

OLT Appeal of OPA 231 – Lands bound by King Street West, Dufferin Street, Lakeshore Rail Corridor & Hanna Avenue – Request for Directions

Date: December 4, 2023

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

City Council adopted Official Plan Amendment 231 ("OPA 231") on December 18, 2013, following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. In addition to setting out city-wide economic policies, OPA 231 also amended the land use designations applicable to many parcels of land, in some cases by adding new or amending existing site and area specific policies or secondary plans.

Through Council's adoption of OPA 231, Area 3 of the in-force Garrison Common North Secondary Plan was amended to include only those lands bound by Dufferin Street to the west, King Street West to the north, Hanna Avenue to the east, and the Lakeshore Rail Corridor to the south, corresponding to the western portion of the neighbourhood known as Liberty Village. Area 3 had previously extended further east to Pirandello Street. Area 3 applies to approximately 33 hectares (80 acres) of lands under various ownership with an existing city-block pattern ("Area 3").

The lands were previously designated Employment Areas with live-work uses permitted; OPA 231 redesignated these lands as a mix of Core Employment Areas and General Employment Areas where residential uses were not permitted.

The Minister of Municipal Affairs and Housing (the "Minister") approved the majority of OPA 231, including amendments to the Garrison Common North Secondary Plan, with limited modifications in July 2014. At the time, the *Planning Act* allowed appeals to the Ontario Municipal Board even where the Minister had issued an approval. A total of 178

appeals were received, and approximately 60 remain under appeal at the Ontario Land Tribunal ("OLT"), the successor to the OMB. The OLT has scheduled a 10-day hearing to commence in January 2024 to deal with outstanding appeals involving lands subject to Area 3 policies of the Garrison Common North Secondary Plan. These are:

1. Appeal 32, respecting the entirety of lands within Area 3 ("Appellant 1");
2. Appeal 49, respecting 153 Dufferin Street ("Appellant 2"); and
3. Appeal 13, respecting 1 Jefferson Avenue and 1A Atlantic Avenue.

The City Solicitor received a With Prejudice offer to settle from Appellant 1 and another With Prejudice offer to settle from Appellant 2 and requires further directions for the upcoming OLT hearing scheduled for January 2024. This matter is urgent and cannot be deferred.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to this report from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

DECISION HISTORY

City Council adopted OPA 231 on December 18, 2013 with respect to the economic health policies and the Employment Areas policies, designations and mapping following the Five-Year Official Plan and Municipal Comprehensive Review regarding employment lands. Included within OPA 231 were a number of updates to secondary plans and site and area specific policies, including Area 3 of the Garrison Common North Secondary Plan, which removed permission for live-work units from the Liberty Village area and designated these lands as a mix of Core and General Employment Areas in the areas bounded by Dufferin, King, Hanna and the Lakeshore Railway Line. The City's decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2013.PG28.2>

The Minister approved the majority of OPA 231 with limited modifications in July 2014. The OLT received a total of 178 appeals to OPA 231, including 3 site-specific appeals related to sites within Area 3 of the Garrison Common North Secondary Plan. The OLT has issued two Orders partially approving OPA 231. The December 2016 Order brought into force the Core Employment Areas and General Employment Areas designations, except for sites under appeal and regarding particular uses that remain contested. The May 2020 Order approved Employment Land Conversion and Forecasting policies. Most city-wide policies are now in force, with the exception of policies relating to office replacement, for which hearing dates have not yet been fixed. There are approximately 60 site and area specific appeals that remain to be resolved, some of which overlap with conversion requests considered by City Council through the 2020 Municipal Comprehensive Review process. Decisions made by the OMB, LPAT and OLT in this appeal and further information on hearing proceedings can be accessed at this link:

<https://jus-olt-prod.powerappsportals.com/en/e-status/details/?id=1f6c3234-4e96-ec11-b400-0022483e85c0>

On April 8, 2022, the Minister of Municipal Affairs and Housing approved two Minister's Zoning Orders ("MZOs") for the lands that are subject to Appeal 13: 1A Jefferson Avenue and 1 Atlantic Avenue. Each MZO permits high-rise mixed use developments, including significant amounts of residential uses previously not permitted in this area, as well as a minimum amount of non-residential GFA to be provided on each site, among other matters, including maximum heights and minimum stepbacks and setbacks. Each MZO can be found here:

<https://www.ontario.ca/laws/regulation/r22338> (O. Reg. 338/22)

<https://www.ontario.ca/laws/regulation/220339> (O. Reg. 339/22)

In July 2022, as part of its phased Municipal Comprehensive Review and Growth Plan Conformity Exercise ("MCR") City Council delineated 115 Major Transit Station Areas ("MTSAs"), a subset of which are proposed to be Protected Major Transit Station Areas ("PMTSAs") where inclusionary zoning may be implemented and minimum densities must be set. Two of these MTSAs cover lands also part of Area 3 of the Garrison Common North Secondary Plan: Council adopted (1) SASP 693 for the area surrounding the existing Exhibition GO Station and (2) SASP 698 for the future King-Liberty GO Station, both of which are PMTSAs. All MTSA mapping and policies remain

with the Minister for review, approval or modification. Council's decision for 115 proposed MTSAs and PMTSAs, including the King-Liberty and Exhibition PMTSAs can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH35.16>

In July 2022, City Council adopted Official Plan Amendment 591 (OPA 591) as part of the MCR and added or amended city-wide economic health policies, including a new policy specifically prohibiting residential uses in employment areas. OPA 591 was the first of several phased official plan amendments adopted by City Council at meetings in 2022-2023 whereby Council formally responded to requests to convert employment lands to other uses. Council in some cases determined that certain lands should be retained for employment uses, and in other cases, opted to redesignate certain lands to permit non-employment uses along with new or amended site and area specific policies setting out additional policies applicable to the lands affected by the conversion to ensure orderly development of the lands being converted and retained, as well as securing matters such as affordable housing and replacement of non-residential gross floor area (GFA). OPA 591 has been submitted to the Minister of Municipal Affairs and Housing for approval and a decision is pending. City Council's decision can be accessed at this link:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH35.15>

On July 19, 2023, City Council adopted Official Plan Amendment 653 (OPA 653) including recommendations respecting a further 70 requests to convert employment lands to non-employment uses as part of a phased Municipal Comprehensive Review. Council recommended that lands located at 171 East Liberty Street and 37 Hanna Avenue, immediately to the east of Area 3 of the Garrison Common North Secondary Plan, as amended by OPA 231, be converted from Core Employment Areas to Mixed Use Areas and subject to Site and Area Specific Policy 10, which would be added to the Garrison Common North Secondary Plan. OPA 653 has been submitted to the Minister of Municipal Affairs and Housing for approval and a decision is pending. The City's decision can be accessed at this link:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH5.3>

COMMENTS

OPA 231 amended the Area 3 policies to:

- transition this area from its historic manufacturing and industrial roots to an important centre for the City's creative economy and a vibrant employment area for Liberty Village, while reflecting the nature of the existing employment uses west of Hanna Avenue;
- remove the lands east of Hanna Avenue from Area 3 mapping;
- scope the area identified for the employment district within Liberty Village to lands generally west of Hanna Avenue and proposed associated mapping changes to Area 3 of the Garrison Common North Secondary Plan; and

- remove the live-work permissions on lands designated Employment Areas in Area 3.

Three appellants appealed these amendments made through OPA 231 to the OLT and thus, these changes are not in-effect. The Appeal 13 lands known municipally as 1A Atlantic Avenue and 1 Jefferson Avenue are each subject to a Minister's Zoning Order enacted in 2022 which added additional permissions on these lands.

With Prejudice Settlement Offers

On November 21, 2023, the City received a With Prejudice, not confidential, settlement offer from Appellant 32's lawyers, Goodmans LLP, which is attached as Public Attachment "A" ("Settlement Offer 1"). Settlement Offer 1 contains revised land use designations and site and area specific policies applicable to all of Area 3 of the Secondary Plan (the "Revised SASP") that are different than the policies approved by Council through OPA 231 more than 10 years ago. Settlement Offer 1 remains open until the end of the City Council meeting commencing on December 13, 2023.

On December 1, 2023, the City received a With Prejudice, not confidential settlement offer from Appellant 2's lawyers, McCarthy Tetrault, which is attached as Public Attachment "B" ("Settlement Offer 2") and contains revised site and area specific policies and land use designations identical to those contained within the Revised SASP. It is contemplated that should City Council accept Settlement Offer 1 and 2, the City Solicitor and the appellants will jointly support OLT approval of the Revised SASP.

The Revised SASP includes a number of modifications from the Council-adopted version set out in OPA 231 which proposed to retain all of the lands in Area 3 with employment designations and proposed to eliminate residential permissions on such lands, including live-work uses. The Settlement Offer proposes to redesignate all of the Area 3 lands to Regeneration Areas and apply new Site and Area Specific Policies that ensure the matters required to support future development are addressed prior to the introduction of a Secondary Plan or Community Planning Permitting System for the area that would permit any residential uses.

The chart below compares the key principles in the 2013 Council-adopted version of OPA 231 respecting Area 3 and the 2023 Revised SASP:

	2013 Council-Adopted	2023 Proposed Settlement
Land Use Designation	Core Employment Areas, General Employment Areas	Regeneration Areas
Commercial Permissions	Stand-alone retail of more than 6000 square metres not permitted. Small scale retail, service and restaurant uses permitted.	Stand-alone retail of more than 6000 square metres not permitted. Small scale retail, service and restaurant uses permitted.
Residential Permissions	None	Existing residential and live-work uses are permitted. New residential uses permitted only after the adoption of a Secondary Plan or Community Planning Permit System.
Provision of Affordable Housing	None	7 percent /10 percent of units, subject to escalation.
Retention/Expansion/Replacement of Existing Non-residential GFA	No specific policy requirements to preserve a minimum amount of GFA.	Greater of existing non-residential GFA or 45 percent of total GFA of proposed development, of which 51 percent will be Core Employment Area uses.

	2013 Council-Adopted	2023 Proposed Settlement
Studies Required to be completed	No specific studies required.	Land Use and Development Plan; a Cultural Heritage Resource Assessment; a Parks and Public Realm Strategy; a Transportation Master Plan; an Economic Development Strategy; an Infrastructure Master Plan; a Green Infrastructure Strategy; and, a Community Services and Facilities Strategy.

The City Solicitor requires further instructions on this matter regarding a with prejudice settlement offer received respecting Appeal 32 and 49. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment "A" - Letter from Goodmans LLP dated November 21 2023 containing With Prejudice Settlement Offer, including Revised SASP
2. Public Attachment "B" - Correspondence from McCarthy Tetrault dated December 1, 2023 containing With Prejudice Settlement Offer, including Revised SASP
3. Confidential Attachment 1 - Confidential Information