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July 4, 2014

Marilyn Toft, Secretariat Contact
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Toronto ON M5H 2N2
email: clerk@toronto.ca

RE: City Council: Item PG 34.4 Official Plan Policies for Implementing a Development Permit System - Final Report

Dear Members of Council,

The Federation of North Toronto Residents' Associations (FoNTRA) continues to have concerns about several aspects of the Development Permit System (DPS) as proposed to be implemented. FoNTRA's letter to Planning & Growth Management Committee (P&GM) dated April 6, 2014 (attached) made a number of recommendations for refinements to the Draft Official Plan Policies with respect to a DPS. Most of these concerns have not been addressed in the Final Report. The Confederation of Residents and Ratepayers Associations (CORRA) in its June 18 letter to P&GM has raised similar concerns.

In addition, CORRA has pointed out the inability to prevent amendments of a DPS by-law on a site-specific basis, and in has raised questions about third party rights of appeal of development permits under a DPS By-law, all of which have not been satisfactorily addressed. As well, George Belza in his June 24 letter to P&GM has raised questions similar to CORRA regarding rights of appeal under a DPS.

As such, we support the proposal by CORRA and George Belza to refer this item back to P&GM for further review until these and other significant issues are resolved.

Thank you for your consideration.

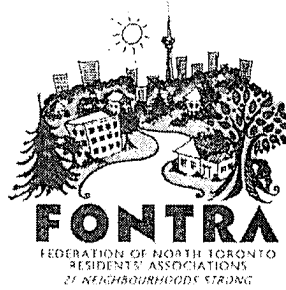
Yours truly,

Geoff Kettel
Co-Chair, FoNTRA
[Redacted]
Toronto, ON [Redacted]
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George Milbrandt
Co-Chair, FoNTRA
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Cc: Jennifer Keesmaat, Chief Planner
Eileen Denny and Jessica Wilson, CORRA
FoNTRA Representatives and Others

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of 28 member organizations. Its members, all residents' associations, include at least 175,000 Toronto residents within their boundaries. The 28 residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment, and social renewal.



April 08, 2014

VIA E-MAIL: pgmc@toronto.ca

Planning and Growth Management Committee
Attention: Ms. Nancy Martins, Secretariat
10th Floor, West Tower, City Hall
100 Queen Street West
Toronto Ontario M5H 2N2

Planning and Growth Management Committee – Meeting 32 – 10 April 2014

Agenda Item PG32.10: Draft Official Plan Policies for Implementing a Development Permit System

Dear Councillors:

The *Federation of North Toronto Residents' Associations* (FoNTRA) has carefully reviewed the Staff Report of 06 November 2013, the Staff Report of 26 March 2014, the Draft Official Plan policies authorized by your Committee for public consultation, and the revised Draft Official Plan policies actually presented by staff at public meetings (but unavailable on the City's website) and now before your Committee.

FoNTRA has been consistently critical of the City's planning practice – described by one OMB-panel as 'planning by exception' - which relies on site-specific amendments to the Zoning By-law and regularly also on amendments to the Official Plan. In the four-year period between 2006 and 2010, the City amended its new Official Plan 120 times – or more than twice a month - most often for site-specific reasons. Accordingly, FoNTRA favours the exploration of alternative approaches and sees a Development Permit System as one of the possible alternative models, albeit limited to specific circumstances. A brief review of key arguments advanced by staff in promoting the Development Permit System – seemingly oblivious to the findings of several expert panels examining the same questions over the last decades - highlights the main differences between FoNTRA and planning staff in defining the problem:

A. "Site specific rezoning applications allow the City control over the details of development and redevelopment that are needed with complex projects." The very purpose of introducing site plan control into the *Planning Act* in 1973 as Section 35(a) was to provide municipalities with control over the details of development independent of the zoning process. As the Ontario Economic Council, in its 1973 *Review of Municipal Planning in Ontario*, noted: "Most important, however, is the fact that the utilization of zoning as a development control device is not generally understood by the public ... Such a bylaw clearly is a misleading instrument to the public; it does not mean what it appears to say. For this reason, public confidence in the process has been seriously eroded and unnecessary confrontation between the public, developers and municipal councils actually has been promoted by the process." The need for site-specific re-zonings is primarily caused by the City's failure to implement its Official Plan policies with corresponding zoning by-laws. With updated zoning by-laws and site plan control pursuant to Section 41 of the *Planning Act*, there is neither a need for site-specific re-zonings nor for turning to a Development Permit System.

B. "The fundamental flaw with the site-specific rezoning process is that the cumulative impact of redevelopment is difficult to address." The fundamental flaw is not inherent in the zoning system but is the result of the City's consistent use of obsolete zoning, as described above. When the City adopted the new Official Plan in 2002, it promised a new zoning by-law: "A new comprehensive Zoning By-law will be the key regulatory instrument that implements the Official Plan policies and provides regulations and standards that shape the City's built form and land use. The Zoning By-law will be based on the principles of: protecting existing City neighbourhoods, maintaining community standards and healthy environments, promoting reinvestment and creating a framework of regulatory certainty, consistency and accessibility." More than eleven years later, this new comprehensive zoning by-law, implementing

the Official Plan policies, has yet to be produced. Instead, the City spent more than ten years harmonizing the existing outdated zoning regulations and adopting them last year as Zoning By-law 569-2013.

C. *“The applicant has the right to appeal to the OMB for failure to approve within the specified time limit of 45 days.”* A Development Permit System will not accelerate the approval process. The statutory time frames for development permits (45 days), re-zonings (120 days), or subdivision approvals (180 days) are not review periods specified in the *Planning Act* but triggers when applicants can appeal to the OMB. Rarely does the City arrive at a Council decision within the specified time frame. There is also a very practical reason why the 45-day time frame for development permits is unrealistic for complex projects common in Toronto, as noted by the Planning Act Review Committee: *“Complex buildings or large-scale projects may require different treatment. For this kind of project, an applicant should be able to receive assurance that his proposal is generally acceptable, before he is required to undergo the expense of preparing detailed plans. At the same time, it is necessary that the municipality does in fact have an opportunity to deal with plans in sufficient detail to achieve its development review objectives. We propose that the Act permit municipalities to issue an outline decision, or decision in principle, within the 60-day period, which will be binding for a stipulated period (perhaps 18 months).”*

D. *“The development permit system ... applies area-based planning at the neighbourhood scale and provides an effective means of securing certainty of outcome.”* So do Secondary Plans with implementing zoning by-laws, only more effectively. The new Official Plan of 2002 discarded 92 of the then existing 113 Secondary Plans. Today, more than eleven years later, there are still only 30 Secondary Plans – less than one new one per year – despite grandiose pronouncement in the Official Plan to the contrary: *“Secondary Plans will generally be prepared, in consultation with the community, for areas demonstrating one or more of the following characteristics: a) large areas of vacant or underutilized land which would benefit from comprehensive planning to enable suitable development or redevelopment; b) areas targeted for major public or private investment; c) areas where development is occurring or proposed, at a scale, intensity or character which necessitates reconsideration or reconfiguration of local streets, block plans, public works, open space or other public services or facilities; and d) other growth areas identified in provisions of this Plan, such as Centres, selected Avenues identified by Committees of Council and Regeneration Areas.”* Similarly, the City’s Official Plan claims that *“Reurbanizing the Avenues will be achieved through the preparation of Avenues Studies.”* Ten years later, the City had initiated only 21 Avenue Studies covering less than a third of the 162 km of corridors designated *Avenues*. Worse, by 2010, it decided to substitute the Mid-Rise Building Performance Standards as guidelines across the city for Avenue Studies for a two-year test period, later extended to four years. The City has consistently ignored its own policies for area-based planning at the neighbourhood scale.

E. *“In Ontario, the development permit system can be understood as a cross between a secondary plan and a zoning by-law.”* Ontario has no experience with development permits that could offer any understanding with relevance to the Toronto development context. Not surprisingly, in a different document, the City suggests otherwise: *“A Development Permit By-law can be created together with a Secondary Plan.”* In Ontario, only Lake of Bays (2006), Carleton Place (2009), Gananoque (2010), and Brampton (2012) have adopted development permit by-laws. Lake of Bays (pop. 3,500) adopted a 288-page development permit by-law which applies only to waterfront properties and is specifically designed to preserve natural shorelines, *“primarily through the ability to address site alteration and vegetation removal.”* The small towns of Carleton Place (pop. 9,800) and Gananoque (pop. 5,200) replaced their zoning by-law with a development permit by-law. Brampton adopted a development permit by-law for a small five-block stretch of the Main Street North Revitalization area comprising 60 properties. To put this experience into some perspective, Toronto’s zoning map shows 487,239 separate land parcels in need of a regulatory framework.

In order to ensure a successful introduction of the Development Permit System, FoNTRA respectfully requests that the staff recommendations on the Official Plan Amendment be modified, as follows:

RECOMMENDATION 1: The application of the Development Permit System needs to be limited to areas designated in the Official Plan as *Downtown, Centres, and Avenues*

FoNTRA believes that a Development Permit System is ideally suited to controlling development in areas of growth and change but that traditional zoning is a superior tool to provide certainty of outcome in stable areas. Accordingly, FoNTRA strongly recommends that the Development Permit System be confined to areas identified in the City’s Official Plan as growth areas, particularly those designated *Downtown, Centres, and Avenues*. A similar view was expressed by the Ontario Economic Council in 1973: *“It is recommended here that new development control powers be exercisable by designated municipalities only in respect of land within an ‘area of change’ (as opposed to an ‘area of stability’) which has been defined in a municipal structure plan and which articulates the criteria against which individual decisions are to be made.”* Such a focused approach would also more closely reflect Council’s actual intent and instruction: *“City Council request the Chief Planner and Executive Director, City Planning to develop a framework for the use of a Development Permit System as a means for managing height.”* [emphasis added]

RECOMMENDATION 2: Low-density residential area designated in the Official Plan as *Neighbourhoods* should never be included in any Development Permit By-law

Low-density residential areas, designated in the Official Plan as *Neighbourhoods*, are the areas least suitable for a Development Permit System: 1) they do not benefit from combining the re-zoning process with the site plan approval process (since re-zonings are relatively rare and these uses are currently exempt from site plan approval); and 2) the dominant form of development applications (Minor Variances considered by the Committee of Adjustment) would suddenly be relegated to a discretionary staff approval process with appeal rights limited to the actual applicant. In FoNTRA's view, this is a fundamentally unfair and unworkable model. For this very reason, the Commission on Planning and Development Reform in Ontario recommended that "*appeals of development permit decisions be made to the Ontario Municipal Board.*" However, Section 12. (1) of Ontario Regulation 608/06 restricts the right to appeal a decision on a development application to the Ontario Municipal Board to the applicant itself. All other stakeholders are excluded and their right to appeal expires after the development permit by-law stage.

RECOMMENDATION 3: Separate and distinct Goals, Objectives, and Policies for *Downtown, Centres, and Avenues* need to be spelled out in the Official Plan Amendment

Section 3.(1) (c) of Ontario Regulation 608/06, issued pursuant to section 70.2 of the Planning Act, requires the City to state in the Official Plan the municipality's goals, objectives and policies for each proposed development permit area. Contrary to this statutory requirement and in direct contradiction to the stated intention of creating area plans that "*reflect local character and distinctiveness.*" the proposed Official Plan Amendment offers a broad-brush, one-size-fits-all single set of goals, objectives, and policies, which purports to reflect the conditions and needs of the city's entire 630 km² area.

RECOMMENDATION 4: The types of criteria in Development Permit By-laws need to include, at a minimum, are permitted land uses, development densities, and building heights

Section 3. (1) of Ontario Regulation 686/06 requires that the Official Plan "*sets out the types of criteria that may be included in the development permit by-law for determining whether any class of development or any use of land may be permitted by development permit.*" In FoNTRA's view, the Draft Official Plan Amendment provides a deficient list. Section 3. (1) of Ontario Regulation 686/06 is subject to Section 24. (2) of the Planning Act which prohibits Council from undertaking any public work or passing any by-laws which do not conform to the Official Plan, as is the case with a zoning by-law. Clear criteria are needed to comply with this requirement. FoNTRA recommends that the Official Plan makes it mandatory for each development permit by-law to specify, at a very minimum, permitted land uses, densities, and building heights. As the Planning Act Review Committee noted: "*... we do not agree with the submissions that building height and density should become within the purview of*" development control since these "*are precisely the matters, in addition to use, for which both the land owner and the community at large require certainty.*" Similarly, the Commission on Planning and Development Reform in Ontario recommended that development permit districts define "*densities, uses, design guidelines, and other requirements ...*"

RECOMMENDATION 5: The policies for the provision of Specified Facilities need to be coordinated with applicable policies under Section 37 of the Planning Act

Since the implementation of Development Permit System, even on a limited basis, will be a slow, incremental process, it is essential that the policies for providing specified facilities under a development permit by-law and those under Section 37 of the Planning Act as part of a rezoning be coordinated and consistent across the city. This requires precise and measurable policies in the Official Plan as, partly, recommended in the Staff Report of 10 February 2014 concerning *Improvements to the Section 37 Implementation Process*.

RECOMMENDATION 6: The range of permitted Variations need to be spelled out in detail in the Official Plan Amendment

The original Official Plan Amendment provided that a "*development permit system by-law may set out a range of possible variations to the base standards, to a specified maximum ...*" Section 4. (2) of Ontario Regulation 608/06 requires that a development permit by-law "*shall set out a list of minimum and maximum standards for development.*" The revised Official Plan Amendment eliminates variations which, in FoNTRA's view, is not advisable. FoNTRA recommends that the range of variations permitted to be included in development permit by-laws be set out in the Official Plan. The ranges of variation can differ for various land use designations (e.g. *Downtown* vs. *Centres*), for development standards (e.g. density vs. height), or for type of buildings (e.g. office towers vs. residential buildings on Avenues). The experience with the Committee of Adjustment shows that, if the public is to maintain some sort of confidence in the fairness and equity of the planning system, clear city-wide direction for granting variations is needed. Simply relying on specified minimum and maximum limits may be too restrictive in light of the large number of currently legal non-conforming conditions that pre-date the original zoning by-laws.

RECOMMENDATION 7: Site-specific amendments to a Development Permit By-law need to be prohibited or, alternatively, made onerous

FoNTRA fully supports the originally proposed provision – eliminated in the revised Official Plan Amendment, supposedly, on the basis of legal advice from the Province - that amendments to development standards can only be considered by Council after five years following the initial approval of the by-law. FoNTRA recommends that this provision be expanded to ensure that amendments to development standards can only be considered by Council at intervals of five years going forward. For many years, FoNTRA has advocated similar criteria for any amendments to Official Plans. FoNTRA also supports the proposal that site-specific amendments to development permit by-laws be further prevented with onerous submission requirements.

RECOMMENDATION 8: Council's permitted scope to delegate its approval authority to a committee or planning staff needs to be precisely circumscribed

The Draft Official Plan Amendment provides that Council may delegate its approval authority to the Chief Planner and Executive Director, City Planning. In FoNTRA's view, the circumstances under which Council would be permitted to delegate its approval authority and the scope of such delegation need to be precisely defined in the Official Plan in order to ensure a city-wide consistency. FoNTRA objects to a blanket delegation authority and believes that such a delegation should only apply to minor developments below defined thresholds (e.g. developments with less than 5,000 m² of gross floor area and 25 m in height).

RECOMMENDATION 9: The highest priority for eliminating site-specific re-zonings is the immediate adoption of a zoning by-law that actually implements the Official Plan

The implementation of a Development Permit System across the city, even limited to areas designated in the Official Plan as *Downtown, Centres, and Avenues*, is a very onerous and costly undertaking which will take decades to achieve. Unless the City's Zoning By-law is simultaneously updated to actually implement the Official Plan policies, the current practice of site-specific rezoning will continue almost unabated in large areas of the city. In addition to this very practical urgency, there is a statutory requirement to regularly update the zoning by-laws under Section 26 of the Planning Act: "*No later than three years after a revision under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning by-laws that are in effect in the municipality to ensure that they conform with the official plan.*"

In conclusion, FoNTRA supports the implementation of a Development Permit System in Toronto. In order to ensure its success, however, it recommends a more moderate introduction, focused on areas designated in the Official Plan as *Downtown, Centres, and Avenue*, subject to the essential refinements outlined above.

Sincerely yours,

George Milbrandt
Co-Chair, FoNTRA

Toronto, Ontario

Geoff Kettel
Co-Chair, FoNTRA

Toronto, Ontario

Copies:

Mayor Rob Ford and Toronto City Council
Ms. Jennifer Keesmaat, Chief Planner and Executive Director
FoNTRA Members and Others

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