We have reviewed OPA 231 and offer the following submissions to the Planning Committee and to Council on behalf of our clients.

### **Submissions**

While the redrafted policies appear to reflect some of the dialogue between our clients and the City around OPA 94, the revised policies remain overly broad in some parts. Moreover, OPA 231 includes

some additional text that was not dealt with in OPA 94, which is also overly broad or vague in parts. In particular:

1. The non-policy text in the current Section 3.5.3 states that:

*... Major shopping centres can continue to expand for retail purposes or develop as areas of mixed use. ...*

This text is proposed to be deleted by OPA 231. This text ought to remain in the plan to acknowledge that existing shopping malls within *Mixed Use Areas* may continue to expand their retail uses. This comment should be considered together with our comment #5 below, insofar as the policies should be clear about preserving the ability of existing malls to expand.

2. OPA 231 proposes the following non-policy text:

*As retail grows in some areas, it may close in others. The impact of the loss of retail commercial space as a result of redevelopment could, in some instances, negatively affect local residents. They may face longer trips, the loss of walkable shopping options, or the loss of an informal meeting place. In other cases the lost retail space may hardly be missed. It's closure may follow underperformance of the space as a result of changes in shopping patterns or demographics in its local market.* (underlining added)

This text suggests that the only instance where replacement retail will not be required is where existing retail is underperforming. However, there may be other market/planning reasons why replacement retail is not required or appropriate in some circumstances. This text should be amended to clarify that underperformance of existing retail is not the only basis on which replacement retail will not be required.

3. OPA 231 proposes the following non-policy text:

*... The replacement of retail space needs to be part of the overall evaluation. At the same time any new retail space should be commercially viable if it is to be included in the new development, and in some circumstances, it may make sense to provide the replacement space in addition to the amount of space for other uses that would be need to make development viable.* (underlining added)

The underlined language is overly broad insofar as it appears to suggest that the City can compel a developer to build new retail space even if it will not be viable. This text should be revised to state that a developer may elect to build retail space that may not be viable.

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4. The new Policy 2 states that:

*Retailing areas will be improved by:*

...

*b) encouraging high quality retail development of a type, density and form that is integrated with the existing and planned context of the area;*

...

*d) encouraging retailing in more intensive formats; ... (underlining added)*

Subsection d) is overly broad and appears to be repetitive of subsection b), which deals with the intensity of a proposed retail development in a more appropriately flexible manner. Subsection d) should either be deleted, or revised to read “encouraging retailing in more intensive formats where appropriate”.

5. The new Policy 4 states:

*Retail development on large sites should be designed to promote street related retail, promote pedestrian and transit use and limit traffic impacts on existing neighbourhoods and employment uses by:*

*a) dividing the large site with a fine grain of public streets, and shared driveways designed to meet the roles of City streets, and to divide the block in to appropriate scaled development blocks; ... (underlining added)*

This policy appears to preclude the expansion of existing retail malls for retail uses in their current format. The text should be revised to clarify that this policy only applies where the site is proposed to be intensified with a mix of uses.

6. Policy 6, which appears to be a revision to Policy 3 of OPA 94, sets out the scope of the assessment to be completed in instances where a loss of existing retail space is proposed:

*When retail commercial uses in Mixed Use Areas are redeveloped, the following considerations will be used either to determine the amount of retail commercial space that must be provided in the new development in order to alleviate the potential impact of the loss of retail commercial space on the community, particularly access to food stores and other stores that meet its convenience needs, or to justify not retaining or replacing any of the existing space:*

*a) the availability of alternative means to meet the convenience needs of the local community including:*



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- i) existing stores and retail commercial space, and*
- ii) opportunities for retail commercial development in Mixed Use Areas particularly opportunities on nearby Avenues*

The opening text of this Policy is unclear about when an assessment is triggered. It should be revised to clarify that an assessment is only required where an application for redevelopment would result in the loss of retail commercial space.

Furthermore, subsection(a)(ii) should include all opportunities for retail commercial development, not only those within *Mixed Use Areas*.

7. The list of considerations to be made in an assessment in Policy 6 should include any potential means of mitigating the lost retail space other than by providing replacement space.
8. The sidebar to the policies, as drafted, appears to pre-determine what might constitute a "local community" for the purposes of an impact assessment. It should be deleted or revised to clarify that the determination of what constitutes the "local community" will be made as part of the assessment.

#### **Request of Planning Committee and Council**

On behalf of our clients, we respectfully request that Planning Committee and Council defer considering OPA 231 until such time that the above concerns have been addressed.

Yours very truly,

**Wood Bull LLP**

A handwritten signature in blue ink, which appears to read "Shapira", is written over the printed name. The signature is fluid and cursive, with a large initial 'S'.

Johanna R. Shapira

JRS

- c. Andrew Warman, Margaret Knowles  
Peter Moore