

Margaret Sexton - PG34.4 - DPS Statutory Public Meeting on OPA 258

From: George Belza <belana@axxent.ca>
To: Councillor Peter Milczyn <councillor_milczyn@toronto.ca>, Councillor Kar...
Date: 06/24/2014 10:19 PM
Subject: PG34.4 - DPS Statutory Public Meeting on OPA 258
CC: Councillor Mike Layton <councillor_layton@toronto.ca>, Councillor Jaye R...
Attachments: New OP - DPS PG34.4 Sub GSB 2014.06.24.pdf

Tue 24 Jun 2014

Chair and Members
Planning and Growth Management Committee
City of Toronto
Toronto City Hall
100 Queen Street West
TORONTO M5H 2N2

Councillor Milczyn, Stintz, Colle, Filion and Nunziata

Re: PG34.4 Official Plan Policies for Implementing a DPS (Draft OPA 258)

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At last Thursday's statutory public meeting on item PG34.4 (Official Plan Policies for Implementing a Development Permit System) the Chief Planner stated that OPA 258 has been specifically formulated so as to preclude approval of site-specific amendment appeals and that, if it were possible for DPS by-laws passed under the auspices of OPA 258 to be site-specifically amended on appeal to the OMB, then she would NOT recommend approval of a development permit system.

In actual fact, as explained in the attached letter, and as confirmed by leading law firms, it will be quite possible for applicants to force site-specific amendment of DPS by-laws on appeal to the OMB.

As it now stands, OPA 258 will deprive community groups, residents and other affected third parties of the right to appeal development permits without preventing applicants from site-specifically appealing not only development permits but also the DPS by-laws that govern them. It will also add yet more cost and bureaucracy to the development approval process, resulting in still-larger buildings to recoup the additional cost to applicants.

Therefore, upon confirming that the foregoing statement is correct, Council should refer draft OPA 258 back to the Planning and Growth Management Committee for fundamental re-consideration in accordance with the Chief Planner's assurance that she would NOT recommend approval of a development permit system if it were possible for applicants to site-specifically appeal DPS by-laws as well as DPS permits.

George Belza

a New OP - DPS PG34.4 Sub GSB 2014.06.24.pdf

c Councillor Mike Layton
c Councillor Jaye Robinson
c PGM Committee Secretariat

G.S, Belza
Partner

ANALOGICA
9 Madeline Road
Toronto M2N 2S7
T: 416 223 9584
F: 416 223 5665
belana@axxent.ca

ANALOGICA

George S. Belza

Partner

9 Madeline Road
Toronto, Ontario
Canada M2N 2S7

T: 416 223 9584
F: 416 223 5665
E: belana@axxent.ca

E-MAILED

24 Jun 2014

Chair and Members
Planning and Growth Management Committee
City of Toronto
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TORONTO M5H 2N2

Re: PG34.4 Official Plan Policies for Implementing a DPS – FOLLOW UP

I am one of the deputants who appeared before the Committee at last Thursday's statutory public meeting. As I verbally advised the Committee at the time, I am a development consultant who, during the past thirty years, has been regularly retained on planning related matters by a number of well known Toronto law firms. I often craft zoning by-laws and official plan amendments (sometimes general, applicable to an entire Secondary Plan, but more often site-specific, applicable to a single land parcel) for approval by Council or the Ontario Municipal Board. However, unlike most people who work in the development industry, I devote a significant portion of my professional time assisting various ratepayer and community interests on a volunteer basis. I appeared before the Committee in that capacity.

I am following up on one of the questions put to City staff by Councillors at this past Thursday's statutory public meeting – after all deputations had been heard – regarding item *PG34.4 Official Plan Policies for Implementing a Development Permit System* that was incorrectly answered by Chief Planner Jennifer Keesmat.

ANALOGICA

Can an application to site-specifically amend a DPS by-law be appealed to the Ontario Municipal Board if refused by the City?

In response to this question, the Chief Planner categorically answered in the negative and stated that OPA 258 has been specifically formulated so as to preclude approval of site-specific amendment appeals. *She went on to say that, if it were possible for DPS by-laws passed under the auspices of OPA 258 to be site-specifically amended on appeal to the Ontario Municipal Board, then she would not recommend approval of a development permit system.*

The Chief Planner's assurance to the Committee that once a DPS by-law is in force and effect it cannot be site-specifically appealed to the Ontario Municipal Board, is not correct, as can readily be demonstrated:

1. The Chief Planner's contention is, to my knowledge, not supported by any reputable law firm and is contradicted by legal submissions contained in written correspondence to the Committee. Neither has the City Solicitor provided any legal basis for such a contention.

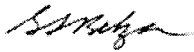
2. Regardless of anything that could be stated in OPA 258, or in any official plan amendment, it lies beyond the authority of the City to take away rights granted by provincial statute, including rights of appeal, except as expressly provided for in the statute or derivative regulation. There is nothing in the Planning Act or in O. Reg. 608/06 Development Permits that precludes appeal of an application to site-specifically amend a DPS by-law.

3. Consequently, there is nothing in OPA 258 that prevents appeal of a site-specific application to amend a DPS by-law either independently of, or collaterally with, appeal of a DPS permit application. No statement prohibiting site-specific amendment applications, or appeals thereof, is contained in OPA 258. Instead, as I mentioned in my verbal remarks to the Committee, ***approval of OPA 258 will merely make preparing such applications more onerous, complicated and costly*** since broader issues are to be formally considered in the supporting materials in order for an application to be accepted as complete and therefore be appealable. Upon such consideration, a site-specific amendment can be proposed and approved, if not by the City then by the Ontario Municipal Board. Moreover, satisfaction of the City's requirements for a complete application to amend a DPS by-law can itself be appealed to the Board in accordance with applicable provisions contained in the *Planning Act*; ie, the OMB can force acceptance of an application as complete even if City staff are not so inclined. In short, contrary to the Chief Planner's contention, applications to amend DPS by-laws are unlikely to be treated much differently than applications to amend area zoning by-laws, such as amendments passed before or after an *Avenue* study. ***Accordingly, besides misleading communities, the Chief Planner's ill-considered notion will over time simply result in a larger planning bureaucracy and add yet another expense to the development approval process that will have to be recouped by still bigger buildings.***

ANALOGICA

In view of the Committee's apparent reliance on the Chief Planner's basic error in making its recommendations to Council, and the nature of those recommendations, I ask that Councillors ensure that this matter is legally clarified, if necessary by seeking a declaration from a superior court of law, before substantive consideration of OPA 258 by City Council. *Council should make no decision respecting OPA 258 based on the Chief Planner's erroneous advice on this underlying issue.* Rather, after confirming that my submission above is correct, and that the Chief Planner's contrary advice to the Committee is incorrect, *OPA 258 should be referred back to the Planning and Growth Management Committee for fundamental re-consideration in accordance with the Chief Planner's statement that she would not recommend a development permit system if DPS by-laws could be site-specifically amended on appeal to the Ontario Municipal Board.*

Sincerely,



G.S. Belza

c Will deBacker, President
Edithvale-Yonge Community Association