

Gary Wright, Chief Planner & Executive Director
City Planning Division

Toronto and East York District
Toronto City Hall
100 Queen Street West
18th Floor, East Tower
Toronto ON M5H 2N2

Lynda Macdonald
Manager, West Section
Tel: (416) 392-7618
Fax: (416) 392-1330
lmacdon1@toronto.ca

Date: July 13, 2010

To: Councillor Giambrone, Ward 18

From: Lynda H. Macdonald, Manager, Community Planning, West Section, Toronto and East York District

Re: Active 18 Letter regarding Dorsay Investments v City of Toronto et al. and Employment Lands North of Queen St West in Ward 18 ("N.W Triangle Lands")

As requested, staff have reviewed the attached letter from Active 18 regarding Dorsay Investments v City of Toronto et al.

We understand Active 18 is concerned that development applications for high density residential/mixed use development may be submitted in the near future on lands designated in the Official Plan as *Employment Areas*, and that developers may appeal if the City refuses this type of development application. Active 18's letter references the recent Ontario Municipal Board decision with respect to 2205 Sheppard Avenue East. It is noteworthy that those lands are subject to a different policy framework than the NW Triangle lands: specifically the 2205 Sheppard Ave E application was submitted prior to the changes to the Planning Act relating to appeal rights and the site is located on an 'Avenue' on the Official Plan's Urban Structure Map 2. Active 18 have also suggested that a Secondary Plan be prepared for the 'NW Triangle' lands in Ward 18 to guide future development in the event development applications involving residential uses are submitted.

The NW Triangle lands are designated in the Official Plan as *Employment Areas*. Before the City could consider a Secondary Plan process to guide future residential/mixed-use development of the NW Triangle lands, it would need to be determined that the lands should be removed from the *Employment Areas* designation.

At a minimum, the first step would entail a comprehensive local area employment study undertaken by the City to determine whether or not to remove these lands from the *Employment Areas* designation. However, because the five year Official Plan review is about to start, it makes sense to review these lands as part of the City-wide review so that a more comprehensive analysis can be undertaken of the City-wide implications of removing any lands from the *Employment Areas* designation, rather than doing one-off area specific studies that cannot consider the broader implications.

If the Official Plan review concludes that a broader range of uses may be appropriate on the NW Triangle lands, then a site specific study could be carried out by the City. Findings from the study could include specific Official Plan policies, zoning changes, urban design guidelines or a combination thereof. These planning tools collectively would guide growth and change in the area. Area-specific policies could be incorporated into the Official Plan. Given the area's size, existing lot patterns, street network and redevelopment potential, effective policy guidance could be achieved through a site and area specific policy

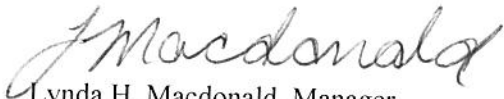
in the Official Plan rather than a Secondary Plan, which is appropriate for larger areas and often where significant infrastructure (e.g. a new street network) and facilities are required.

As indicated earlier, because the City has not determined that these lands should be removed from the *Employment Areas* designation, thereby allowing a broader range of uses including residential, it would be premature to undertake a site specific study to consider a residential/mixed-use development of these lands. Given the timing of the five year Official Plan review and the initiation of the municipal comprehensive review, the City-wide review is the best vehicle to enable a well considered determination of the best use of these lands for the future. In the meantime, any applications will be evaluated against existing Official Plan policies directing future employment growth and development in the area.

Additionally, with respect to the former Samko site at 11 Peel, as you are aware, Planning staff undertook a policy review of the lands in response to interest by a land developer proposing mixed – use development. The conclusion of that review was that any redesignation of these lands was pre-mature and that under current legislation, the Employment Designation of these lands is not appealable. It is noteworthy that City Planning staff have met several times with a commercial/industrial developer that is developing plans to redevelop the site for commercial uses that would comply with the *Employment Areas* designation and zoning for the site. This indicates there is a demand for employment uses in the area.

If you have any questions, please do not hesitate to contact me on 416 392 7618 or Jamaica Hewston on 416 392 0758.

Yours truly,



Lynda H. Macdonald, Manager
Community Planning, West Section
Toronto & East York District

June 22, 2010



Memo TO: **Councilor Adam Giambrone**
Linda MacDonald, City Planning

FROM: Active 18 Steering Committee (c/o Steve Heuchert & Charles Campbell)

RE: *Dorsay Investments v City of Toronto et al.*
OMB Decision, released Aug 28, 2009 (File Nos. 0070161, Z070111, M070004)

An OMB decision has recently come to our attention which presents some serious problems for planning in what A18 calls the NW Triangle (where we have proposed a Secondary Plan) but also for similar areas located further north on the east side of the rail corridor. The problem is this: these areas which are designated as "Employment Areas" in the Official Plan Land Use Map appear NOT to be protected, under the amendment to Sec. 22 of the Planning Act, from developer appeals from a Council refusal to act on an application for development. The City's position to date has been, since there could be no appeal from a City 'non-decision' then we can all take our time in planning this area.

This decision is a successful appeal by a developer on a number of issues. Among the things decided - and the point of this memo - is that the designation of "Employment Area" in the Official Plan Land Use Map on the land in question did not bring it within the definition of "Employment Area" as defined by the PPS and the Growth Plan (Issue 1, Pg. 17). Based on this OMB interpretation, this meant that the land in question was not subject to the conversion requirements set out in those provincial policies.

Those policies provide that there could be no removal of land from "Employment Areas" as defined by the PPS for residential purposes except after a full study - which had not been done. The policies were held to apply only to "Employment Districts" in the Official Plan Structure Plan (Map 2) which are larger and described as 'strategic' industrial lands. While the lands subject to the OMB appeal are called "Employment Lands" in the Official Plan Land Use Map, and the province has strict policies for "Employment Lands" in the PPS, the land in question was not considered "Employment Lands" for purposes of the PPS because said provincial policies only apply to what are called "Employment Districts" in the City of Toronto.

This decision is not specifically an interpretation of the meaning of "area of employment" within Section 22(7) of the amended Planning Act. This is the section which is thought to prohibit appeals to the OMB where a municipality refuses an application to take 'land out of an area of employment'. We see no reason to expect the OMB to treat the interpretation of this section any different than its interpretation of the meaning of "Employment Lands" within the PPS, which had an identical purpose.

Which is to say that we expect the OMB would rule that section 22(7) does not block an application to appeal to the OMB from a refusal to remove land from an "Employment Area" in the Official Plan Land Use Map. Technically, the issue is whether the meaning of "area of employment" in the Statute includes "Employment Area" in the OP Land Use Map when it has been held that "Employment Area" in a Provincial policy document applies only to "Employment Districts" and not "Employment Area". Yes, this all appears to be nonsense; however, the bottom line is that the OMB in all likelihood has final say on interpretation. And given their view of the 'purpose' behind the PPS, it is hard to see why the purpose of the Statute, with only slightly different wording, would be different.

We also note that the Section 22(7) blocking appeals does not apply unless there is an OP policy in place. There is none. The implication of the above argument is that it would be irrelevant with respect to lands designated "Employment Areas".

Our conclusion is that the most likely state of the 'law' at the moment is that there is nothing blocking development applications and appeals to the OMB on any and all of the lands designated as "Employment Areas" but not designated "Employment Districts", as is the case in the NW Triangle and other lands in Ward 18 and throughout the City.

Our concern is not to stop development on these lands. Rather, our concern is that - just as in south of Queen in the notorious Queen West Triangle - applications can proceed on lands where the City does not even have a basic plan in place for roads and other infrastructure, parks, and urban design etc. to deal with the residential development that will come. Worse, the City does not have a plan in place to ensure that existing employment space will continue, new employment space is guaranteed, and to extract the appropriate public benefits (such as inexpensive work space) to support new residents and employment. Our further concern is that the City seems intent on letting this drift. The applications for high rise residential will shortly appear before City Hall and the City and the residents will be forced into a fight ill prepared.

This OMB case is warning bell that "Employment Areas" will be treated differently than "Employment Districts". We believe the right strategy is to move quickly with the appropriate planning instruments (Secondary Plan, Zoning, Urban Design Guidelines?) for the "Employment Areas" most at risk, and that the planning process be transparent and most inclusive of the local residents and business community. The worst thing that can happen is that the City is forced to the OMB with no plan in place.

We recognize the problems of planning to protect cheap work space and to create more is even more difficult. However, delay is the worst possible strategy and we respectfully request that a Council Motion be brought forward in July or August directing staff to proceed with the detailed planning of this area. Waiting for a broad employment lands policy amendment to work its way through the OMB during the 5-year review is going to take too long to have any benefit in our community. Time and money spent now will significantly reduce the time and money spent fighting inappropriate development in the near future.

We trust this is of assistance and we look forward to discussing further.

Sincerely,



ACTIVE 18 Association

cc. Deputy Mayor Joe Pantalone
Gord Perks, Councillor
Bruce Gavin Ward