PG34.4.55

From: <elc@highparkra.org>
To: <clerk@toronto.ca>
Date: 07/08/2014 8:46 AM
Subject: Agenda Item PG34.4 Official Plan Policies for Implementing a Development Permit System
Attachments: CORRA Letter - 2014 JuLY 8 CC -PG34.4 OPA DPS.pdf

Agenda Item PG34.4 Official Plan Policies for Implementing a Development Permit System.

To: All Members of Toronto City Council

I am writing to express my support for CORRA's position on this Item.
Please see the attached letter.

Another concern:
The DPS is based, in part, on the Mid Rise Performance Standards.
The Mid Rise Performance Standards are not yet complete. They are still in the Guideline phase, and are under review.
We should not be in such a rush to implement a DPS.

Please vote to defer this Item.

E L Cramp
Secretary,
High Park Residents' Association

CORRA

Confederation of Resident & Ratepayer Associations in Toronto

July 6, 2014

TO: **ALL MEMBERS OF COUNCIL**
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft
City Clerk's Office
clerk@toronto.ca

CITY COUNCIL MEETING No. 54 – JULY 8TH, 2014 – AGENDA ITEM PG34.4
OFFICIAL PLAN POLICIES TO IMPLEMENT A DEVELOPMENT PERMIT SYSTEM

CORRA is writing to provide City Council with our findings and position concerning the proposed Official Plan Policies for implementing a Development Permit System (DPS).

CORRA RECOMMENDS:

That the draft OP Policies for implementing the DPS (OPA 258) be deferred for fundamental reconsideration until the last quarter of 2015 or until such time that a full comprehensive analysis and study, including consultations with Ward Councillors, resident/community groups and other stakeholders, has been completed, whichever is later.

The foundation for considering the Development Permit System (DPS) relied on the claim that "site-specific amendments of adopted DPS by-laws are not allowed".

Indeed, at the PGMC public statutory meeting held on June 19, 2014, Chief Planner Keesmaat said that she would not recommend proceeding with the DPS if site-specific appeals were allowed.

However, top planning lawyers, including Dennis Wood of Wood Bull LLP, Calvin Lantz of Stikeman Elliott LLP, and Jeff Davies of Davies Howe LLP, have recently confirmed that the Planning Act permits site-specific amendments to DPS by-laws (including amendments approved as a result of developer appeals to the OMB), and that Toronto's Official Plan Policies for implementing a DPS do not and legislatively cannot prohibit or remove the right to seek site-specific amendments.

This new information reinforces CORRA's concerns, raised at the statutory meeting, that even the apparent attempt to limit site specific appeals (by imposing certain conditions) in the proposed DPS OPA may be ruled *ultra vires* by the OMB or a Court of Law.

The claim that "site-specific amendments of adopted DPS by-laws are not allowed" is the foundation on which consideration of the DPS OP policies and related area DPS by-laws has been based. This foundation has been shown to be fundamentally flawed. As such, the DPS OP policies as proposed and amended by PGMC on June 19, 2014 cannot be supported.

CORRA respectfully asks Members of Council to send this agenda item back for fundamental reconsideration with appropriate due process, as recommended above.

Please find attached more detailed commentary and argument on this matter from Jessica Wilson, CORRA's designated executive on the DPS issue. Also provided is a list of links providing easy access to CORRA's previous submissions on the DPS, for your consideration.

Respectfully submitted,

William H. Roberts

CORRA Chair
Confederation of Resident and Ratepayer Associations in Toronto
corratoronto@gmail.com

Encls. Attachment I: Detailed Commentary and Argument

CORRA's BACKGROUND MATERIALS AND LINKS:

CORRA's Written Submission to PGMC dated June 18, 2014:
http://www.toronto.ca/legdocs/mmis/2014/pg/comm/communicationfile-48321.pdf

CORRA Materials on the DPS can be found online at:
http://www.scribd.com/CORRATORONTO

CORRA DPS Update – June 4, 2014 – Further Updated to June 16, 2014
"The DPS from the Community Perspective"
http://www.scribd.com/doc/228649666/CORRA-DPS-Update-June-2014

CORRA DPS 9 Concerns – April 8, 2014
http://www.scribd.com/doc/217172153/CORRA-DPS-9-Concerns

CORRA DPS Addendum – March 31, 2014
http://www.scribd.com/doc/215565645/CORRA-DPS-Addendum

CORRA DPS Discussion Paper – February 6, 2014
http://www.scribd.com/doc/212699657/CORRA-DPS-Discussion-Paper

SOME OTHER CORRA LINKS TO CONSIDER:

OMB Decision PL130062 Lake of Bays amending a DPS area by-law
http://www.omb.gov.on.ca/e-decisions/pl130062-Aug-20-2013.pdf

Law Times News:
http://www.lawtimesnews.com/201406234039/focus-on/focus-toronto-considering-development-permit-system

Attachment 1: Official Plan Policies to Implement DPS
Detailed Commentary and Argument for Council Meeting No. 54 July 8, 2013

CORRA has written and communicated extensively on the topic of the DPS since this agenda item first appeared at PGMC's December 2013 meeting. We have dialogued on this topic with our member groups, resident and ratepayer executives, experts in municipal law and planning, City staff and Councillors, and other interested parties.

We and others have raised many concerns about the implementation of the DPS, most of which remain unaddressed.[1] Here we highlight the three most pressing concerns.

1. The primary stated advantage for communities of the DPS over existing area-planning policies has been that, as Chief Planner Keesmaat has repeatedly said, "you cannot appeal a DPS by-law on a site-specific basis". Indeed, at the PGMC public statutory meeting held on June 19, 2014, Chief Planner Keesmaat said that she would not recommend proceeding with the DPS if site-specific appeals were allowed.

   However, top planning lawyers, including Dennis Wood of Wood Bull LLP, Calvin Lantz of Stikeman Elliott LLP, and Jeff Davies of Davies Howe LLP, have recently confirmed that **the Planning Act permits site-specific amendments to DPS by-laws** (including those approved as a result of OMB appeal), and that **Toronto's Official Plan Policies for implementing a DPS do not and legislatively cannot prohibit site-specific amendments.**

   Nor is the Chief Planner's claim that a DPS by-law is "like a Heritage Conservation District by-law: you can't appeal on a site-specific basis" correct: **right now, there are several cases of site-specific applications and appeals to amend Heritage Conservation District by-laws** (see the CORRA paper 'The DPS from the community perspective' for links).

2. Another stated advantage of the DPS is as encoding a "community vision" for development in an area. But unlike existing area-planning tools (also "vision-based"), **the DPS process carries a risk of significant unappealable OMB-determined upzoning of an entire area:** developers can appeal to change the parameters of a proposed DPS by-law; once the OMB decides, all zoning for the area is replaced, and the new DPS standards are henceforth "as-of-right" and unappealable by 3rd parties.

   As Joseph D'Abramo noted, **the areas for which the risk of significant OMB-directed upzoning is greatest are high growth areas without a consistent built form profile.** But this description fits the very areas targeted as DPS pilots---King-Spadina, Yonge-Eglinton, North Yonge, and Scarborough and Etobicoke Centres!

[1] See especially FoNTRA's submission to the April 10, 2014 PGMC, and the 25+ submissions (from community associations, planners, lawyers, developers, and community support groups) to the June 19 PGMC statutory meeting on the DPS Official Plan Policies, nearly all of which raised concerns and asked for deferral for further study and consideration.

3. **The Official Plan Policies designate the entire City of Toronto a development permit area**: "The entire City of Toronto is identified by this policy as a development permit area. The Development Permit System will be implemented by by-law in selected areas of the City" (S5.2.3).[2]

   This designation is both unusual and significant. As was discussed at a recent panel discussion on the DPS (with the Lake of Bays and Brampton DPS planners, Dennis Wood of Wood Bull, and CORRA Vice Chair Jessica Wilson), in previous implementations, the boundary of the "development permit area" in the Official Plan Policies is closely aligned with the boundaries of targeted DPS areas. Not so for Toronto's DPS policies. What this means is that **passage of the motion renders every single part of the City of Toronto potentially DPS-able**. Planning staff assure us that "only areas that want it will get it"; and Councillor Filion's amendment(s) to the Policies require that there be a public meeting and Council decision about proposed DPS target areas; but these are comparatively weak safeguards.

   Top planning lawyer Calvin Lantz of Stikeman Elliott expressed concern about this overly broad implementation, saying "**Toronto is talking about moving forward by way of pilot project at the same time that the city is proceeding with an official plan amendment to implement a DPS on a city-wide basis; [...] That seems inconsistent, and it's difficult to understand why the city is moving forward so rapidly with what it is calling, but doesn't actually appear to be, a pilot project**".[3]

CORRA understands that many groups relied on City planning staff and the Chief Planner's assurances that no site-specific amendments would be permitted under a DPS by-law.

Given the new information: Are you, as a Councillor, willing to advance a system that could put communities in your Ward at risk of potentially significant up-zoning and subsequent loss of 3rd party rights of consultation and appeal, in exchange for a DPS by-law---especially when there are existing "vision-based" area planning tools that, we now know, are as effective at preventing site-specific amendments as a DPS by-law, and which do not incur such risks or loss of rights?

Jessica Wilson, Vice Chair
Development Permit System (DPS)
Confederation of Resident and Ratepayer Associations in Toronto
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[2] See http://www.toronto.ca/legdocs/mmis/2014/pg/bgrd/backgroundfile-70294.pdf
[3] See http://www.lawtimesnews.com/201406234039/focus-on/focus-toronto-considering-development-permit-system