



January 23, 2020

By email exc@toronto.ca

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

Attn: Ms. Julia Amoroso, Council Administrator

Your Worship and Members of the Executive Committee of Toronto City Council

**Re: Toronto Executive Committee Meeting January 23, 2020
Agenda Item Ex. 12.4
Acquisitions and Expropriation of Air Space Related to Rail Deck Park (Ward 10)**

We are counsel to P.I.T.S. Developments Inc., Craft Acquisitions Corp. and Craft Kingsmen Rail Corp. Our client owns the majority of the air rights in the rail corridor between Blue Jays Way and Bathurst Street.

Our client read with interest the January 9, 2020 staff report as well as media reports which quoted from His Worship Mayor John Tory. Normally we would not deal with media reports in a letter to your Committee, but our client was compelled to do so in this case given the high-profile nature of the matter and the public's interest in knowing the truth about Rail Deck Park. Our client does not believe it is appropriate to conduct commercial negotiations in public so we will focus our comments on correcting the misinformation which is currently circulating and commenting on the staff report.

RECENT MEDIA REPORTS

On January 16, 2020 Joshua Freeman of CP24.com reported the following comment from His Worship, Mayor John Tory.

“What’s the old expression? People’s eyes are bigger than their stomachs, or expectations exceed reality.” Tory told reporters at a news conference Thursday when asked why negotiations weren’t successful. “So, when negotiations don’t work, it’s usually because there’s a failure to agree on how much should be paid. My job is to get this done, which we will, but also to protect the taxpayers’ interests.” - emphasis added

This statement suggests that our client has refused an offer to purchase from the City because the price offered was too low. That is not true. Despite His Worship's first Rail Deck Park public announcement on August 3, 2016, which was more than three years ago, the City has yet to present our client with a formal offer to purchase the air rights. With none being made, none has been rejected. The City is the purchaser and thus drives the timing of the purchase including making a formal offer to purchase. Any delay in the City's progress to purchase the air rights cannot be blamed on our client and our client takes offense to any suggestion that it is delaying the purchase.

Our client has been consistent throughout that, since Rail Deck Park is for the greater public good, the public must purchase the air rights from our client at fair market value; no less and no more. Asking for fair market value can never be considered greedy. Asking for fair market value is simply not consistent with the statement quoted in CP24.com.

This same article goes on to further quote His Worship as saying:

"We're not going to have these people keep us at the table forever when this is a very important public initiative that we're taking in the interest of the city as a whole and the downtown neighbourhood in particular." -emphasis added

If the phrase "these people" refers to our client, the quoted statement is entirely inaccurate, misleading and offensive to our client. Our client has attended every meeting which City staff requested in order to discuss the City's acquisition of the air rights. The City requested information and our client provided it in a timely manner. Our client has not kept the City at the table forever and it would be wrong for the public to be under that false impression.

In addition to the CP24.com article, on Monday January 20, 2020 the Toronto Star Editorial Board stated that "[...] the City has tried to negotiate a deal to buy the air rights." The impression being left is the City tried to purchase the air rights, but our client refused the deal. This is not true. No formal offer to purchase the air rights has ever been made by the City to our client so none has ever been rejected.

THE STAFF REPORT (DATED JANUARY 9, 2020)

On page 6 staff write:

City and Create TO staff have been engaged in negotiations with the various air rights holders to acquire the Property Interests and additional properties in the Rail Deck Park project area since 2018. To date, these negotiations have not been successful in producing an agreement between the parties. Emphasis added.

An Agreement of Purchase and Sale starts with the purchaser, in this case the City, making a formal offer to purchase to our client and then the parties go back-and-forth on terms in the hopes of reaching an agreement. Despite the passage of years, the City has yet to make a formal offer to purchase. For the reasons provided earlier our client is not the reason for delays and lack of progress on the City's part. Our client has been on record, consistently, that the City should move quickly to purchase or expropriate the air rights, all the air rights, if the City is really going

to build its 20-acre park. If the City does not do so then our client is entitled, as is any other private property owner, to seek to develop its property in accordance with provincial policy. As the City knows, the Local Planning Appeal Tribunal has scheduled a hearing commencing November 2, 2020 for our client's development application.

The staff report only makes recommendations for 3 acres of our client's rights. If the City proceeds with an expropriation of these 3 acres, the law will require that the City pay fair market value to our client. Fair market value is what our client seeks and what any landowner would seek when a public body uses its powers to deprive it of property it purchased for value. When it comes to the balance of our client's air rights, however, staff are not consistent. They advise, on the bottom of page 1:

“Additional air space in the Rail Deck Park project area (ie: between Spadina Avenue and Bathurst Street) will be pursued at a time when staff are confident that they can be acquired at fair market value.”

Staff are already satisfied that the City will only be required to pay fair market value for the 3 acres because the law requires that through expropriation. The same applies to an expropriation of the balance of our client's air rights. In both cases expropriation law requires that the City pay fair market value for the air rights; no more and no less. Accordingly, staff's concern about paying anything more than fair market value can be readily satisfied through an expropriation of all the air rights. The City's Rail Deck Park vision has been reported as a 20-acre park; not 3 acres or even 5 acres.

All of this takes us to the staff recommendations that call for continued negotiations failing which, expropriation. There are, however, no timelines imposed for any of this. If City Council is in favour of the staff recommended approach then City Council, as the duly elected officials, should provide effective oversight over and direction to staff by imposing a time limit. Staff could be directed to bring back to City Council a negotiated purchase within 90 days failing which City staff have the authority to commence expropriation proceedings. Given that more than three years have passed since the August 3, 2016 Rail Deck Park announcement, this seems quite reasonable. Failing a purchase or expropriation, our client is pursuing development of its air rights through the LPAT appeal scheduled for November 2, 2020, just as any other prudent owner would do.

Our client has always been and remains willing and ready to negotiate a purchase of all the air rights on terms which are fair and reasonable and at a price which reflects fair market value.

Our client appreciates this opportunity to set the record straight.

Yours very truly,

Ira T. Kagan
cc. Client