

Calvin Lantz
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January 28, 2020
File No. 136696.1001

By E-mail
councilmeeting@toronto.ca

City Council
City Hall
100 Queen Street West
12th Floor, West Tower
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, Secretariat

Dear Sirs/Mesdames:

**Re: Item No. TE12.4 – King-Spadina Secondary Plan Update – Final Report
Letter of Concern
401-415 King Street West**

We are counsel to 1107051 Ontario Ltd. and Cabo Three Investments Inc., the owner of the property municipally known in the City of Toronto as 401-415 King Street West (the "**Property**"), and located within the area of the proposed King-Spadina Secondary Plan (the "**Secondary Plan**").

By this letter, we request that City Council defer consideration of the Secondary Plan until staff have conducted meaningful consultation with affected landowners, including our client.

We have been engaged in the consultation process for the Secondary Plan and have expressed serious concerns to City staff by way of formal comments, submitted back in January 2019, as well as by letter to the Toronto & East York Community Council. A copy of these submissions is attached for your reference.

Staff have recently made substantive changes to the draft Secondary Plan, which became available to the public only in late December 2019. These recent changes have not been accompanied by further public and stakeholder consultation. Through the Commenting Letter, we requested a meeting with staff to discuss our client's concerns regarding the draft Secondary Plan, and to date, we have received no response from staff.

Upon our preliminary review, the most recent draft of the Secondary Plan fails to address some of the serious concerns raised in our submissions to the City and also raise additional areas of concern, including:

1. Policy 3.1.2, which requires that development provide the greater of the replacement of all existing non-residential gross floor area or a minimum of 25 percent of the total gross floor area as non-residential uses—without consideration of site location and context, the size and configuration of a site, or the built form implications of providing such a significant amount of non-residential space;

2. Policy 6.3, which requires setbacks of at least 3 metres above the height of a streetwall or base building, free and clear of projections—imposes an inflexible and prescriptive standard that fails to account for the unique attributes of the site and development scheme;
3. Policies 6.5, 6.6, 6.15 – 6.17, and associated maps and policies, which impose height limits and other built form requirements—without regard for the emerging context and overarching direction for growth and development at transit-supportive densities;
4. the lack of any policies addressing matters of transition or exemption.

Given that the revised draft Secondary Plan was made available to the public only in late December, it is essential that a deferral be granted in order to allow the public an opportunity to review and comment on this new document advanced by staff, and to provide staff the time needed to respond to the comments received.

In addition, as the appeals of the King-Spadina Heritage Conservation District Plan (the “HCD Plan”) are still ongoing before the Local Planning Appeal Tribunal (Case No. MM170097), it is premature for the City to move forward with the Secondary Plan absent a determination on the appeals of the HCD Plan—particularly where the draft Secondary Plan references or incorporates elements of the HCD Plan still under appeal.

For these reasons, we strongly urge City Council to

1. Defer consideration of the Secondary Plan;
2. Direct City Planning staff to conduct further consultation as it relates to the draft Secondary Plan policies; and
3. Direct City Planning staff to report to Community Council with any further recommendations, such report to be made available to the public as required under the *Planning Act* and related regulations.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the Secondary Plan will be considered, and we ask to be provided with notice of Council's decision with respect to this item.

Yours truly,



Calvin Lantz

CL/jsc

Enclosures

cc. Larry Krauss, *Terracap Management Inc.*
Jason McCauley, *Terracap Management Inc.*
Peter Smith, *Bousfields Inc.*

Calvin Lantz
Direct: 416.869.5669
clantz@stikeman.com

January 8, 2020
File No. 136696.1001

By E-mail
teycc@toronto.ca

Toronto and East York Community Council
City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ms. Ellen Devlin, Committee Administrator

Dear Sirs/Mesdames:

**Re: TE12.4 – King-Spadina Secondary Plan Update - Final Report
Letter of Concern
401-415 King Street West**

We are counsel to 1107051 Ontario Ltd. and Cabo Three Investments Inc., the owner of the property municipally known in the City of Toronto as 401-415 King Street West (the "**Property**"), and located within the area of the proposed King-Spadina Secondary Plan (the "**Secondary Plan**").

By this letter, we request that the Community Council defer consideration of the Secondary Plan until staff have conducted meaningful consultation with affected landowners, including our client.

We have been engaged in the consultation process for the Secondary Plan and have expressed serious concerns to City staff by way of formal comments, submitted back in January 2019 (the "**Commenting Letter**"). A copy of the Commenting Letter is attached for your reference.

Staff have recently made substantive changes to the draft Secondary Plan, which became available to the public only in late December 2019. These recent changes have not been accompanied by further public and stakeholder consultation. Through the Commenting Letter, we requested a meeting with staff to discuss our client's concerns, and to date, we have received no response from staff.

Upon our preliminary review, the most recent draft of the Secondary Plan fails to address some of the serious concerns raised in the Commenting Letter—in particular, the lack of transition policies to recognize existing development applications and approvals that pre-date the potential adoption of the Secondary Plan.

Given that the revised draft Secondary Plan was made available to the public only in late December, it is essential that a deferral be granted in order to allow the public an opportunity to review and comment on this new document advanced by staff, and to provide staff the time needed to respond to the comments received.

For these reasons, we strongly urge the Toronto and East York Community Council to

- (i) Defer consideration of the Secondary Plan;

- (ii) Direct City Planning staff to conduct further consultation as it relates to the draft Secondary Plan policies, and in particular, site-specific issues and matters relating to exemption and transition policies; and
- (iii) Direct City Planning staff to report to Community Council with any further recommendations, such report to be made available to the public as required under the *Planning Act* and related regulations.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the Secondary Plan will be considered, and we ask to be provided with notice of Council's decision with respect to this item.

Yours truly,



FOR Calvin Lantz
Partner

CL/na
Attachments

cc. Larry Krauss, *Terracap Management Inc.*
Jason McCauley, *Terracap Management Inc.*
Peter Smith, *Bousfields Inc.*

Calvin Lantz
Direct: 416 869 5669
clantz@stikeman.com

January 31, 2019
File No. 136696.1001

By E-mail

City Planning Division
Strategic Initiatives, Policy & Analysis
Metro Hall
55 John Street, 22nd Floor
Toronto, ON M5V 3C6

Attention: Ms. Sarah Phipps, Project Manager

Dear Ms. Phipps:

Re: Draft King-Spadina Secondary Plan Update - Comments

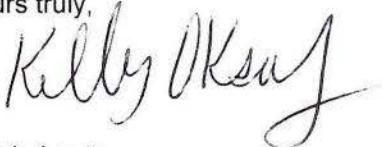
We are counsel to 1107051 Ontario Ltd. and Cabo Three Investments Inc. (the "**client**"), owner of the property municipally known as 401-415 King Street West (the "**Property**"), and located within the area of the draft King-Spadina Secondary Plan Update (the "**Secondary Plan**").

With respect to the Property, our client has a Zoning By-law Amendment application that has been approved in principle by the Local Planning Appeal Tribunal (formerly the Ontario Municipal Board) by the Tribunal's decision issued March 1, 2017 (LPAT Case No. PL151158). The Tribunal's approval was premised upon a Council-endorsed settlement of our client's proposal to develop a mixed-use building on the Property. The lack of transition provisions in the Draft Secondary Plan compromises our client's ability to finalize a Zoning By-law Amendment for the Property and to obtain the additional development approvals that are necessary, to allow the Council-endorsed development proposal for the Property, to proceed to construction.

On behalf of our client, consulting land use planner Peter Smith, Bousfields Inc., reviewed the draft Secondary Plan and raises a number of concerns with and comments on the draft Secondary Plan that are documented in the attached Planning Opinion Letter, dated January 30, 2019. As part of this submission, we request a meeting with staff to discuss our client's concerns.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Yours truly,



For Calvin Lantz

CWL/cb
Enclosures

Stikeman Elliott

cc: Larry Krauss, *Terracap Management Inc.*
Jason McCauley, *Terracap Management Inc.*
Peter Smith, *Bousfields Inc.*



BOUSFIELDS INC.

January 30, 2019 "

Project No. 09116

Sarah Phipps, Project Manager
City Planning Division
Strategic Initiatives, Policy & Analysis
Metro Hall
55 John Street, 22nd Floor
Toronto, ON M5V 3C6

Dear Ms. Phipps,

Re: \$ *King-Spadina Secondary Plan Update*
December 4, 2018 Draft
401-415 King Street West

We are the planning consultants for Terracap Management Inc. with respect to its property at 401-415 King Street West, located at the southeast corner of Spadina Avenue and King Street West ("the subject site").

On behalf of our client, we filed a Zoning By-law Amendment application for the site on June 16, 2010 (File: 10 217270 POZ 00 ZR) with subsequent submissions made on March 2, 2012 and September 27, 2013. The application was subsequently appealed to the Ontario Municipal Board, now the Local Planning Appeal Tribunal ("LPAT"), and was assigned File No. PL151158. Following the appeal, the City and our client ultimately reached a settlement based on a 145-metre tall mixed-use building, which in turn was approved by the OMB by its decision issued March 1, 2017.

Given this background and the timing of the proposed King-Spadina Secondary Plan Update (herein referred to as the "Secondary Plan"), it is our opinion that the update should not be applied to the subject site. Despite the foregoing, we have reviewed the draft King-Spadina Secondary Plan dated December 4, 2018 as it relates to the approval in principle and wish to note a number of specific concerns as set out below.

1. " The draft Secondary Plan does not currently include any transition policies or protocols to recognize proposed redevelopments that were the subject of applications filed prior to adoption of the Secondary Plan and/or have received approval in principle from the Local Planning Appeal Tribunal. In this regard, the above-noted application for the subject site was submitted many years prior to the release of the draft of the Downtown Plan and was approved by the OMB almost two years ago. As such, we would request

that the subject site be exempted from the application of the Secondary Plan.

In the event that the subject site is not specifically exempted from the Secondary Plan, it is our opinion that transition provisions should be incorporated into the Secondary Plan so as to ensure that applications that are in process are reviewed on the basis of the planning framework that was in force at the time they were filed. In this regard, the client, consulting team, adjacent property owners and City Staff have worked collaboratively over an extended time period in an attempt to arrive at a satisfactory built form which was presented to the LPAT at the Settlement Hearing. The Secondary Plan should not negate this process.

Should you disagree with exempting the site from the Secondary Plan, we offer the following additional comments on the draft policies that do not recognize the approval on the subject site:

2. " The majority of the subject site is identified as *Mixed Use Areas 3* on Map 16-2, with the easterly portion of the site identified as *Mixed Use Areas 1*. Policy 5.14 provides that development in *Mixed Use Areas 3* will be in the form of low-rise and mid-rise buildings, while Policy 5.9 provides that development within *Mixed Use Areas 1* will include a diverse range of building typologies, including tall buildings. In our opinion, a single designation should apply to the entirety of the subject site which recognizes the approved tall building height. In this regard, the entirety of the site should be designated *Mixed Use Areas 1*.
3. " Furthermore, Map 16-3 identifies the majority of the subject site within the Spadina Precinct and the easterly portion of the site within the East Precinct. We have concerns with Policy 9.45 which provides that development in the Spadina Precinct will generally not exceed a height of 40 metres, and Policy 9.47 which would require development to fit within a 45-degree angular plane taken from Spadina Avenue, both of which would restrict building height in a manner that does not respect the OMB-approved settlement.
4. " We have significant concerns with proposed Policy 5.1 applying to lands designated *Mixed Use Areas*, which would require the greater of: the replacement of all existing non-residential gross floor area, including full replacement of cultural spaces; or a minimum of 25% of the total gross floor area as non-residential uses, including full replacement of cultural spaces. In particular, the policy as currently drafted provides no flexibility

to take into account site size, site-specific conditions, or the impacts that non-residential uses may have on built form. In addition, we have concerns with Policy 5.10 which requires that development within *Mixed Use Areas 1* will provide a “high proportion” of non-residential uses within new mixed-use developments. While the approved settlement for the subject would allow for a substantial non-residential component, there is no definition of the term “high proportion”.

5. " Policies 4.2 and 4.3 provide that “development will be evaluated based on the availability and provision of community service facilities, parkland, green infrastructure and physical infrastructure relative to the number of people it will generate, to provide for the achievement of complete communities”, and that a Complete Community Assessment will be required for some development applications, including applications on lands proposed to be designated *Mixed Use Areas 1, 2 or 3*.

Policy 4.6 goes on to say that “when a Complete Community Assessment demonstrates that a development, or the cumulative impact of more than one development, will occur at a scale, intensity or character unanticipated by the Official Plan, or that the availability and provision of community service facilities, parkland, green infrastructure and physical infrastructure is insufficient to ensure the creation of complete communities, the City may determine that a Site and Area Specific Policy or other study is necessary. Where it has been determined that further study is necessary, the Site and Area Specific Policy or other study will be prepared by the City prior to any site-specific recommendations to Council.”

The Complete Community Assessment is a new study requirement proposed to be introduced by the as-adopted Downtown Secondary Plan, which is not yet in force. Consequently, the City has yet to provide formal Terms of Reference for the preparation of this study. Although our office has prepared several Complete Community Assessments, they have been based on the limited explanation of the Complete Community Assessment provided in the Downtown Secondary Plan, and on the definition provided in the City’s development glossary of terms.

We are concerned that these policies, in combination with Policy 14.6 which provides that a Holding (H) Symbol will be considered during the review of rezoning applications, would allow the City to “freeze” development in King-Spadina based on the results of a study with no terms of reference that has yet to be rigorously tested.

Given the foregoing, and given that no transition provisions are proposed in the draft Secondary Plan, we are concerned that the inclusion of these policies could impact the proposed development on the subject site. Accordingly, we would request clarification regarding how a Complete Community Assessment will be evaluated in determining whether a Site and Area Specific Policy or other study is necessary.

6. " We also have concerns with proposed Policy 10.1, which would require, for developments containing more than 80 residential units, 15% of the units to be two-bedroom units and 10% to be three-bedroom units, with minimum unit sizes of 87 square metres for the two-bedroom units and 100 square metres for the three-bedroom units, as well as an additional 15% of the units to be a combination of 2- and 3-bedroom units. In our opinion, such detailed numerical standards are inappropriate in a policy document. We believe that advancing these prescriptive measures without an in-depth review of market demand/supply and income/affordability results in significant risks with respect to housing affordability and could potentially stifle the development of new housing in King-Spadina.
7. " Policy 9.14 requires that development include stepbacks on all elevations facing public streets, specifically a minimum of 3 metres above the height of the streetwall or base building (Policy 9.14.1), that is free of all projections (Policy 9.14.2). It is our opinion that the proposed imposition of numerical setback standards 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 document. Fundamentally, the imposition of numerical standards in an Official Plan has the potential to prejudice appropriate methods and key principles of development and architectural design, and to unnecessarily trigger the requirement for site-specific Official Plan Amendments.
8. " We have concerns with Policy 9.19, which restricts the maximum floorplate size to 750 square metres. Although the policy would allow for consideration of increases in the floorplate size, we are concerned that the policy may be interpreted in an overly restrictive manner with respect to demonstrating "to the City's satisfaction" that shadow, wind, sky view and transition impacts can be mitigated.



Thank-you for your consideration of these comments. If you require any clarification or wish to discuss these matters further, please do not hesitate to contact me or Tyler Grinyer of our office.

Yours very truly,

Bousfields Inc.

A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a faint, larger version of the same signature.

Peter F. Smith, B.E.S., MCIP, RPP

cc: *client*
Calvin Lantz, Stikeman Elliott