



April 28, 2018

To: David Shiner, Chair and Members of the
Planning and Growth Management Committee

From: Ian Morrison, President, Spire Condominium

Re: TOcore Downtown Plan Amendment (Agenda Item 29.4)

I am writing on behalf of the Board of Directors of the Spire Condominium (TSCC-1864) to communicate our views on the above matter before your Committee.

While the proposed downtown plan before your Committee is impressive, it has not been optimized to take advantage of oversight reform — i.e. the Local Planning Appeal Tribunal (LPAT) replacing the Ontario Municipal Board (OMB).

Unlike the OMB, LPAT cannot approve development proposals that are inconsistent with local official plans. However, when consistency is a matter of opinion, LPAT — like the OMB before it — may have one opinion while City Council has another.

Conflicting opinions are inevitable when plans rely on qualitative policies to regulate land use. For example the TOcore plan's proposed policy 6.26: "The scale and massing of buildings will respect and reinforce the existing and planned context of the neighbourhood, including the prevailing heights, massing, scale, density, and building type."

Clearly, opinions can differ when this policy is considered in relation to a given development proposal. Planners retained by the proposal's proponent can argue that it satisfies the policy while city planners can argue that it doesn't. If LPAT agrees with the proponent's planners, the development may proceed despite its inconsistency — in the opinion of Council — with the official plan.

On the other hand, if the plan incorporates numerical density limits — as Toronto plans used to do — rather than simply mentioning density, there would be no ambiguity: either the proposed density would exceed the limit, or it wouldn't.

With the objective of reinforcing City control over land use, we recommend that the plan be referred back to staff with direction to incorporate density limits.

The appended letter we sent to City staff on January 17, 2018 cites a concrete illustrative example — i.e. a development the OMB viewed as consistent with the current plan despite City Council's opinion to the contrary. The qualitative nature of the current plan's policies made that disagreement possible.

A handwritten signature in blue ink, appearing to read "Alan Monson".

Attachment

January 17, 2018

Mr. Gregg Lintern
Acting Chief Planner and Executive Director
Toronto City Hall
12th Floor, East Tower
100 Queen Street West
Toronto ON M5H 2N2
Via email: glintern@toronto.ca

Dear Mr. Lintern:

Re: TOCore Consultation

As Board President of Spire Condominium (TSCC-1864), and on behalf of the Board, I am writing to recommend a substantive change to the proposed downtown plan:

<https://www.toronto.ca/legdocs/mmis/2017/pg/bgrd/backgroundfile-106336.pdf>

As posted on line, the proposed plan does not correct a key deficiency of the current plan: i.e. lack of certainty when proposed developments are assessed for consistency with the plan. I will argue that recently-passed provincial legislation — i.e. replacement of the Ontario Municipal Board with the Local Planning Appeal Tribunal — strengthens the case for reducing this uncertainty. To that end I will recommend addition of density limits to the plan, at least in the St. Lawrence neighbourhood, where Spire is located.

The 60 Colborne project can serve to illustrate the uncertainty issue.

The developer of 60 Colborne — a project now nearing completion at King and Church Streets — appealed to the Ontario Municipal Board when the City did not respond to his rezoning application. At that point City Council approved a “request-for-direction” report from staff, which said the appeal should be

opposed because the project was inconsistent with the official plan. A number of official plan policies were cited in support of that position:

<https://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60288.pdf>

At that OMB hearing, the testimony of City planners was in line with Council's direction. However the developer's planning witness testified that the proposed project, contrary to the City's position, actually *was* consistent with the official plan. The board accepted that witness's opinion and ordered approval of the project: <http://internatlibs.mcgill.ca/OMB%2060%20Colborne-Jul-31-2014.pdf>

The 60 Colborne project's density (i.e. floor area divided by lot area) is 11.77. Had the City's official plan prescribed a lower density limit — for example 8.00 — the project's inconsistency with the official plan would have been a certainty, rather than a matter of opinion. That certainty might have motivated the Board to rule against the project as proposed. If the developer then came back with a density of 8.00, the result would have been the appropriate built form the city envisaged in its request-for-direction report.

Notwithstanding an official plan density limit, however, the Board could have approved the developer's proposal — by ordering the city to adopt a site-specific official plan amendment permitting density of 11.77.

This limitation of the City's authority will no longer apply when the OMB is replaced by the Local Planning Appeal Tribunal. As the legal firm Oslers notes in a commentary: *"Bill 139 (the legislation replacing the OMB with the Tribunal) amends the Planning Act such that the Tribunal would only have the authority to overturn a municipal decision if the Tribunal is convinced that the original decision under appeal is inconsistent with or does not conform with provincial policies or local plans."*

Clearly a city decision to refuse density of 11.77, if its official plan limited density to 8.00, could not be inconsistent with local plans. The Tribunal would have no authority to overturn such a decision, so the City's decision could not be appealed in the first place.

However a different outcome would be possible if the official plan continues without density limits, relying instead on policies like those involved in the 60 Colborne appeal; in that case the Tribunal would be free to view consistency as a

matter of opinion. The commentary by Oslers indicates how that scenario might play out:

“...if the Tribunal determines that a municipal decision does not follow provincial policies or municipal plans, the Tribunal would not substitute its own decision for that of the municipal council; rather, the Tribunal would be required to return the matter to the municipal council, with written reasons explaining the Tribunal’s rationale for overturning the decision. The municipality would then have 90 days to reconsider the application, with the benefit of the Tribunal’s decision. Only when, on a second appeal, the municipality’s subsequent decision still fails to follow provincial policies or municipal plans, would the Tribunal have the authority to substitute its own order for an order of municipal council.”

In other words if the City views a proposed project as inconsistent with its official plan, and refuses the application on that basis, the developer can appeal to the Tribunal. If the Tribunal then says it is actually the City’s *refusal* that is inconsistent with the official plan, not the proposed project, it will send the file back to the City. If the City then re-confirms its original refusal, the developer has the right to appeal a second time. In that scenario the Tribunal can order approval of a project the City says is inconsistent with its official plan, just as the OMB did in the 60 Colborne case.

The City can formulate its new downtown plan either way: retain the language currently proposed and live with the potential for Tribunal decisions like the OMB’s 60 Colborne decision — or add density limits to avoid that potential.

We acknowledge the possibility that official plan density limits will become problematic. The City is likely to look favourably on some development proposals with density above an official plan limit. The option of approving site-specific plan amendments would be available, although routine exercise of this option would impede desirable land-market adjustment — i.e. adjustment to land prices consistent with firm density limits.

Despite potential problems, the legislated role of the Local Planning Appeal Tribunal tips the balance in favour of official plan density limits. The St. Lawrence neighbourhood’s distinctive heritage character makes these limits particularly desirable. However it seems likely they would be desirable in other areas within the City’s downtown planning area — and indeed beyond that area.

Yours sincerely,

Ian Morrison

President

TSCC-1864

cc:

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