

July 10, 2024

VIA EMAIL: phc@toronto.ca

Attn: Nancy Martins
Planning and Housing Committee
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Members of the Planning and Housing Committee:

**Re: Item 2024.PH14.1 - Employment Area Land Use Permissions - Decision Report – Approval (OPA 680)
Planning and Housing Committee consideration on July 11, 2024**

We act for Davies Ave Holdings Inc., and 39 Davies Ave Holdings Inc., owners of the lands at 33 & 39 Davies Avenue in the City of Toronto (the “**Site**”).

Background

The Site is immediately abutting a community park, and within a neighbourhood of overwhelmingly residential uses. The employment designation of the lands is largely an historical artifact - dating to an earlier era when this area adjacent to the Don River had a largely industrial character. The current uses on the Site are office and retail. There is no manufacturing or warehouse uses in any form on the Site or in the surrounding area. Modern manufacturing, industrial and warehousing users cannot function on the Site or the block.

The Site is in an area that has been undergoing transition for some time, with a series of planning decisions delivering conversions from employment to residential uses, and gentle residential intensification in the neighbourhood.

In terms of transition, we note that the City has adopted the conversion of a site on the same street at 9 Davies Avenue. Immediately to the east of the site, Joel Weeks Park serves the community. The approximately 1 hectare park was developed in partnership with the Toronto Community Housing Corporation. The lands to the north and east of the park are a residential neighbourhood developed by Toronto Community Housing composed of apartments and townhouses. Further east and north is traditional grade-related housing dating to the original development of the community. As a result, the 33-39 Davies site is already bordered by a long-established residential neighbourhood. This fundamental residential neighbourhood character makes the Site an appropriate location for mixed use development including residential intensification.

The Site was the subject of a request to the City of Toronto for a conversion from Employment to Mixed Use Areas as part of the City’s Municipal Comprehensive Review exercise commenced in August, 2022. City Council declined to approve the conversion, as part of their consideration of

Toronto Official Plan Amendment 644. Through its application for a conversion, our client's application posited that the redesignation of the Site as mixed use will actually result in a better fit and greater compatibility with the prevailing neighbourhood character and more importantly, contributes the goals of delivering much-needed housing quickly. The market is also demonstrating that there is very limited demand on Davies Avenue for the space for the employment uses currently permitted. The building to the north - at 43 Davies - has been vacant for over four years. The building at 2 Matilda has seen the closure of Merchants of Green Coffee, as well as the loss of the other uses in that building - the office, the music/production workshop and event space uses have all ceased to operate.

Given the status of its conversion request and its desire to redevelop the Site, our client has been very closely monitoring the City's proposed response to Bill 97 and the updated definition of *Areas of Employment* that it introduces into the *Planning Act*, R.S.O 1990, c. P.13, as amended.

Concerns with OPA 680

One of the objectives of the draft PPS is to make land available for development, which our client fully supports. To assist in achieving this objective, the draft PPS includes a policy requiring municipalities to plan for and protect "employment areas" based on a new definition of "employment area" that would align with the new definition in the *Planning Act* introduced through Bill 97¹.

The new definition of "employment area" in the draft PPS is as follows:

Employment area: means those areas designated in an official plan for clusters of business and economic activities including manufacturing, research and development in connection with manufacturing, warehousing, goods movement, associated retail and office, and ancillary facilities. An *employment area* also includes areas of land described by subsection 1(1.1) of the *Planning Act*. Uses that are excluded from *employment areas* are institutional and commercial, including retail and office not associated with the primary employment use listed above. [our emphasis added]

¹ The new Planning Act definition (not yet proclaimed) is as follows:

"*area of employment*" means an area of land designated in an official plan for clusters of business and economic uses, those being uses that meet the following criteria:

1. The uses consist of business and economic uses, other than uses referred to in paragraph 2, including any of the following:

- i. Manufacturing uses.
- ii. Uses related to research and development in connection with manufacturing anything.
- iii. Warehousing uses, including uses related to the movement of goods.
- iv. Retail uses and office uses that are associated with uses mentioned in subparagraphs i to iii.
- v. Facilities that are ancillary to the uses mentioned in subparagraphs i to iv.
- vi. Any other prescribed business and economic uses.

2. The uses are not any of the following uses:

- i. Institutional uses.
- ii. Commercial uses, including retail and office uses not referred to in subparagraph 1 iv.

The general intent of the new definition of employment area is to facilitate the development of sensitive uses, such as residential, on existing employment lands with office, retail and institutional uses, as such lands would no longer be considered an “employment area” – such as the Site. The proposed draft PPS together with the recent amendments to the *Planning Act* introduced through Bill 97, result in the definition of Area of Employment being more narrowly defined to focus protection on manufacturing and warehousing uses. Of note, office uses will no longer be permitted uses in employment areas (with the exception of the offices that are part of the principal manufacturing or warehousing on site).

Through the approved OPA 668, two new policies (i.e., policies 4.6.1.1 and 4.6.3.1) were approved to authorize the continuation of commercial and institutional uses which would be excluded on the basis of the Bill 97 definition, provided that these uses are already lawfully established. As noted above, office and retail uses (albeit minimal) are lawfully established on the Site.

The intention of the new definition of Areas of Employment is to limit employment areas to traditional manufacturing, warehousing or related uses. Office, retail and institutional uses are not included in this definition for the purposes of exempting lands with such uses from employment protection policies and to allow for the introduction of residential uses to encourage mixed-use development and complete communities without the need for a conversion application. OPA 668 and OPA 680 undermine this objective.

Together with OPA 668, OPA 680 will effectively sterilize the redevelopment potential of the Site by precluding both the replacement or expansion of the existing office/retail space, yet through OPA 688 only recognize the office/retail uses that are legally established thereby precluding the the introduction of residential uses prior to the next Municipal Comprehensive Review process. As a result, these amendments would render office and retail uses on the Site as legal non-conforming and undermine further investment in the Site. Furthermore, the Site is not an area for the location of warehousing and manufacturing, as contemplated by provincial policy for employment areas. It does not meet the needs of such users for space extensive operations, separated from residential neighbourhoods.

For the reasons set out above, we request that this Committee: (1) reject OPA 680, as proposed by staff, (2) reconsider the approval of OPA 668 given the unintended consequences set out in this correspondence, and (3) direct staff to conduct a detailed review of all existing lands designated *Employment Areas* to determine which of these areas meet the new definition before bringing forth a revised recommendation report.

We ask to be added to the City’s mailing list in connection with this matter and be notified of any further decisions made by this Committee or Council.

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Thank you for consideration and for the opportunity to make submissions. Should you have any questions about the above, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read "S. Tomasella".

Sidonia J. Tomasella
Partner

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