



Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Andrew L. Jeanrie
Partner
Direct Line: 416.777.4814
e-mail: jeanriea@bennettjones.com

October 10, 2023

Delivered Via E-Mail Councilmeeting@toronto.ca

Toronto City Council
Toronto City Hall
100 Queen Street West
Toronto, ON
M5H 2N2

Attention: Sylwia Przedziecki

Dear Mayor and Members of City Council:

**Re: Agenda Item PH6.2 – Request for Deferral
Bill 109 Implementation, Phase 3 – Proposed Official Plan Amendment No. 688 and
Municipal Code Amendments respecting Site Plan Control**

We are writing on behalf of our client, Oxford Properties Group ("**Oxford**"), in regards to the proposed Official Plan Amendment No. 688 ("**OPA 688**") by the City of Toronto (the "**City**") and the proposed amendments to the City's Municipal Code. It is our understanding that the City is making these proposals in response to Bill 109: *More Homes for Everyone Act, 2022* ("**Bill 109**") and that said proposals would require in-effect zoning compliance as an application requirement for site plan control.

While our client can understand the issues Bill 109 poses for the City, they are of the view that the aforementioned proposals go beyond what is necessary to address these concerns and will go against legislative intent of both Bill 109 and section 114 of the *City of Toronto Act*, with the net effect being a number of undesirable outcomes. Furthermore, our client suggests that the concerns raised by the City may be dealt with without enacting the proposed amendments (or amendments thereto). The following points summarize our client's concerns and comments with the draft OPA 688 and proposed amendments:

The amendments run contrary to the fundamental intent of Bill 109

The legislative intent of Bill 109 was to build more housing more quickly; the new process proposed by the City will result in the reverse effect and lead to increased timelines.

Currently, reviewing the zoning and site plan applications concurrently allows for tweaks to the site plan to be made in a more straightforward manner prior to zoning being approved. This ability to make changes during the process is lost when zoning has already been established. Accordingly, the requirement for zoning compliance will cause an increase in subsequent zoning amendments and minor variance applications, leading to unnecessary delays in the construction of much-needed housing.

The proposed approach results in high financial risk

The last several years have seen amendments to the planning process that are specifically tied to improving certainty for development projects in terms of costs – various matters using site plan application as a benchmark for transition. The proposed amendments would run in the face of this legislative intent by removing the assurance developers have regarding costs, conditions of approval and implementation. This uncertainty results in higher economic risk for developers and consequently increases the costs of housing.

OPA 688 is Beyond the Authority in Section 114 of the *City of Toronto Act*

The City derives its authority as it relates to site plan applications and approval from section 114 of the *City of Toronto Act*. Importantly, this section provides the City with the authority to require prescribed information and materials, as well as "information or material" that the City considers it may need to process a site plan application and stems from provisions contained in the official plan. "Information or material" in the context of this provision relates to certain studies or plans that would assist the City in approving the site plan application. What the City is proposing with OPA 688 is not information or material, but rather the establishment of a pre-condition – requiring a specific state, not specific information - to filing site plan approval. While the legislation provides the city with the authority to establish conditions of site plan approval, it does not provide authority for pre-conditions to an application.

Notice of Approval Conditions may act as a solution rather than a concern

In the Staff Report concern was raised that, in order to mitigate costs, planning staff would be required to issue Notice of Approval Conditions ("NOAC") in support of a site plan control application prior to a decision of Council on the official plan amendment and/or zoning by-law amendment applications. While we understand this concern, we believe that the NOAC process is actually part of the solution to the potential issues for the City posed by Bill 109. In short, we suggest that the City could amend its process so that it issues NOAC that includes the final zoning by-law amendment coming into force as a condition of approval. This would allow the City to take site plan applications in prior to final approval and move the financial risk to the developer and away from the City – if final zoning by-law approval is not obtained, then it is the developer who would lose the fees paid.

This is one suggestion that our client has to attempt to address the concerns raised by City staff, while avoiding the negative consequences that arise as a result of the proposed OPA 688.

October 10, 2023

Page 3

In summary, our client does not support the implementation of OPA 688 and the proposed amendments to the Municipal Code and believe that there are other ways to address the City's concerns. As such, our client requests that City Council defer making a final decision with respect to this matter and requests the opportunity to meet with Staff to discuss the proposal, and proposed solutions, in more detail.

We look forward to you reviewing our concerns and ask to be included in the notice for any further decisions on this matter.

Thank you in advance for your consideration,

Yours truly,



Andrew L. Jeanrie

ALJ

