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To: <pgmc@toronto.ca>
CC: Councillor Mike Layton <councillor_layton@toronto.ca>
Date: 06/18/2014 12:24 AM
Subject: My comments for 2014.PG34.4 on June 19, 2014 Planning and Growth Management Committee
Attachments: CORRA-DPS-from-the-community-perspective-June-2014.pdf; Part.002

To the City Clerk:

Please add my comments to the agenda for the June 19, 2014 Planning and Growth Management Committee meeting on item 2014.PG34.4, Official Plan Policies for Implementing a Development Permit System - Final Report

I understand that my comments and the personal information in this email will form part of the public record and that my name will be listed as a correspondent on agendas and minutes of City Council or its committees. Also, I understand that agendas and minutes are posted online and my name may be indexed by search engines like Google.

Comments:

Dear Members of the Planning and Growth Management Committee:

The recommendations in this motion---in particular, the recommendations that City Council amend the Official Plan by introducing policies for implementing a Development Permit System (DPS) in Toronto---are premature.

As Chief Planner Keesmaat noted at the November P&G meeting, the DPS, if implemented, would represent a "fundamental shift" in the planning process in Toronto. Yet almost no one in the City of Toronto---all of which is designated a potential DPS area in the draft Official Plan Policies---has even heard of the DPS; there has been effectively no discussion of the DPS in the mainstream press; and in any case there remain deep unclarities and concerns about this process, both in general and in particular. These unclarities and concerns should be extensively studied prior to implementing a DPS in Toronto in any significant area, much less as potentially applying to any area in the City of Toronto. Also needed is public consultation and dissemination of information going far beyond what has presently been done: the City reports that around 300 people attended the 4 open houses/public meetings---a drop in the bucket of the 2.9 million people in the City of Toronto that stand to be affected by this initiative.

It must also be remarked that the presentations by some members of City Planning about the content of the DPS have been misleading, to an extent casting doubt on whatever existing support for the DPS there may presently be. For example, Chief Planner Keesmaat said, of the Development Permit System on the Feb 25 TVO Agenda (at 28:40): "You can't appeal just one site. You can only appeal the whole thing". The supposed inability of developers to apply to amend a DPS by-law on a site-specific basis has been flagged as perhaps the main advantage of the DPS over existing area-planning tools, such as Secondary Plans or Area-specific Policies. But it turns out that (as I found out by speaking with planners and lawyers familiar with the DPS---e.g., Stefan Szczerbak, the Lake of Bays DPS Planner) neither the Ontario DPS regulation 608/06 nor Toronto's draft Official Plan Policies prevent developers from applying to amend a DPS by-law on a site-specific basis. The Draft Policies make site-specific applications to amend a DPS by-law a bit harder than usual---but site-specific appeals of existing area-specific policies also require area-wide considerations and studies; moreover, lawyers have expressed concerns that such additional requirements may not be legal and so may be removed on developer appeal.

Another misleading trope concerns Planning's pitching the DPS as aimed at identifying and incorporating the "community vision" for the area. That sounds great; but what Planning has not told the public is that, unlike existing area-planning tools (which are also capable of incorporating a community "vision"), the DPS process carries a risk of significant and unappealable upzoning of an entire area, due both to

departures between "vision" and what Planning proposes as the DPS by-law, and between what Planning proposes and what the OMB returns as a result of developer appeals (importantly, the OMB can change the content of the by-law). Once the OMB rules, all existing zoning for the area is replaced and is henceforth "as-of-right" and unappealable by any 3rd parties. Shouldn't the public be made aware of this risk in order to appropriately assess whether and how the DPS should be implemented in Toronto?

These brief remarks really only scratch the surface of the concerns that might be raised about both process and content of the DPS. That's not to say that the DPS should not be explored as applicable to some or other areas of Toronto. But given the unclarities and concerns---and the viable area-based alternatives---it seems reasonable to think that we should be taking a very conservative approach here.

I have read and thought a lot about the DPS in the past months, and am familiar enough with this topic that, for example, I am a member of a June 18 panel discussion on this topic at Insight's Planning and Land Development Forum. I attach the short paper upon which my presentation is based: 'The DPS from the community perspective'. I ask that members of the Planning and Growth Management Committee take a few minutes to read this paper.

Let's take our time, study this unusual planning process, and do it right. Please defer the motion to allow for further study of whether and how the DPS should be implemented in Toronto.

Sincerely,
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THE DEVELOPMENT PERMIT SYSTEM (DPS) FROM THE COMMUNITY PERSPECTIVE¹

CORRA, Confederation of Resident and Ratepayer Associations in Toronto

June 16, 2014

Here we provide an overview, from the community perspective, of the DPS process as anticipated to unfold in Toronto, followed by sections presenting the main stated advantages (with commentary) and main concerns with this process.

1. OVERVIEW OF THE DPS PROCESS

The Development Permit System (DPS) is a fast-track (45-day) area-based development approval process, combining the minor variance, zoning amendment, and site plan approval processes, that City Planning is advancing for implementation in Toronto.

Key features of the DPS as it would be implemented in Toronto are as follows:

1. **Passage of an Official Plan Amendment (OPA) containing Policies for implementing a Development Permit System in Toronto.** This document is the topic of the June 9 open house and June 19 statutory public meeting. After these meetings, the Official Plan Amendment will go to Council (in the 'ResetTO' literature the anticipated date is July 8-9). If passed as currently presented, all of Toronto would be a proposed DPS area, though in practice only selected areas would undergo the process, at least to start.
2. **Selection of specific areas to receive a DPS by-law, which will replace existing zoning.** City Planning presents the DPS as applying to "neighbourhood-scale" areas; this terminology is not defined, but some areas discussed as possible pilot areas are the King-Spadina Planning District and portions of Eglinton Avenue and vicinity. Planning has stated that only areas wanting a DPS by-law will get one; at present the mechanism for selection and drawing of boundaries is unclear.
3. **For each selected area, a front-end process of consultation.** This is advertised as identifying the community "vision" for the area, including identifying needed community benefits.
4. **After consultation, City Planning proposes a DPS by-law.** This specifies minimum and maximum standards (e.g., heights) and associated criteria (e.g., acceptable shadow impact); the standards also contain triggers for community benefits. For example, a DPS by-law for a mid-rise area might specify a max height of 11 storeys, a criterion limiting shadow impact, and a "trigger" for community benefits that kicks in above 6 storeys.

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5. **For 20 days, anyone disagreeing with the by-law may appeal to the Ontario Municipal Board (OMB).** As a consequence, **the DPS by-law may be revised.**
6. **Once the DPS by-law is adopted, all existing zoning is repealed.** All applications for building permits are henceforth processed under the DPS by-law, with a 45-day time-line (after which applicants can appeal to the OMB).
7. **Once the DPS by-law is adopted, all permit applications are processed like “as of right” applications: no public consultation is required, and 3rd parties do not have the right to appeal application decisions; developers do have this right.**

2. STATED ADVANTAGES OF THE DPS

The following are what the province and/or City Planning present as the primary advantages of the DPS; commentary follows in the form of notes.

1. **Replaces site-by-site planning with "vision-based neighbourhood scale" planning.**

NOTE 1: This feature is of potential benefit to communities: in practice (though not law), there is extensive front-end consultation with the community about the desired course of future development and needed community benefits, prior to formulation of a DPS by-law.

NOTE 2: Toronto currently has existing vision-based area-planning alternatives to site-by-site planning (Secondary Plans, area-specific OPAs such as those had by Kensington and Ossington) not subject to any of the concerns highlighted below.

NOTE 3: DPS by-laws will typically involve “upzoning”, since DPS by-laws replace the minor variance and zoning amendment processes.

NOTE 4: The final form of a DPS by-law may depart considerably from the community “vision”. In particular, there is a risk of significant unappealable upzoning associated with developer appeals of a DPS by-law; see Concern 1.

2. **Encourages a planning process that is transparent and consistent.**

NOTE 1: This feature is of potential benefit to both communities and applicants: DPS by-laws set out specific standards (height, etc.) and criteria (acceptable shadow impact, etc.), and conditions (pertaining to, e.g., community benefits) that are supposed to be met for applications to be approved, so that everyone more or less knows what to expect.

NOTE 2: The caveat "more or less" in the last sentence of NOTE 1 reflects that the criteria-based form of DPS by-laws introduces an element of uncertainty not found in present zoning by-laws; see Concern 4.

NOTE 3: The caveat "supposed to be met" in the last sentence of NOTE 1 reflects that the Provincial DPS Regulation O. Reg. 608/06 does not prevent applicants from appealing to amend a DPS by-law on a site-specific basis.² In this respect the DPS and existing area-based planning mechanisms are on a par. This leads, however, to a possible distinctive advantage of Toronto's DPS.

3. POSSIBLE ADVANTAGE: It is difficult to amend a DPS by-law on a site-specific basis.

NOTE 1: The Draft Official Plan Policies for Implementing a DPS in Toronto contain requirements intended to make it difficult to apply to amend a DPS by-law on a site-specific basis, by requiring that such applications include area studies, an area-based planning rationale, and a strategy for consultation along lines of what would be required for an application to amend the entire by-law.

NOTE 2: This feature is primarily of benefit to communities, and the requirements are somewhat harder to satisfy than those associated with site-specific applications to amend Secondary Plans or other existing area-planning by-laws. Not by much, though: site-specific applications to amend Secondary Plans and other area-specific Official Plan Amendments must also include area (e.g. transportation) studies, an area-based planning rationale, and consultation.

NOTE 3: Since this feature is not part of the Ontario DPS Regulation, there is a risk that it will be appealed by developers and removed from the final version of Toronto's DPS Official Plan Policies. This would remove the primary advantage for communities of going with the DPS instead of alternative area-based policies.

NOTE 4: Even if the feature does survive a legal challenge, developers may be able to satisfy the requirements without overmuch difficulty. Illustrative cases-in-point are the typically highly superficial "Avenue Segment Studies" and area-based planning rationales submitted by applicants wanting to build on Avenues in the absence of a City-led Avenue Study.

4. Provides a streamlined development approval process and allows flexible development standards.

NOTE 1: This feature is primarily of benefit to applicants. The streamlined approval process reflects (a) that multiple processes are combined into one; (b) the timeline on permit applications is greatly reduced, from 180 days to 45 days;

² For example, the Lake-of-Bays DPS allows applicants to appeal to amend the DPS by-law on a site-specific basis.

(c) no public consultation is required, and (d) application approvals are not subject to 3rd party appeals. The development standards are “flexible”, reflecting that what is allowed on a site is a function of satisfaction of criteria and conditions, as opposed to hard-and-fast numbers as in the case of present zoning by-laws.

NOTE 2: Streamlining the development approval process and shifting to flexible development standards may be a disadvantage to communities, in having several potentially problematic consequences (see Concerns 2, 3, and 4).

3. CONCERNS WITH THE DPS

The main concerns with the DPS are as follows:

1. Risk of “upzoning” significantly departing from what members of the community envision.

There are two main areas of risk. First, there is no guarantee that Planning will return a DPS by-law encoding the community “vision”. For example, if the community vision is for a 10 storey max, Planning might return with a DPS by-law with a 15-storey max.³ Second, developers with deep pockets and investments in the area may appeal the by-law to the OMB. Importantly, the OMB can change the content of the by-law. For example, the OMB might agree with a developer that the DPS by-law should have a 20-storey max. And once the OMB rules, the new standards replace existing zoning, with no right of 3rd party appeal.

2. An adopted DPS by-law removes public rights to consultation and to 3rd party appeal, but retains appeal rights for applicants.

A DPS by-law turns non-as-of-right asks (minor variance, zoning amendment, and Section-37-style tradeoffs) into as-of-right asks (so long as specified criteria and conditions are met). Then it removes public rights of consultation and appeal on grounds that all DPS-based applications are “as-of-right”. The removal of public rights of consultation and appeal will likely incline decisions in favor of developers. Moreover, residents and other 3rd parties may want to be consulted

³ Vancouver has a “development permit system” similar in respect of involving a front-end process of consultation followed by rezoning, and there has been great citizen unrest due to large gaps between what a given community wants and what it gets. See <http://www.cbc.ca/news/canada/british-columbia/city-delays-rezoning-plans-in-vancouver-neighbourhoods-1.1871813> and <http://cityhallwatch.wordpress.com/2013/10/24/coalition-of-vancouver-neighbourhoods-cvn-media-release/>.

about or to appeal decisions on applications.⁴

3. **A DPS allows delegation of final approval authority away from public representatives to planning staff or others.**

Due to the 45-day timeline, approvals are expected to be delegated to the Chief Planner or other unelected persons or committees. Such delegation takes out of picture both Councillors and residents—advocates for those who actually live in the area. Complex applications may be directed to Council, as in Lake-of-Bays; but given the 45-day timeline, these applications may be appealed to OMB on grounds of neglect, again by-passing local input. Even given extensive front-end consultation, the community may want to be involved in helping plan their neighbourhood on an on-going basis.

4. **“Criteria/Performance-based” DPS by-laws can be problematic.**

To allow 45-day processing, DPS by-laws are based in algorithmic criteria or “performance standards” (e.g., requiring 5 hours of sunlight on a facing sidewalk). Such by-laws are insensitive to context, and may not be appropriate for Toronto’s mature, idiosyncratic areas. Many have found, for example, that the criteria in the Avenues and Mid-rise Building Study allow buildings that are overly intrusive with respect to shadow, overlook, etc. There is also a concern that performance-based standards will increase uncertainty, since before an application and associated studies come in, residents can’t predict what exactly the criteria will allow on a specific site.

5. **The law doesn’t guarantee that there will be extensive front-end consultation.**

City Planning has described the process of consultation as being intensive, but the legal requirements for front-end consultation consist in only a single open house and a single public meeting, and the proposed Official Plan Policies for implementing the DPS in Toronto do not contain language ensuring that consultation will go beyond this minimum.

⁴ Here are 2 case studies where community members might want to appeal a DPS decision:

Case I: A developer applies for a 9 storey condo. Planning approves the proposal. The community has good reason to think the criteria should only allow 8 storeys (perhaps the developer’s shadow study is flawed, as we know has happened), but **can’t appeal to the OMB to make their case.**

Case II: A developer applies for an 11 storey condo. Planning approves the 11 storey proposal in trade for a community benefit. The community doesn’t think the benefit is worth it, but **can’t appeal to the OMB to make their case.**

6. DPS studies are highly resource intensive.

DPS studies are presented as highly intensive, on order of a Heritage Conservation District (HCD) Study—which for a neighbourhood-scale area may cost on order of 1 million dollars. This gives rise to two potential problems:

- Given risk factors/removal of rights, not every community will want the DPS. Will planning staff and resources be diverted from existing or needed non-DPS Area Studies, to DPS studies?
- In the case of mid-rise intensification on TO Avenues, lack of resources for Avenue Studies led to a “general guidelines” approach, via the Avenues and Mid-rise Building Study. Will community visions input into custom-fit DPS by-laws similarly give way to general DPS guidelines for different kinds of areas?