



**Kagan
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LAWYERS

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May 21, 2018

By email clerk@toronto.ca

His Worship Mayor John Tory and Members of the City Council
10th floor, West Tower, City Hall
100 Queen St. West
Toronto, ON M5H 2N2

Attn: Ms. Ulli Watkiss

Your Worship and Members of the City Council

**Re: Toronto City Council Meeting May 22-24, 2018
Downtown Secondary Plan, Official Plan Amendment OPA 406
Agenda Item PG29.4**

We are the solicitors for P.I.T.S. with respect to the above-noted matter. Pursuant to an Agreement of Purchase and Sale (Dec. 2013), P.I.T.S. is under contract to purchase the air rights from Canadian National Railway Company and Toronto Terminals Railway Co. Ltd. over that portion of the railway corridor roughly bounded by Blue Jays Way (on the east), Bathurst Street (on the west), Front Street (on the north) and Ice Boat Terrace (on the south) (the "Property"). By way of this letter we are providing our client's comments on the proposed Downtown Secondary Plan, OPA 406.

As City Council is well aware, on May 23, 2017 our client filed an Official Plan Amendment application to permit the construction of a decking structure over top of the rail corridor together with a mixed-use development consisting of residential, retail, commercial, institutional and significant open space uses. That application (also known as the ORCA project) was deemed complete, refused by the City and appealed to the Local Planning Appeal Tribunal (formerly the Ontario Municipal Board). That appeal is awaiting a hearing. As City Council is also aware, our client appealed OPA 395 (the Rail Deck Park OPA) to the Local Planning Appeal Tribunal and a hearing on that appeal is also awaiting a hearing. The reasons in support of both appeals are numerous. In summary, outright denying our client's development and adopting instead OPA 395 (which strips away all private development rights and leaves only public parkland as the permitted use), is not consistent with the Provincial Policy Statement, fails to conform to the Growth Plan, and fails to comply with the City's in-force Official Plan. Moreover, since the City does not own the vast majority of the air rights needed to build the Rail Deck Park its above-noted decisions do not represent good planning and do not treat our client fairly.

The proposed Downtown Secondary Plan (OPA 406) continues to implement, as it applies to the Property, some of the same planning errors as OPA 395. To that extent my client opposes OPA 406 and asks that City Council direct staff to bring forward modifications which would be consistent with the PPS, conform to the Growth Plan and represent good planning.

Without restricting the generality of the foregoing, my client's specific concerns with proposed OPA 406 are as follows:

1. To the extent that OPA 406 replaces the development rights afforded the Property under the Railway Lands Central Secondary Plan and the Railway Lands West Secondary Plan, our client requests that this not be done.
2. Policy 4.2 (*Directing Growth*) directs growth to certain areas of the downtown but does not direct any growth to the Property. Given that the Property is within the Provincial Urban Growth Centre and is exceptionally well served by both existing and planned higher order transit, the Property should be specifically identified for growth.
3. Policy 6.35 (*Development in Proximity to Planned Rapid Transit Stations*) requires the City to undertake a further study, sometime in the future, to adopt policies which would implement appropriate intensification within 500m of an planned rapid transit station. The Property is directly adjacent to a planned rapid transit station being the future Spadina Go Station. Policy 6.35 puts off to a later date the very study and policies which the Growth Plan (2017) requires be adopted now, as part of OPA 406. All land use planning decisions by City Council must conform to the Growth Plan (2017) at the time of the decision, not at some later date.
4. Policy 7.4 (*Development Adjacent to a Park*) provides certain urban design policies for development adjacent to a park. To the extent that any of these policies restricts or prohibits our client's proposed development, this policy is opposed. The policy should be modified to permit our client's proposed development. Regardless we take the position that our client's proposed development is protected by the Clergy principle.
5. Policy 7.5 (*The Downtown Parks and Public Realm Plan*) refers to a non-statutory document called the Downtown Parks and Public Realm Plan. To the extent that such document restricts or prohibits our client's proposed development, our client opposes this policy.
6. Policy 7.11 (*Core Circle*) provides onerous urban design policies for development adjacent to parks in the Core Circle. The Property is within the Core Circle. To the extent that this policy restricts or prohibits our client's proposed development, our client opposes this policy.
7. Policy 7.29.4 (*The Shoreline Stich*) provides that the railway corridor west of Union Station will be developed for a significant park space. The Property is located west of Union Station and within the railway corridor. To the extent that this policy restricts or prohibits our client's proposed development, our client opposes this policy.
8. Policy 7.4 (*Parkland Provision*). Our client's proposed development included the provision of a significant amount of open space capable of becoming a significant public park. That open space was proposed on the south side of the development, not adjacent to Front Street, and as such might not comply with this policy. To the extent that this policy restricts or prohibits our client's proposed development, our client opposes this policy. Moreover, to the extent that this policy seeks to increase the current City parkland dedication rate (which caps the requirement at 10%-20% of the land area depending on the size of the development parcel), this policy is opposed. A greater parkland taking would not be consistent with the PPS (as it would stifle intensification and affordable housing) and because it would not conform to the Growth Plan (since it would stifle intensification).

9. Policy 7.50 (*Privately Owned Publicly-Accessible Spaces [POPS]*) provides that POPS will not be provided in lieu of parkland dedication but fails to provide a policy basis for a parkland credit (even partial) for a POPS. This does not represent good planning and should be modified to provide for such a credit.
10. Policy 15 (*Interpretation*). To the extent that any of the policies or mapping referred to in this letter contain defined terms, then the definitions should be appropriate to the submissions made in this letter.
11. Maps 41-3, 41-3A, 41-3B, 41-3C and 41-3D (*Mixed Use Areas*) identifies the areas targeted for growth. The Property is not so identified and it should be. Our client opposes this map and asks that it be modified to identify the Property for growth.
12. Map 41-5 (Priority Retail Streets) identifies Front Street as a priority retail street but only as far west as Spadina Avenue. This map should be modified to extend that designation west to Bathurst Street.
13. Map 41-6 (*Core Circle*) is opposed as it applies to the concerns identified in policy 7.11 above; and
14. Map 41-10 (*Shoreline Stitch*) is opposed as it applies to the concerns identified in policy 7.29.4.

We hope that City Council will give careful consideration to our client's comments and concerns. Kindly ensure that we receive a copy of the City's decision. Thank you.

Yours very truly,



Ira T. Kagan

cc: P.I.T.S. Developments Inc.
Ian Graham (R.E. Millward & Associates Ltd.)