

June 6, 2018

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File 18436.00001

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

Attention: Nancy Martins, Secretariat

Dear Chair and Members of the Committee:

Re: PG 30.4 - Midtown in Focus: Final Report

A. Introduction

We act as counsel for 110 Broadway Inc. and Broadway Redpath Development Corporation, with respect to the properties municipally known as 110, 114 and 120 Broadway Avenue (collectively the "**Site**"), in the City of Toronto (the "**City**"). The Site is situated within the Yonge-Eglinton Secondary Plan area of the City, east of Yonge Street and north of Eglinton Avenue East.

On August 18, 2017, our clients filed an application for a Zoning By-law Amendment in respect of the Site, together with all of the required studies and supporting documentation. The application was subsequently deemed complete by the City as of August 22, 2017. The purpose of the application is to facilitate a proposed redevelopment and intensification of the Site. The proposed redevelopment consists of two tower components, namely, a 28-storey building and a 35-storey building, connected by a six-storey base building. The proposed redevelopment would consist of 822 residential units, including 121 rental replacement units and 261 parking spaces in two levels of underground parking. The proposed redevelopment would have a total gross floor area of 53,625 sq. m. and a density (FSI) of 9.45 times the lot area.

The proposed redevelopment of the Site requires amendments to the former City of Toronto Comprehensive Zoning By-law No. 438-86, as amended, as well as the new City of Toronto Zoning By-law 569-2013, as amended and currently under appeal. The amendments are required in order to increase the permitted height, density, setbacks and stepbacks, and revise other development standards in order to accommodate the proposal.

At its meeting on November 14, 2017, North York Community Council (“NYCC”) considered a Preliminary Report dated October 27, 2017 regarding the Application (the “**Preliminary Report**”) which was prepared by Community Planning Staff – North York District. Among the recommendations which were made by Planning Staff to Community Council in the Preliminary Report was Recommendation #1, which provides as follows:

1. Council withhold any approvals on the application until the adoption of the revised Yonge-Eglinton Secondary Plan as part of the City-initiated Midtown in Focus: Growth, Built Form and Infrastructure Review.

Despite our clients’ objections, Recommendation #1 above was adopted by Community Council on November 14, 2017 and subsequently adopted by City Council at its meeting on December 5, 2017.

In light of the City’s position, our clients exercised their statutory right to appeal the proposed Zoning By-law Amendment to the Ontario Municipal Board (now the Local Planning Appeal Tribunal) on December 21, 2017. A Pre-Hearing Conference before the Tribunal has been scheduled to take place on July 31, 2018.

Given that our clients’ application long pre-dates the proposed revisions to the Yonge-Eglinton Secondary Plan (which even at the present time remains in draft form only), we submit it is clear that the proposed revisions cannot constitute applicable policy for the purposes of our clients’ appeal. However, it is equally clear that the City has been purporting to establish a linkage between the two and, in effect, seek to have the revised Secondary Plan apply retroactively to our clients’ application. For this reason - and strictly without prejudice to our clients’ position that the City’s position is unfair, unjustified and without legal foundation - we are hereby submitting our comments on the Midtown in Focus: Final Report and the proposed revisions to the Secondary Plan as it relates to the Site.

B. Submissions Regarding the Proposed Secondary Plan

At the outset, our clients are particularly concerned about the apparent efforts on the part of City Staff to characterize this process as part of a Municipal Comprehensive Review, and their associated recommendation to seek to have the proposed Official Plan Amendment approved by the Minister pursuant to Section 26 of the *Planning Act*. In our respectful submission, this constitutes a belated after-the-fact attempt, apparently undertaken in concert with Staff at the Ministry of Municipal Affairs, to recast this process as something which was clearly not intended until long after it was already well underway. We presume that the primary motivation for this belated initiative is an attempt to take advantage of recent amendments to the *Planning Act* which effectively enable Section 26 Official Plan updates to be immunized from statutory rights of appeal to the Tribunal under section 17 of the *Planning Act*.

In our respectful submission, this amounts to a subversion of the planning process as envisioned by the *Planning Act* and it should not be condoned by the Committee or Council. It would be particularly ironic if the City chose to seek the Minister's approval of the proposed amendments after years of asserting the need for the City to have greater autonomy and independence from Queen's Park. If Council is satisfied with the proposed revisions to the Secondary Plan and is prepared to adopt them on that basis, it should have the fortitude and resolve to defend those amendments on any subsequent appeals before the Tribunal, rather than shielding itself under the cloak of the Minister.

With respect to the merits of the Proposed Secondary Plan as it applies to the Site, is our opinion that, as currently drafted, the proposed Secondary Plan is not consistent with the Provincial Policy Statement, 2014 and does not conform with the Growth Plan for the Greater Golden Horseshoe (the "**Growth Plan**"). More specifically, the Proposed Secondary Plan does not optimize the use of land and infrastructure, both generally and particularly as it applies to the Site.

In particular, the Proposed Secondary Plan does not take into account specific Provincial policy directions to optimize the use of land and infrastructure along transit and transportation corridors, and in particular within "major transit station areas". In this regard, "optimization" means making something "as fully perfect, functional, or effective as possible".

From a broader strategic perspective, planning for nodal intensification around key subway stations provides significant potential for integrating land use and transportation planning objectives. There are limited opportunities to optimize intensification on Sites in proximity to rapid transit stations to meet the objectives of the Growth Plan. The proximity to the Eglinton-Yonge subway/LRT station should be a key consideration in determining an appropriate height (and resulting density) for the Site. In our submission, the apparent failure to take this consideration into account or to give it proper weight does not conform with the direction in the Growth Plan to maximize the number of potential transit users within walking distance of the existing and planned transit facilities. Instead, the October 15, 2017 Staff Report appears to consider only the minimum density requirements set out in the Growth Plan.

Our clients also have concerns with the revised unit mix and minimum unit size policy, Policy 7.1, which would require 15% two-bedroom units and 10% three-bedroom units, as well as an additional 15% for a combination of 2- and 3-bedroom units, and would specify minimum unit sizes of 87 square metres for two-bedroom units and 100 square metres for three-bedroom units. Setting minimum sizes for units will have unintended negative consequences by reducing affordability. We strongly believe that advancing these prescriptive measures without an in-depth review of market demand/supply and income/affordability presents significant risks and could potentially counter affordability objectives that the City is trying to achieve.

Finally, our clients have concerns with the revised monetary contributions policy, Policy 9.4.5, which provides that the amount of a monetary contribution will be equal to 25% of the incremental market value of the gross floor area, is inappropriate in several respects. First, as with the unit size and minimum gross floor area for office, any such policy should be considered on a City-wide basis. Second, a formulaic approach to monetary contributions (Section 37) is not supported by the City's Section 37 implementation guidelines. Third, while the City's practice has been to use a percentage of the incremental increase in land value as a guideline for calculating a Section 37 contribution, that percentage has historically much less than 25%.

Please note that the foregoing is not intended as a comprehensive list of all of the concerns that would arise from the application of the proposed Secondary Plan as it applies to the Site, but rather as a summary of the primary issues and concerns as identified to date.

C. Summary

For all of these reasons, it is our respectful submission that the revisions to the Yonge-Eglinton Secondary Plan as proposed in the Midtown in Focus: Final Report should not be recommended for approval by the Committee. Instead, we submit that the proposed OPA should be referred back to Staff for further consideration, both with respect to the proposed process intended to be followed and with respect to the substance and planning merits of the policy direction provided in the revised Secondary Plan.

Thank you for the opportunity to provide these written submissions. Please ensure that we are provided written notice of the Committee's recommendations and any subsequent decisions made by City Council in respect of these matters.

Yours truly,

WeirFoulds LLP



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c: Clients
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