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BL44.1.13
Re Bill 1109

July 23, 2018

BY EMAIL

City Council
Attn: Ms. Marilyn Toft, City Clerk's Office
City of Toronto
12th Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Mayor Tory and Members of Council:

Re: Official Plan Amendment No. 406 – Downtown Plan

Please be advised that Aird & Berlis LLP represents the Bitove Family which owns property municipally known as 99 Blue Jays Way.

On behalf of our client, please accept this correspondence as formal objection to the Downtown Plan as currently drafted, on both procedural and substantive grounds. For reasons that follow, we request that this matter be referred back to City staff to allow the public a meaningful opportunity to assess and comment on the impacts of these policies, and to allow staff to remedy the substantive and procedural defects which exist.

Our client's concerns with the Downtown Plan, include, but are not limited to, the following:

The Downtown Plan contains a number of policies, including those that discourage or restrict residential intensification, which are inconsistent with the Provincial Policy Statement 2014 ("PPS"), and do not conform with policies of the Growth Plan for the Greater Golden Horseshoe 2017 ("Growth Plan"). Both the PPS and the Growth Plan specifically promote residential intensification within the boundaries of the Downtown Plan.

The Downtown Plan also contains new designations and policies that impose overly prescriptive performance and built form standards, including mandatory residential unit mix, type, and size, building heights and setbacks, and the location and layout of interior amenity space. The rigid and prescriptive nature of these policies is especially problematic within an Official Plan amendment as it means that even minor changes required on a site by site basis and supported by the City would be subject to a costly and lengthy Official Plan amendment process. For these reasons, matters such as these are more properly addressed through a zoning by-law which can be varied to address site specific issues.

Additionally, proposed policies that require minimum non-residential gross floor area in new developments and that prohibit any net-new shadow on parks and open spaces, will jeopardize the viability of future development, precisely at a time when the City is facing real challenges in terms of its housing supply.

OPA 406 contains no transition provisions, which are critical to prevent prejudice to landowners with development applications that are already in process and, in some instances, have been the subject of hearings. Landowners ought to be entitled to rely on the policy regime in force at the time of preparing and submitting their applications. For development proposals which pre-date the adoption of OPA 406, appropriate transition provisions should be incorporated into OPA 406. The failure to incorporate even basic transition provisions represents a significant procedural unfairness, and is inconsistent with the City's past practices.

We note that the draft of OPA 406 and the accompanying staff report were released to the public only shortly prior to the Planning and Growth Management Committee meeting of May 1, 2018. Such a limited window for review and feedback on a document as far-reaching as this one is entirely insufficient in the context of this proposed Official Plan Amendment which covers an area as large as the Downtown and raises the number and complexity of issues involved.

The adoption of the Downtown Plan is proposed to be undertaken pursuant to Section 26 of the Planning Act, with final approval to be sought from the Minister of Municipal Affairs and Housing. In support of this approach, staff have described this process as a "partial conformity exercise" for the Growth Plan, 2017. However, despite the significant amendments made to the Planning Act in recent months, it is unclear what statutory authority exists for this "partial conformity" exercise. Any efforts to bring the Official Plan into conformity with the Growth Plan should take into account the Official Plan as a whole, rather than seeking "partial conformity" on an area by area basis. We do not agree that this is a proper or appropriate case for the use of the Section 26 process.

Further, due to recent changes to the Planning Act, reliance on approval by the Minister pursuant to Section 26 eliminates any further opportunity for stakeholders, including our client, to challenge any flaws or defects in the Plan. This circumstance underscores the importance of further deliberation by the City, and reconsideration of the issues outlined above.

For all of these reasons, and such further reasons as may be added upon additional review, our client objects to OPA 406 in its current form. Please provide the undersigned with notice of any future public meetings in relation to this matter and to notice of adoption of OPA 406 or any amendments thereto.

Yours truly,

AIRD & BERLIS LLP



Eileen P. K. Costello
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