

September 17, 2021

Via Email (phc@toronto.ca)

Planning and Housing Committee
10th floor, West Tower, City Hall
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Attention: Nancy Martins

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File: 56412-1

Dear Chair and Committee Members:

Re: Letter requesting deferral and further study of Item No. PH 26.2 - Zoning Conformity for Official Plan Employment Areas - Phase 1 Final Report and Phase 2 Update

We are the Solicitors for the DUKE Heights Business Improvement Area (the “**DUKE Heights BIA**”). Our client has reviewed Item No. PH 26.2 - Zoning Conformity for Official Plan Employment Areas - Phase 1 Final Report and Phase 2 Update (the “**Staff Report**”) and is writing to express its significant concerns with the recommendations contained therein.

We request that the written submissions and presentations received by the Planning and Housing Committee (the “**Committee**”) from the DUKE Heights BIA and its members be carefully considered.

It is the position of our client that adoption of the above-noted item is inappropriate for the reasons outlined below. On behalf of the DUKE Heights BIA, we respectfully request that the Planning and Housing Committee defer any changes to City of Toronto Zoning By-law 569-2013 and Former City of North York Zoning By-law No. 7625 until such time as: (1) the Phase 2 review has concluded; (2) the appeals of Official Plan Amendment No. 231 (“**OPA 231**”) have been resolved before the Ontario Land Tribunal (“**OLT**”); (3) the Keele Finch Secondary Plan is adopted; (4) the current City-Wide Municipal Comprehensive Review has concluded; and (5) a study is undertaken of the particular employment needs of the DUKE Heights BIA.

Background

The DUKE Heights BIA is located in North York and is bordered by Steeles Avenue to the north, Dufferin Street to the east, Sheppard Avenue West to the south and Keele Street to the west (the “**DUKE Heights BIA Area**”).

The DUKE Heights BIA is well served by an extensive transportation and transit network, including, 2 TTC Subway Stations – Finch West and Downsview Park, with a third subway station, Sheppard West, just to the south. Additionally, the DUKE Heights BIA is served by GO Transit at the Downsview Park GO Station and will benefit from the future planned Finch LRT.

As outlined in the Reports submitted by our client's planning consultants, Gladki Planning Associates dated June 28, 2021, the DUKE Heights BIA consists of over 2,500 businesses and 32,000 employees. As per the DUKE Heights Economic Development Study conducted by IBI in 2016, offices make up the largest number of establishments in the DUKE Heights BIA, followed by service, retail, manufacturing, institutional and other uses.

The nature of employment in the DUKE Heights BIA is changing. Office, service, institutional and other establishments were noted in the Study as experiencing positive growth during a survey period of 2001 – 2014, while manufacturing and retail uses trended in the negative.¹

The DUKE Heights BIA is predominantly designated *Core Employment Areas* or *General Employment Area* under the City of Toronto Official Plan. The DUKE Heights BIA also overlaps in part with the Keele Finch Secondary Plan Area, which has been endorsed by Council. While much of the Duke Heights BIA is zoned for Employment Industrial uses (E and EH) under City of Toronto Zoning By-law 569-2013, a significant portion of the DUKE Heights BIA is still subject to Former City of North York Zoning By-law No. 7625.

Issues

The Staff Report seeks to remove significant sources of employment

It is our position that the proposed removal of permitted uses does not conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020), which recognizes by definition that *Employment Areas* will host a wide variety of employment uses. The uses that the Staff Report seeks to remove are significant generators of employment in the DUKE Heights BIA in particular. Many of the proposed uses to be removed already exist within the DUKE Heights BIA Area, with more than 550 businesses affected by the removals proposed in the Staff Report. These businesses operate ice arenas, fitness centres, adult education schools, secondary schools, colleges and more. Many businesses will become legal non-conforming uses, negatively impacting future expansion, or prevent landowners from leasing their spaces for these uses in the future without obtaining zoning amendments. This is overly onerous and will likely be cost-prohibitive for many small businesses.

The Staff Report also fails to consider the quality of the jobs it proposes to remove, and the impact the amendments will have on marginalized communities. For example, the removal of hotel uses as permitted uses in Employment Areas is directly contrary to a prior staff report dated November 3, 2017 which emphasized the importance of hotels as employers of marginalized communities that provide higher than living wages with benefits and a greater percentage of unionized positions.²

¹ IBI Group, *Duke Heights Economic Development Study*, online < <https://dukeheights.ca/wp-content/uploads/DUKE-Heights-Economic-Development-Study-and-Executive-Summary-FINAL-2016....pdf>> at pg 36

² City of Toronto, *Ensuring A Robust Hotel Supply*, (November 3, 2017) online < <https://www.toronto.ca/legdocs/mmis/2017/ed/bgrd/backgroundfile-108767.pdf>> at pg. 9.

Significant caution should be taken for this reason in applying the narrow interpretation taken in the Staff Report as to what constitutes an employment use.

Recommendations Premature Prior to Conducting Phase 2 of the Review

The Staff Report is seeking to remove several currently permitted uses under the in-force City zoning by-laws, prior to fully understanding the impact such removal will have on Employment Areas and in the absence of consideration of additional use permissions to facilitate employment opportunities.

Notably, the Staff Report seeks to remove Fitness Centres as a permitted use despite being a permitted use in General Employment Areas. No consideration has been given to expanding current restrictions on office use, also an otherwise permitted use in General Employment Areas.

Among other matters, the Staff Report also acknowledges that it has not reviewed site-specific permissions under the City of Toronto zoning by-laws, deferring consideration for Phase 2.

OPA 231 remains under appeal

Despite the stated desire of City Staff to bring all City zoning by-laws into conformity with the policies for both *General Employment Areas* and *Core Employment Areas*, OPA 231 respecting *Employment Areas* remains under appeal before the OLT. It is apparent that OPA 231 will remain under appeal for a significant amount of time; at the April 9, 2021 Case Management Conference respecting this matter a total of 346 hearing days were requested to be scheduled by the City's Solicitor as part of Phase 6 of the hearing, including 234 days for site specific hearings. There is simply no reason or urgency to bring forward these amendments at this time, disrupting a successful BIA, particularly when OPA 231 remains subject to change.

Staff Report does not consider the Keele Finch Secondary Plan

During the December 16 – 18, 2020 City Council meeting, Council adopted Official Plan Amendment No. 482 (“**OPA 482**”), respecting Protected Major Transit Station Areas in the Finch West Transit Station Area and Sentinel Transit Station Area and endorsed the Keele Finch Secondary Plan. Adoption of the Keele Finch Secondary Plan has been postponed until the Minister of Municipal Affairs and Housing (“**Minister**”) makes a decision respecting OPA 482 and the Chief Planner and Executive Director, City Planning confirms no consequential amendments are required to the Keele Finch Secondary Plan as a result.

The Keele Finch Secondary Plan designates lands within the DUKE Heights BIA Area as *Mixed Use Areas A*, *Mixed Use Areas B*, *Parks*, *General Employment Areas*, *Core Employment Areas A*, and *Core Employment Areas B*. Consideration of amendments to Zoning By-law 569-2013 and Zoning By-law 7625 should be deferred until the Keele Finch Secondary Plan is adopted to ensure conformity with the Official Plan.

Municipal Comprehensive Review of Employment Areas underway

OPA 231 was adopted by City Council in 2013, and no longer reflects current provincial policy, or the current and emerging employment uses in the DUKE Heights BIA. Following A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020), the City of Toronto has been directed by the Minister to undertake a conformity exercise through a Municipal Comprehensive Review (“**MCR**”). The City commenced its MCR on June 29, 2020 and it remains under review. The MCR includes a review of land uses and density targets in *Employment Areas* as well as consideration of numerous employment area conversion requests across the City. All of the foregoing may result in amendments to the *Employment Areas* policies of the Official Plan. Any amendments to the City zoning by-laws should be deferred until the conclusion of the MCR to ensure conformity with emerging policies.

Recommendations ignore the ongoing transformation of the DUKE Heights BIA Area

The DUKE Heights BIA Area is in a period of transformation, demonstrated by the shift away from the traditionally predominant manufacturing uses in the area and introduction of TTC Subway Service into the heart of the BIA. Additionally, there is the ongoing transformation of the adjacent Parc Downsview Park and Bombardier Lands (“**Downsview Park**”), which will bring renewal and revitalization of the Downsview area. This will bring consequential change to the DUKE Heights BIA which is located just to the north of Downsview Park.

As outlined in the DUKE Heights Economic Development Study, the DUKE Heights BIA intends to leverage its strategic location both at the gateway to the City of Toronto and at the centre of the regional economy, along with proximity to world class academic and government institutions, higher order transit and a supportive business network to foster development in advanced manufacturing, health care, research and development and professional services.

Despite the unique characteristics of the DUKE Heights BIA, our client is of the position that it has not received adequate study in recent years by the City. Our client encourages the City to engage in a planning study of the DUKE Heights BIA to assess the appropriateness of current Official Plan designations and permitted uses in support of its future growth and transformation.

Conclusion

At a time when small businesses are struggling to recover from the COVID-19 pandemic, the Committee should be very cautious in undertaking any amendments which may impact the success of employment areas. Removing permitted uses prior to understanding the full extent of the impact to Employment Areas will add significant and unnecessary cost and risk for businesses.

It is the position of our client that the recommendations of staff are best considered once the significant and unfolding planning processes outlined in this letter have concluded. For this reason, we ask the Committee to defer consideration of zoning amendments until: (1) the Phase 2 review has concluded; (2) the appeals of OPA 231 have been resolved; (3) the Keele Finch Secondary Plan is adopted; (4) the current City-Wide Municipal Comprehensive Review has concluded; and (5) a study is undertaken of the particular employment needs of the DUKE Heights BIA.

We respectfully request notification of any further actions or decisions made by Council or City Committees respecting this matter.

Yours truly,

Cassels Brock & Blackwell LLP



Signe Leisk
Partner

SL/JE/cm

cc: DUKE Heights BIA
Deputy Mayor Ana Bailão, Ward 9 – Davenport, Chair Planning and Housing Committee
Cllr. James Pasternak, Ward 6 – York Centre
Cllr. Anthony Perruzza, Ward 7 – Humber River-Black Creek
Lia Martelluzzi, Executive Director DUKE Heights BIA
Lew Pliamm, Chair DUKE Heights BIA