Barristers & Solicitors

WeirFoulds LLP

June 29, 2018

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File 03406.0003

VIA E-MAIL - PGMC@TORONTO.CA

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 31.7 - Midtown in Focus Supplementary Report

We act as counsel for Duplex Holding, in respect of its lands municipally known as 479, 485 and 487 Duplex Avenue (collectively the "**Site**"). The Site is located on the east side of Duplex Avenue between Montgomery Avenue and Roselawn Avenue, within the Yonge-Eglinton Secondary Plan area. The current uses of the Site consist of two low-rise rental apartment buildings (both dating from the late 1920s or early 1930s) at 485 and 487 Duplex Avenue, as well as a surface parking lot located at 479 Duplex Avenue.

By correspondence dated March 29, 2018 and June 5, 2018 (copies attached), we provided a detailed written submission on this matter. We have now had an opportunity to review the Supplementary Report which was subsequently prepared by City Staff and wish to provide these further submissions on that basis.

Respectfully, it appears from the Supplementary Report that the noted concerns have not been responded to. We remain concerned that resources are being focused solely on responding to the Committee's direction for further community consultation and, through that process, to validate the pre-determined focus on lowering heights in specified Character Areas and increasing employment opportunities in Mixed Use Areas.

In that regard, we are surprised that Staff have now rolled out Option 3. The Midtown in Focus initiative has been subject to substantial review and consideration by Staff and the public for many months. By contrast, Option 3 would seem to lack the same depth of analysis and respectfully, we are of the view that it may undermine the integrity of the planning process.

Amongst other issues, the abrupt and sweeping change in direction represented by Option 3 undermines the already committed infrastructure improvements for this area of the City – significant ongoing taxpayer investments that were made by all participating levels of governments, in recognition of the central importance of Yonge-Eglinton from the standpoint of both provincial policy with which it must be consistent and to which it must conform (the Provincial Policy Statement, 2014 and the Growth Plan (2017), respectively) as well as the City's own Official Plan.

Finally, we also note the apparent continued intention to seek the Minister's approval of the proposed amendments pursuant to Section 26 of the *Planning Act*. We reiterate our clients' concerns and objections to that proposal for the reasons set out in our previous correspondence. Those concerns are exacerbated by the inclusion of Option 3 through the Supplementary Report.

Thank you for your ongoing attention to these matters. Please ensure that we continue to receive written notice of the Committee's recommendations and any subsequent decisions made by City Council in respect of these matters.

WeirFoulds LLP

Barnet H. Kussner

BHK/ew

c: Clients
P. Smith and S. Lauzon, Bousfields Inc.

11916483.1

June 5, 2018

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File 03406.00003

VIA E-MAIL - PGMC@TORONTO.CA

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 Committee Members:

Re: PG 30.4 - Midtown in Focus: Final Report

A. Introduction

We act as counsel for Duplex Holding, in respect of its lands municipally known as 479, 485 and 487 Duplex Avenue (collectively the "**Site**"). The Site is located on the east side of Duplex Avenue between Montgomery Avenue and Roselawn Avenue, within the Yonge-Eglinton Secondary Plan area. The current uses of the Site consist of two low-rise rental apartment buildings (both dating from the late 1920s or early 1930s) at 485 and 487 Duplex Avenue, as well as a surface parking lot located at 479 Duplex Avenue.

By letter dated March 29, 2018 (copy attached), we provided a formal submission on behalf of our client with respect to the proposed revisions to the Yonge-Eglinton Secondary Plan (the "**proposed Secondary Plan**") as part of the "Midtown in Focus" planning initiative. Our submission included a memorandum from Bousfields Inc. dated March 29, 2018 (the "**Bousfields memo**"), also attached, which set out a detailed planning rationale in support of our client's objections and concerns regarding the proposed Secondary Plan, as well as a policy justification to support further intensification of the Site at a substantially greater height and density than what is currently contemplated in the proposed Secondary Plan.

We have now had an opportunity to review the Midtown in Focus: Final Report which will be considered by the Committee at its upcoming meeting on June 7, 2018. On behalf of our client, we are hereby providing these written submissions in respect of the Final Report and the proposed Secondary Plan as appended thereto.

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 Secondary Plan 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 should not be condoned by the Committee or Council. It would be particularly ironic if Council 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 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, particularly as it applies to the subject 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".

In our respectful submission, the proposed designation of the Site as *Neighbourhoods 'A'* (Map 21-11) and the proposed height limit of 4 storeys (Policy 5.3.7), which are applicable to a small pocket of *Neighbourhood* designated lands that are 'bookended' between *Apartment Neighbourhoods* designated lands to the immediate west and *Mixed Use Areas* designated lands, would unduly restrict, rather than support, the intensification potential of the Site. Greater

height and density should be permitted on the *Neighbourhoods 'A'* lands to allow for appropriate intensification given its locational context between two higher density land use designations and within a 6- to 8-minute walk from the entrance to the Eglinton-Yonge subway/LRT station. In this regard, we submit that retaining this small pocket of lands strictly for low-rise low-density residential uses does not represent good planning and is not forward-thinking.

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.

As noted in the previously submitted Bousfields memo, despite the fact that Map 21-3 of the Proposed Secondary Plan indicates that the Site is within a "Major Transit Station Area – Secondary Zone", it would permit a height of only 4 storeys on the Site - the same height permission that would apply to *Neighbourhoods* designated lands located virtually anywhere in the City, regardless of proximity (or lack thereof) to rapid transit. In effect, it gives no additional height permissions to the Site notwithstanding its proximity to major transit, and thereby disregards the clear Provincial policy direction in that respect.

Moreover, we continue to 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. As outlined in the previously submitted Bousfields memo, 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, we continue to 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 by Bousfields and our client.

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 proposed 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 Council in respect of these matters.

Yours truly,

WeirFoulds LLP

Barnet H. Kussner

BHK/ew

Encl.

c: Client
P. Smith and S. Lauzon, Bousfields Inc.

11817814.1

March 29, 2018

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File 03406.00003

VIA E-MAIL (paul.farish@toronto.ca)

Paul Farish
Senior Planner, Strategic Initiatives, City Planning
City of Toronto
Metro Hall, 22nd Floor
55 John Street
Toronto, ON M5V 3C6

Dear Mr. Farish:

Re: Midtown in Focus: Proposed Yonge-Eglinton Secondary Plan
485 and 487 Duplex Avenue, Toronto

We act as counsel for Duplex Holding in respect of its lands municipally referred to as 479, 485 and 487 Duplex Avenue (collectively the "**Site**"). The current uses of the Site consist of two low-rise rental apartment buildings (both dating from the late 1920s or early 1930s) at 485 and 487 Duplex Avenue, as well as a surface parking lot located at 479 Duplex Avenue.

The purpose of this letter is to provide a formal submission on behalf of our client with respect to the proposed Yonge-Eglinton Secondary Plan (the "**proposed Secondary Plan**"), also known as "Midtown in Focus".

We have had an opportunity to review the proposed Secondary Plan with our client as well as its independent planning consultants, Bousfields Inc. In that regard, we enclose a memorandum provided to us by Bousfields Inc. dated March 29, 2018 (the "**Bousfields memo**"). It sets out a detailed planning rationale in support of our client's objections and concerns regarding the proposed Secondary Plan, as well as a policy justification to support further intensification of the Site at a substantially greater height and density than what is currently contemplated in the proposed Secondary Plan.

We commend to Staff the analysis and opinions set out in the Bousfields memo in its entirety. In particular, we submit that the locational context of the Site – specifically, its close proximity to the Yonge-Eglinton subway (and future Crosstown LRT station); the need for logical, coherent and consistent boundaries for transit-supportive development in the Yonge-Eglinton area; the overall size and dimensions of the Site; and its proximity to existing, approved and planned tall buildings within the Apartment Neighbourhoods and Mixed-Use Areas designations immediately adjacent or in close proximity to the Site – collectively provide a compelling basis for a more

permissive policy regime that would enable redevelopment of the Site at a substantially greater height and density than currently proposed, including the potential for a tall building on the Site.

We acknowledge that any consideration of the suitability of the Site for more intensive development based on Provincial and Official Plan policy directions and these relevant contextual factors, must also be balanced together with other important policy considerations. These include, among others, the need to respect and reinforce the character and scale of, and ensure appropriate transition to, the stable residential neighbourhoods in proximity to this Site.

In this regard, however, we commend to you the observation made in the Bousfields memo that the explicit height limit of 4 storeys on this Site in the proposed Secondary Plan effectively "*gives zero additional height permissions to the [Site] notwithstanding its proximity to major transit*". In our respectful submission, this is clearly not reflective of a fair, reasonable or appropriate balancing of the Provincial and Official Plan policies directing and supporting transit-supportive development with the other important policy considerations noted above. Instead it unduly subjugates the higher-order policy direction for transit-supportive intensification in favour of those other policy considerations as applied to this Site.

Our client and its consultants would be pleased to meet with Staff to discuss this submission and explore potential means of resolving our client's concerns prior to finalization and adoption of the proposed Secondary Plan.

Thank you for your consideration of this submission. Should you have any questions or require any additional information, please do not hesitate to contact Paul Chronis, Senior Planner in our office, at (416) 947-5069 or pchronis@weirfoulds.com.

Yours truly,

WeirFoulds LLP

Barnet Kussner

BHK/PC:cf
Enclosure

c: Client
P. Smith and S. Lauzon, Bousfields Inc.
P. Chronis, WeirFoulds LLP

BOUSFIELDS INC.

MEMORANDUM

To: Barnet Kussner
Partner
WeirFoulds LLP
66 Wellington Street West, Suite 4100
P.O. Box 35, TD Bank Tower
Toronto, Ontario M5K 1B7

Project No.: 1892

From: Peter F. Smith, B.E.S., MCIP, RPP
Sasha Lauzon, M.PL., MCIP, RPP

Date: March 29, 2018

Re: Midtown in Focus: Proposed Yonge-Eglinton Secondary Plan
479, 485 and 487 Duplex Avenue, Toronto

We are planning consultants to Duplex Holding with respect to the above-noted properties, which are located on the east side of Duplex Avenue in the block between Roselawn Avenue and Montgomery Avenue (collectively the "subject site"). The subject site is located within a 500 metre radius of the Eglinton-Yonge subway/LRT interchange station and, accordingly, is within a "major transit station area" as defined by the Growth Plan for the Greater Golden Horseshoe 2017 (the "Growth Plan"). The current uses of the subject site consist of two low-rise rental apartment buildings (both dating from the late 1920s or early 1930s) at 485 and 487 Duplex, as well as a surface parking lot located at 479 Duplex Avenue.

On behalf of Duplex Holding, we have reviewed the Proposed Yonge-Eglinton Secondary Plan Update - November 2017 (the "proposed Secondary Plan"), which was received and endorsed by City Council on December 5, 2017 as a basis for stakeholder and public consultation. In this regard, we have prepared this memorandum which outlines a number of concerns with the proposed Secondary Plan, which are set out below.

Fundamentally, our concern is that the proposed Secondary Plan falls short of the Provincial policy direction to accommodate intensification at locations within major transit station areas, including the subject site. In order to accommodate the planned growth and intensification targets set out for the City over the next 15-25 years and, even more critically, to be able to increase the housing supply going forward to help address the affordability problems we collectively face, the City will need to take better advantage of opportunities to intensify within "major transit station areas". It is these areas where people can be expected to rely on public transit and active transportation as an alternative to the private automobile, and where the City is able to maximize its substantial investment in public transit.

In our opinion, the approach taken in the proposed Secondary Plan is counter-productive to those objectives, and will impair the City's ability to achieve them. It would restrict, rather than support, the intensification potential of the subject site by introducing an explicit height limit of 4 storeys (12 metres) applicable to a small pocket of *Neighbourhood* designated lands which are 'bookended' between *Apartment Neighbourhoods* designated lands to the immediate west (west of Duplex Avenue) and *Mixed Use Areas* designated lands to the immediate east (fronting Yonge Street). In our opinion, rather than restricting height, the draft Secondary Plan should permit greater height and density to allow for appropriate intensification within this small pocket of lands given its unique locational context between two higher density land use designations and within a 6- to 8-minute walk from the entrance to the Eglinton-Yonge station. In this regard, it is our opinion that retaining this small pocket of lands strictly for low-rise low-density residential uses does not represent good planning and is not forward-thinking.

In our opinion, the proposed Secondary Plan, as currently drafted, is not consistent with the Provincial Policy Statement and does not conform with the Growth Plan. More specifically, the proposed Secondary Plan does not optimize the use of land and infrastructure, particularly as it applies to the subject site. From a 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 City needs to take advantage of rapid transit, and sites in the immediate proximity of subway stations (such as the subject site), in order to maximize the number of potential transit users within walking distance of the station. These strategic opportunities to achieve intensification as directed by Provincial policy must, of course, be balanced against the need to respect and reinforce the character of our stable residential neighbourhoods however, in our opinion, the draft Secondary Plan as currently proposed would not achieve such a balance.

The proximity to the Eglinton-Yonge subway/LRT station must be a key consideration in determining an appropriate height for the subject site. In our opinion, 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 facilites. Instead, the October 15, 2017 Staff Report appears to consider only the minimum density requirements set out in the Growth Plan.

Despite the fact that Map 21-2: Area Structure in the proposed Secondary Plan indicates that the subject site is within a "Major Transit Station Area – Secondary Zone", the proposed plan would only permit a height of 4 storeys in accordance with proposed Policy 4.5.3.7, the same height permission that would apply to *Neighbourhoods* designated lands located virtually anywhere in the City, regardless of proximity to rapid transit. In effect, it gives zero additional height permissions to the subject site notwithstanding its proximity to major transit, and thereby disregards the importance of the Provincial policy direction in that respect.

Fundamentally, it is our opinion that the subject site is a contextually appropriate location for a tall building, significantly taller than the 4 storeys currently contemplated in the proposed Secondary Plan. In our opinion, the subject site should be considered a tall building site for a

number of reasons including:

- its location within an approximate 400 metre radius of the Eglinton-Yonge station (within a major transit station area – within a 500 metre radius of a higher order transit station as defined in the Growth Plan);
- the establishment of logical boundaries for the transit-supportive intensification area in the northwest quadrant of Yonge-Eglinton, which should extend to Duplex Avenue and Roselawn Avenue, so as to be more generally consistent with the extent of the Urban Growth Centre within the northeast quadrant;
- its overall site size and dimensions; and
- its proximity to a number of other existing, approved and planned tall buildings in the *Apartment Neighbourhoods* designated area to the west and *Mixed Use Areas* designated area to the east.

In this latter regard, it should be noted that immediately opposite the subject site, within the *Apartment Neighbourhoods* designated lands, is a 34-storey apartment building at 500 Duplex Avenue.

Furthermore, from a fundamental policy perspective, it is our opinion that the imposition of numerical height limits (not only 4 storeys, but 12 metres as well) is generally inappropriate and undesirable in a policy document and is more appropriately included in a regulatory document (the zoning by-law) or a guideline. Fundamentally, the imposition of numerical standards in an Official Plan has the potential to stifle creativity, to unnecessarily trigger the requirement for site-specific official plan amendments, and to foster unnecessary technical debates.

In addition to the above mentioned concerns with respect to the height limit applicable to the subject site, we have identified a number of other general concerns with the proposed secondary plan policies, as set out in Attachment A.

In summary, for the reasons outlined above, it is our opinion that the City should provide consideration for tall building permissions on the subject site and within the area currently designated *Neighbourhoods*, east of Duplex Avenue and west of the lands fronting Yonge Street, between Helendale Avenue and Roselawn Avenue given their proximity to the Yonge-Eglinton subway station. Furthermore, it is our opinion that the City should provide consideration to the concerns outlined in Attachment A, prior to the Final Report to City Council.

Attachment A

1. Unit Mix and Minimum Sizes

   We have significant concerns with proposed Policy 3.6.2, which would require 30% two-bedroom units and 20% three-bedroom units, and would specify minimum unit sizes of 90 square metres for half of the two-bedroom units and 106 square metres for half of the three-bedroom units. Similar to our comments above, such detailed numerical standards are inappropriate in a policy document. Furthermore, if such policies are to be introduced in the Official Plan, that should be done on a City-wide basis with the requisite comprehensive study and opportunity for broad-based consultation.

2. Affordable Housing

   We have similar concerns about the proposed affordable housing provisions in Policy 3.6.4, which would require 10% of the total residential gross floor area as Affordable Rental Housing or 15% of the total residential gross floor area as Affordable Ownership Housing or a combination of the above. Moreover, no definitions are provided for Affordable Rental Housing or Affordable Ownership Housing, and it appears from a review of proposed Section 5.3 that affordable housing would not be an eligible Section 37 contribution, contrary to the City-wide policies in Policy 5.1.1(6) of the Official Plan. Similar to the proposed unit size policy addressed above, if such policies are to be introduced in the Official Plan, it should be done on a City-wide basis with the requisite comprehensive study and opportunity for broad-based consultation.

3. Section 37

   Finally, it is our opinion that proposed Policy 5.3.5, which provides that the amount of a monetary Section 37 contribution will be equal to 25% of the incremental market value of the gross floor area, is inappropriate in a number of respects. First, as with the unit size and affordable housing policies, any such policy should be considered on a City-wide basis. Second, a formulaic approach to Section 37 contribution is specifically rejected in 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 been 7-15% of the increased land value, not 25% of the increased gross floor area.