

Margaret Sexton

From: ORCA Project <ORCA@craftgrp.com>
Sent: January 28, 2020 8:23 PM
Subject: News Release - ORCA Project and Rail Deck Park
Attachments: 2020-01-28 Letter from CKRC to Mayor and Council - Final.pdf

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Good evening Your Worship and Members of Council:

We are writing to you in advance of your council meeting scheduled for January 29th and 30th, 2020.

Please find enclosed very important information relating to Rail Deck Park. Our hope is to commence open and meaningful dialogue with the City respecting our air rights, which is the subject of a potential expropriation to be considered at tomorrow's council meeting. It is our belief that all of the facts regarding negotiations to purchase the air rights have not been properly communicated to each and every one of you. Accordingly we are enclosing our position with respect to Rail Deck Park and truly hope that this information will assist in your decision.

Respectfully,

Robert Sabato

AIR RIGHTS OWNER, CRAFT-KINGSMEN RAIL CORP., CHALLENGES CITY'S POSITION ON RAIL DECK PARK

CRAFT KINGSMEN RAIL CORP. (CKRC), the owner of the majority of air rights in the area where Rail Deck Park is contemplated, publicly opens negotiations with the City of Toronto to resolve stalemate.

The enclosed proposal includes air rights options as well as plans for a potential linear park, similar to New York's High Line, that could span from Strachan to the Don Valley Parkway.

Summary:

Craft-Kingsmen Rail Corp. presents four options for consideration by the City. These are alternatives to the ORCA Project, which already facilitates 12 acres of public parkland at a third of the cost of the 20 acre Rail Deck Park budget, saving the City \$1.2 billion.

- Enter into a Section 30 Agreement for the air rights at an initial price determined by CreateTO
- Lease the air rights for \$25 million per year, avoiding a major capital expense
- Purchase the air rights for \$340 million, a price well below fair market value
- CKRC makes additional air rights available to the City to enable a linear park extending across the City

For details of these proposals and other background information, please see the appended letter or contact orca@craftgrp.com

CRAFT-KINGSMEN RAIL CORP.

January 29, 2020

By email: exc@toronto.ca

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

Attn: Ms. Julia Amoroso, Committee Secretariat

Your Worship and Members of the Toronto City Council

Re: Acquisition and Expropriation of Air Space Related to Rail Deck Park

Agenda Item: EX12.4

Acquisitions and Expropriation of Air Space Related to Rail Deck Park (Ward 10)

I am President of Craft-Kingsmen Rail Corp., the owner of the majority of the air rights above the rail corridor extending from Blue Jays Way to Bathurst Street (the Air Rights) upon which we have proposed a mixed use development that features a 12 acre public park, utilizing two thirds of our property, to be built in partnership with the City. The City has a different vision for the Air Rights, namely Rail Deck Park.

I am writing to Your Worship and Council as the City is contemplating exercising its legal right to expropriate part, or possibly all, of the Air Rights to make Rail Deck Park a reality. Given that this will be one of the largest investments of public funds in the City's history, it's important that Council and taxpayers clearly understand what their options are.

In this letter I will provide an overview of our proposed development, The ORCA Project, which features a substantial public park – one that is proportionately larger than any other development application in the history of downtown Toronto.

Next, I will outline several options that Craft Kingsmen Rail Corp. is prepared to offer to the City to enable the City to acquire the Air Rights for Rail Deck Park.

Finally, I will seek to clarify some points which have been made in the media and at public meetings, strictly to provide a clearer picture to all stakeholders at this critical point in time.

January 28, 2020

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The ORCA Project

We first became interested in developing over the rail corridor in 2013. After some initial engineering and feasibility studies, we concluded that a development would be financially and technically feasible, while providing substantial social benefits for the City of Toronto. A deck over the rail corridor would close a gap in the City, enabling a natural flow of people between the established neighbourhoods to the north and the waterfront area to the south. We entered into an Agreement of Purchase and Sale for the Air Rights on December 02, 2013.

The canvas the Air Rights offered was large enough that we could dream about something bigger than a typical development. From the beginning the vision was for a complete community that combines live, work, shop, and play areas, with a large public park at its center. The park was to be the focal point of our development, reinforcing our vision of a family-oriented community where kids can grow up in an urban setting while enjoying open community spaces. It could stretch the full length of the Air Rights, with a pedestrian bridge over Spadina.

To support this vision, we proposed a percentage of our residential units be family sized, with a generous portion designated as affordable. As a group we were very excited about developing something special.

With a project of this size and scale, we knew it was important to engage the City early in the process. Once we had some preliminary concepts developed, on January 26, 2016 we met with Gregg Lintern and Lynda MacDonald from City Planning and shared our vision with them. Their response was very positive. On March 10, 2016 Gregg Lintern issued a letter to our planning consultant which included a review of the existing planning framework, the existing and anticipated built form context, and the need for an Official Plan amendment in the context of the emerging changes to the Downtown Plan (TOCore). The letter indicated there would be a City-initiated Official Plan amendment for these areas and they encouraged us to participate in this process and requested that we not initiate a private Official Plan amendment at this time. Another meeting took place on July 20, 2016 with Gregg Lintern and Ann-Marie Nasr of City Planning. This meeting was to discuss the next steps in the process. Staff requested, again, that we not initiate a private Official Plan amendment and instead work within the City-initiated Official Plan amendment. We complied with their request, making sure our internal team and outside consultants took extra precautions to keep the project confidential.

On August 03, 2016 Mayor Tory held a press conference announcing Rail Deck Park, a public park which was to be built on the Air Rights. We had no knowledge of this announcement until the day before the press conference (we were invited to attend the press conference with the understanding that we were not to speak about our project) and the City refused to have an open dialogue with us afterward.

A reasonable person might conclude that had the City made an effort to work with us in those very early days, we might not be here today talking about a potentially costly expropriation, perhaps the largest in the City's history.

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At the Executive Committee meeting of January 22, 2020 Mayor Tory said there are three choices for the Air Rights. They could either become more condos, remain a scar on the city, or become a park. We respectfully wish to inform Your Worship, Members of Council, and the residents of Toronto that there are more than three choices.

Options for Acquisition of Air Rights

As you can appreciate, it is unusual and certainly not industry standard for a property owner to make offers to a potential purchaser, but in the interest of settling this matter in an expeditious, cost-efficient, and non-confrontational manner we are prepared to take the unusual step of making the following public proposals to the City for consideration.

For comparison purposes, the City's current estimate for Rail Deck Park is \$1.7 billion, excluding the cost of acquiring the Air Rights.

1. The ORCA Project provides for 12 acres of public park on our Air Rights together with the adjacent City owned parkland. We are prepared to provide the structural deck upon which the park will be built for a fixed cost to the City of \$540 million, inclusive of air rights. Even with a generous budget of \$25 million for landscaping, the total cost of the finished park will be \$565 million, which is less than one-third of the City's current Rail Deck Park budget. This represents approximately \$1.135 billion in savings to the City.

Mayor Tory refers to this as the "more condos" option. Since we are providing almost two thirds of the Air Rights for a public park, this is not an accurate characterization.

2. We are willing to enter into a Section 30 Agreement with the City for the Air Rights with an initial payment that CreateTO believes is fair market value. The final amount will be settled in accordance with the provisions of the Expropriation Act. We understand time is of the essence. This is the fastest and simplest way for the City to acquire all of the Air Rights for Rail Deck Park at fair market value.
3. To alleviate pressure on the City's capital budget, we are willing to lease the Air Rights to the City on a fully net basis for a 49-year term, with no pre-payment option, and an option to purchase for one dollar at the end of the term. We are proposing a fully net annual rental amount of \$25 million per year for the first five-year term, with rent adjustments based on annualized CPI for successive terms. The rent for the initial term works out to 0.186% (fifteen one hundredths of one percent) of the City's 2019 operating budget and will have zero impact on the capital budget.
4. We are willing to sell the Air Rights to the City for the sum of \$340 million dollars, which comes to just under \$20.86 million per acre. We believe this is substantially less than fair market value for the Air Rights. As an example, on January 15, 2020, the City purchased less than two thirds of an acre of land at 229 Richmond Street for \$100 million, which works out to over \$155 million an acre. Please note that this proposal is made without prejudice to any future expropriation valuation of fair market value.

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5. We also want to make you aware that Craft Kingsmen Rail Corp. controls additional air rights along the rail corridor, including sections that stretch from Strachan Avenue to the west and the Don Valley Parkway to the east. This could facilitate a linear park extending across the City. Much like New York City's Highline, Toronto's "Rail Line Park" could connect and transform the City in a powerful way. If you want an iconic destination that will attract and inspire visitors from around the City and the world over, we can help make that happen at a price Torontonians can afford.

One example would be to partner with the City to build over air rights we control to the west of Bathurst Street, which will facilitate a connection with the City's proposed 3 acre park at 85 Bathurst. Combined with the public park in the Orca Project concept and the proposed 3 acre Union Park, this would result in a public park that is virtually the same size as Rail Deck Park at a saving to the City in the range of \$1 billion.

Appendix A provides a map showing additional air rights across the rail corridor and outlines some of the concepts we are contemplating at a high level.

This is a sustainable model to affordably perpetuate development of up to 36 acres of public parkland throughout the rail corridor.

Setting the Record Straight

Members of City Council are relying on information in the staff report to inform their decision with respect to Rail Deck Park. Statements by City officials in the media also influence their decision. At this critical juncture, it's important that we provide our perspective on some of the statements made in staff reports, public meetings, and in the media.

Negotiations Regarding Value of the Air Rights:

The staff report to Executive Committee dated January 9, 2020 indicates "Negotiations for the acquisition of the Property Interests have been ongoing with the various owners with no success to date." To start, the City has known for a long time that there is only one party they can negotiate with regarding a purchase of the air rights and that is Craft Kingsmen Rail Corp.

At the January 22nd Executive Committee meeting, in response to a question from Mayor Tory regarding the outcome of negotiations regarding acquisition of the Air Rights, Brian Johnson of CreateTO confirmed there were four meetings but "the gap was unbridgeable" and therefore a formal offer was not made.

We're confused by this conclusion because the purpose of the meetings, according to the agreement we signed prior to the start of the meetings, was not to agree on a value for the Air Rights but to agree on a process for establishing value.

To be precise, on March 5, 2018 Craft Kingsmen Rail Corp. entered into a confidential agreement with the City of Toronto to review technical information related to the ORCA Project

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and Rail Deck Park “to determine whether a mutually satisfactory agreement can be achieved between the City and the Developer under which the City acquires the Developers' real property interests in the Subject Lands.” The agreement also stated that “the fact of holding these Discussions shall be kept confidential and shall not be disclosed.” Since the fact that the meetings were held has been widely discussed in the media, we are free to discuss the meetings from our perspective.

Four meetings were held, the last of which was in December of 2018. Technical and financial information was provided. The largest discrepancy in determining value was regarding technical feasibility and the approach that should be taken to adjust for future risks. We agreed that a third-party appraisal was the only path forward. We were discussing terms of reference for the appraisal when the meetings were stopped.

We have never seen a negotiation for a transaction of this size and complexity that was completed in four meetings.

People's Eyes are Bigger Than Their Stomachs

On January 15, 2020, when asked why negotiations to acquire the air rights were not successful Mayor Tory was quoted by several media outlets as saying “What’s the old expression? People’s eyes are bigger than their stomachs, or expectations exceed reality,”

The response doesn’t fit the circumstances. The Expropriations Act of Ontario assures both parties subject to an expropriation shall receive and pay no more than fair market value. We trust the expropriation process and we believe it will result in a fair settlement, but we would rather proceed with our vision for the ORCA Project. We put our money where our mouth is by closing on the air rights and investing many millions of dollars in engineering, consultant studies, and other fees. We’re not asking the City to buy the air rights from us.

Has the City been equally forceful in pursuing its vision? If the City is committed to building Rail Deck Park and is willing to pay fair market value for the air rights, they should expropriate all of the air rights. If they’re now contemplating biting off small pieces, could it be the City whose “eyes are bigger than their stomachs”?

No Axe To Grind

At the January 22nd Executive Committee meeting, Mayor Tory supported the conclusions of the staff report by saying city officials “have no axe to grind in this”. The facts suggest otherwise.

The day we submitted our Official Plan Amendment application, Councillor Cressy was quoted in the media as saying “The proposal is dead on arrival. The city has already said the air above the rail corridor is park land. In fact, formal city policy is forthcoming declaring it as such. So this is a ridiculous proposal which is going nowhere,”. Several development applications have been advanced in the immediate area and none have been met with anywhere near the level of negativity as this application.

CRAFT-KINGSMEN RAIL CORP.

As an example, our development is directly across the street from a 7 acre 3 million square foot mixed use development, which features less than a third of an acre of public park. We didn't hear such strong language from City officials when this development was launched. In fact, Mayor Tory attended the sales launch for condominiums being developed at this property and publicly praised the development by saying "The Well has the ability to transform the downtown core and create an entirely new community. Investments like this are a reflection of the growth we are experiencing in Toronto and the confidence that businesses have in our city."

Based strictly on the facts, it seems to us the City is not unbiased.

Conclusion

In conclusion, we respectfully request that Your Worship and Members of Council suspend adoption of the staff report titled Acquisitions and Expropriation of Air Space Related to Rail Deck Park until the proposals in this document are given careful consideration.

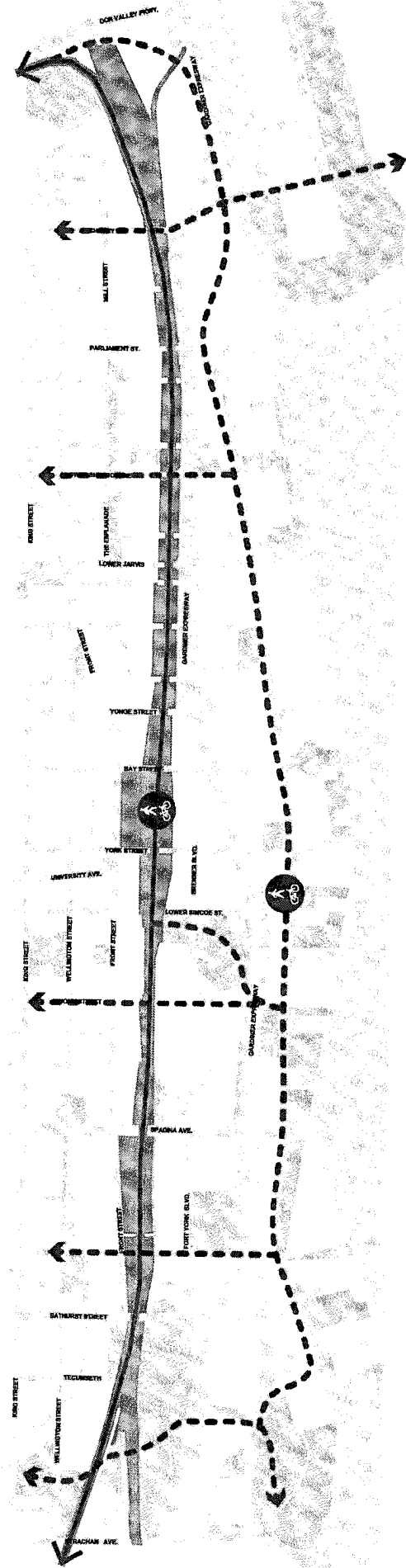
We hope this first step toward real negotiations leads to a mutually satisfactory outcome.

Respectfully,

Robert Sabato

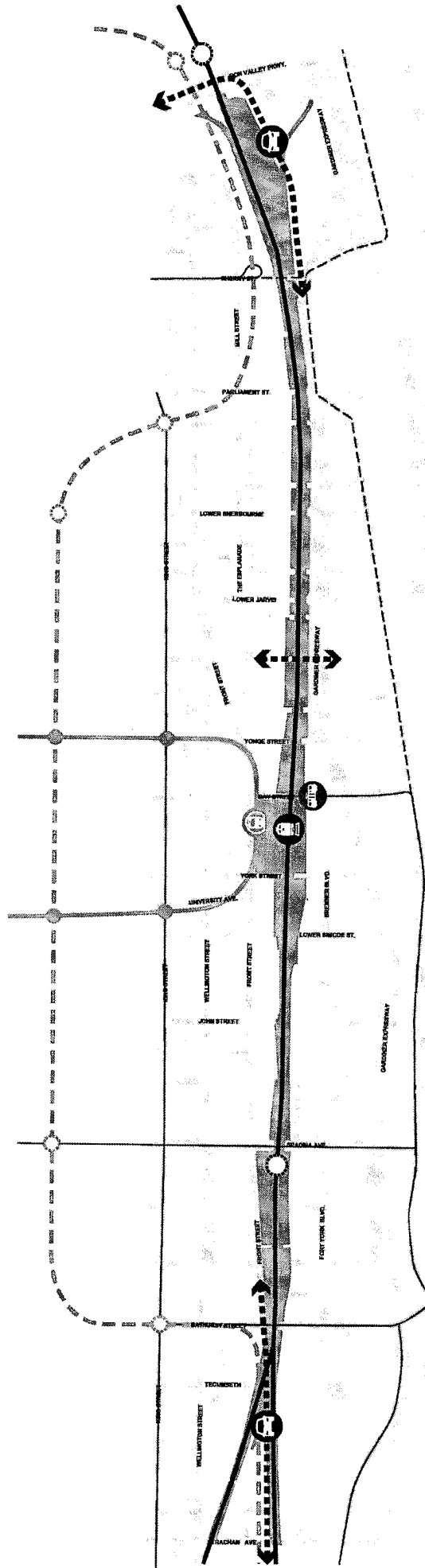
Robert Sabato
President, Craft Kingsmen Rail Corp.

Rail Corridor Vision - Uninterrupted, elevated east-west connectivity



Source: CN/TT/CRAFT Kingsmen Rail Corp./Sweeny&Co Architects

Rail Corridor Vision - Part of a larger mass mobility solution



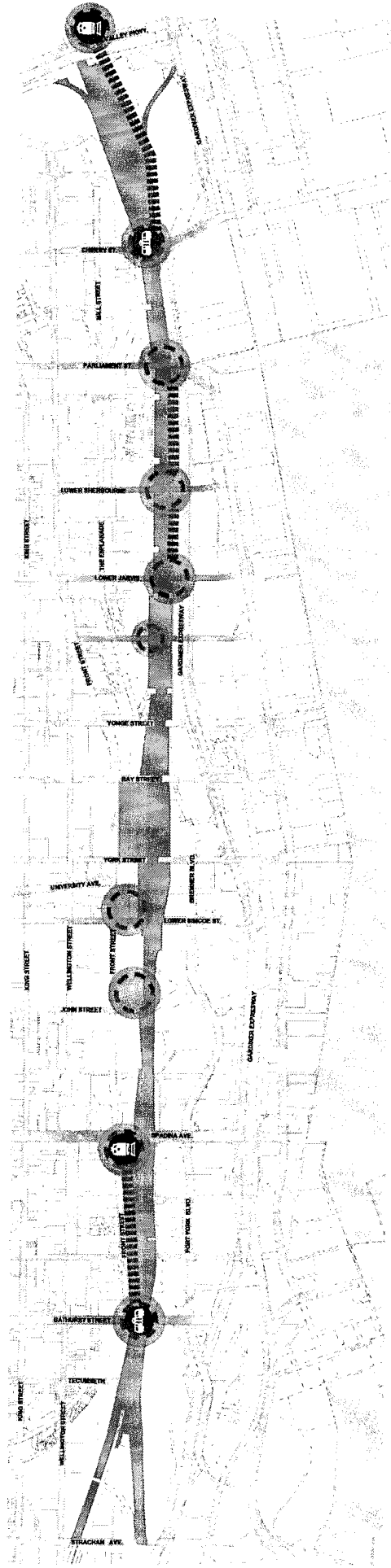
- Current**
- Future**
- Rail Park potential**
- GO Transit**
- Vehicular**
- Subway**
- Streetcar**

Source: CN/TTR/CRAFT Kingsmen Rail Corp./Sweeny&Co Architects

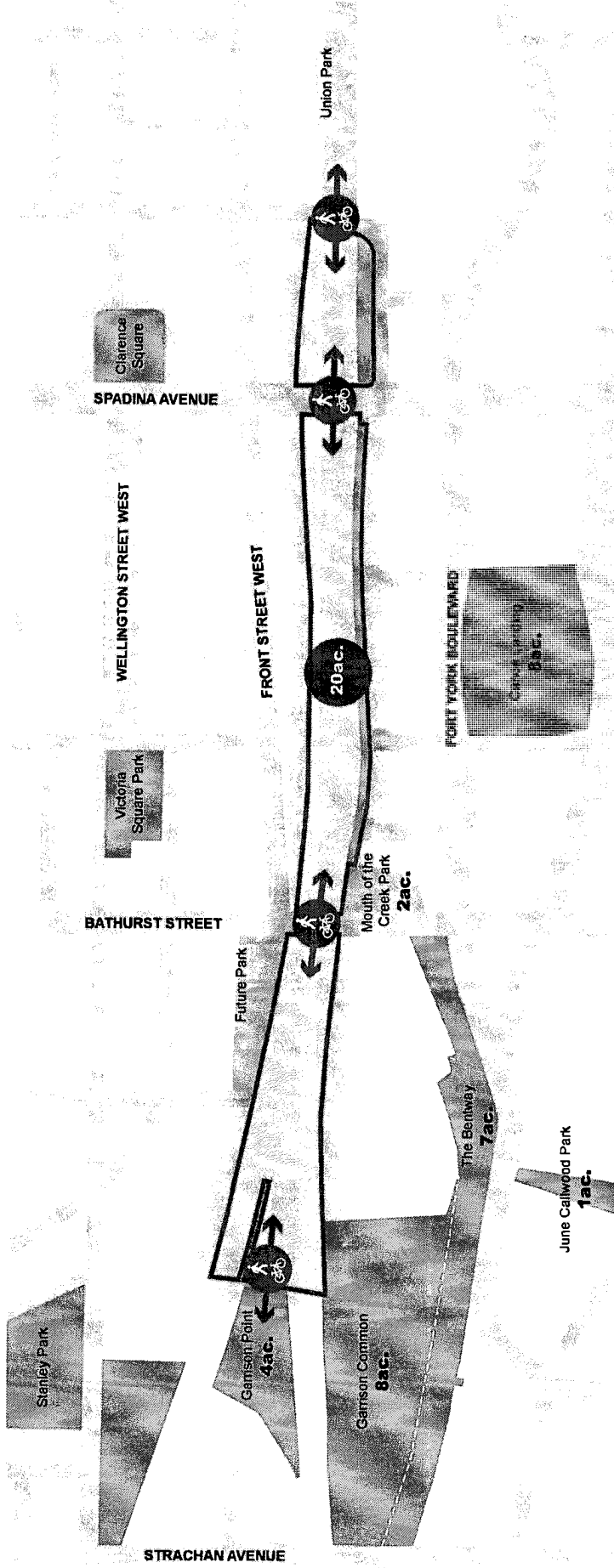
Craft Kingsmen Rail Corp.

Sweeny & Co Architects Inc.

Rail Corridor Vision - Park-integrated development nodes



Rail Corridor Vision - A contiguous, uninterrupted park approach



Rail Corridor Vision - A contiguous, uninterrupted park approach

