



Councillor Josh Colle

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Tuesday, February 24th, 2015

Chair David Shiner
Planning and Growth Management Committee
100 Queen Street West
Toronto, ON M5H 2N2

Dear Chair Shiner and Committee Members,

RE: Council Direction to Retain Outside Planners at the Ontario Municipal Board (OMB)

Over the past two years I have been working with engaged residents in my Ward to advocate on behalf of the community with respect to a development application at 1100 Briar Hill Avenue.

Both North York Community Council and City Council adopted NY34.95, which directed Council to *“authorize the City Solicitor to hire the necessary external consultants to defend the existing zoning by-laws on site, and direct all consultants together with any other appropriate City staff, to attend any Ontario Municipal Board hearing to oppose the applicant’s appeal respecting Zoning By-law Amendment application City File No. 13 221087 NNY 15 OZ for 1100 Briar Hill Avenue.”*

In this instance, internal City protocols trumped the will of Council and this direction from Council was not followed. As it currently stands, internal City of Toronto protocol calls for City Legal to make three attempts to secure an outside planner. If, for any reason, they are unable to secure an outside planner, the direction of City Council to defend their position is not fulfilled.

As a result of this internal policy, at the Ontario Municipal Board hearing for 1100 Briar Hill on November 24th, 2014, the community and I did our best to defend Council’s position with no external expert planning or support from City Legal to counter the applicant.

I encourage members of the Committee to review this policy to ensure that the directions of Council are being followed.

RECOMMENDATION

1. **That staff report back to the May 2015 Planning and Growth Management Committee meeting with a review of the current internal policies around retaining external planning experts to support Council’s decisions and directives.**

Thank you for your consideration of this recommendation.

Sincerely,

Josh Colle
Councillor, Ward 15 – Eglinton-Lawrence

Encl. Briar Hill – Stayner Residents Association Correspondence

Mayor John Tory
Office of the Mayor,
Toronto City Hall,
2nd Floor,
100 Queen St. West,
Toronto ON
M5H 2N2

December 12, 2014

Your Worship,

Re: Redevelopment of 1100 Briar Hill Ave; File - 13 221087 NNY 15 OZ

Congratulations on your recent election as Mayor of the City of Toronto. This is a great city whose leadership in recent years has not been its match - we all look forward to your tenure and the return to real business as the priority of City Council.

We are writing to you today on behalf of the Briar Hill Stayner Community Committee and its 423 signatories. Over the past year and a half we have been engaged on an application for rezoning of a school property that was surplus in our neighbourhood by the Toronto District School Board. The debate and public engagement on this file took us through public meetings, a municipal process and ultimately an OMB hearing on November 25, 2014. While we await the results of that hearing, we feel the need to articulate to you our disappointment with the surprising lack of accountability and transparency that has characterized our experience with the City of Toronto staff.

The Planning act and the City of Toronto Act clearly lay out the process which a landowner must follow in order to request and potentially achieve a rezoning of a property. The Provincial Growth Plan and Toronto's Official Plan give guidance on the appropriateness of density and uses for properties. Our group of citizens, drawn from families that live in the immediate vicinity of the former Briar Hill Junior Public School at 1100 Briar Hill Avenue in Ward 15, is well informed of our rights and obligations as immediate neighbors to this subject redevelopment property.

When the new owner submitted a rezoning application in August 2013, we formed a community committee and canvassed the neighborhood for its position on the proposal. We participated in a community public meeting, we engaged our local Councillor Josh Colle, we engaged city planning staff, building and parks and forestry staff. We met the usual resistance to community engagement but we were unbowed in our efforts to be heard. Throughout the process - a process which we used to guide us in our effort - city staff frustrated our efforts to acquire information, engage on planning rationale and to accept that another perspective on land-use was valid. The assigned city planner told us that the city was obligated to allow for a profitable density for the applicant

because they had overpaid for the property, inferring that one individual's commercial rights should take prominence over the rights and opinions of an entire neighbourhood.

Along the way we asked for and received meetings with many city staff, usually at the behest of our Councillor. We understood the process, and we were not deterred by the lack of engagement of staff. The process calls for engagement at specific times and leads ultimately to community Council and city Council. As we did on another occasion in March and April 2014, with the support of our Councillor we worked through this process to arrive at a North York Community Council motion in August 2014 and ultimately a City Council motion passed on September 20, 2014.

That motion called for - amongst other things - the city solicitor to engage outside planning staff to defend the city's position as expressed by Council at the OMB hearing. It was the position of the Councillor who sponsored the motion that the city staff had not acted in the best interest of the city or its residents by not adhering to a process and by not incorporating or acknowledging the local concerns of immediate neighbours.

Our committee and the neighborhood were thankful for the stewardship of the Councillor and we believed that the City Council motion was clear direction to staff on a file that was characterized by lack of staff transparency and accountability. What we had been requesting during this consultation period was that another viewpoint based on planning principles would be consulted and we were satisfied that it would be. Soon after the final meeting of the last Council, the municipality went into a writ period and we were not able to engage further on the file. Understanding that the will of Council is the preeminent authority in the municipality, we perhaps naïvely believed that staff would follow its instructions even when Council was not sitting.

The first principle of elected representation is that final authority rests with the body that receives the mandate from the People. We put our faith in that first principle, and we believed that would ultimately direct the activities and responsibilities of the unelected municipal staff. However, as has been our experience on this file, staff acted in a manner that was not consistent with this principle and ultimately took actions of omission that injured our ability to present a counter position in a contentious redevelopment hearing.

In the two months between the City Council meeting and motion and the tribunal hearing, city staff did not follow the instruction presented to them. Not only did they not hire outside planning experts, they chose not to report this to the Councillor or Council when there would have been time to seek new direction. Staff's informal position – expressed many times to stakeholders but not in official reports - on the applicants proposal was that the requested permissions were compliant with their ideology, and any positions to the contrary that were based on the official plan or other existing planning principles were not welcome. In fact, we had been told along the way that regulations and principles were evolutionary.

The ultimate result of the city staff action was that at the November 25, 2014 OMB hearing on this file no planning staff, internal or external, and no other expert witnesses were in attendance to present a counter case to the applicant. Also the City's assigned solicitor did not present an opening statement or a closing statement, or cross-examine any of the witnesses presented by the applicant. The city staff indicated that they were unable to contract outside planning consultants for this case, and they did not even attend the tribunal hearing in their

place.

The hearing took place with a small army of paid consultants on one side arguing the case of the commercially conflicted applicant, and the city on the other side represented by a silent and unprepared singular solicitor on the other side. In our view it was a deliberate effort by a city staff that had been forced by council to prepare and present a counter case to ignore first principles and abandon its responsibility to do its job. The City of Toronto conducted itself in a shameful fashion, deliberately choosing to not execute its duties simply because unelected staff did not agree with the position taken by elected council.

Your Worship, this is a very disturbing development that needs careful deliberation by Council. If the citizens of the municipality are required to follow an articulated process that is built through legislation, guided by regulation and ultimately responsible to the first principle of democracy, unelected city staff cannot arbitrarily choose to ignore their obligations arbitrarily. We are not writing you today to request that you take a position on our development debate. We are writing you today to formally request that in your new role you address the lack of accountability that characterized the relationship between staff and the people of Toronto on this file.

The OMB will make a decision in short order, and one side or the other will ultimately win or lose via that ruling. However if we do not address the choices made by staff to ignore Council, and the underlying issues that allow them to do so in the context of the principles of the democratic process, then we are bound to ask the question that is on the minds of the people of the Briar Hill Stayner neighborhood:

Who runs the city - the representatives we elect through the democratic process or the people that those representatives hire to administer the municipality?

We are requesting a meeting to address this with you or conversely an opportunity to present Council and pose the question to the full executive. Thank you for your attention to this matter, and we look forward to speaking with you and your staff in the near future.

Regards,



Mato Roncevic
Co-Chairs, Briar Hill Stayner Community Committee



Flavio Volpe

cc: Councillor Josh Colle
Joe Penachetti, City Manager