

May 12, 2020

VIA Email: [clerks@richmondhill.ca](mailto:clerks@richmondhill.ca)

Richmond Hill City Council  
225 East Beaver Creek  
Richmond Hill, ON L4B 3P4

Dear Mr. Mayor and members of Council:

**RE: Richmond Hill Council Meeting on May 13, 2020  
Delegation regarding Item 12.6**

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I am writing on behalf of my client, the Yonge Bernard Residents Association (the “YRA”). The YRA is a party to the appeal of the Yonge and Bernard Key Development Area (the “KDA”) Secondary Plan (the “**Secondary Plan**”) at the Local Planning Appeal Tribunal (“LPAT”). It represents hundreds of residents in Wards 2 and 4.

On behalf of the YRA, for the reasons outlined below, I am requesting that this item be adjourned until after the State of Emergency is lifted and residents can again attend at council meetings in person.

## **History**

Local resident John Li was actively involved during the consultations for the existing Secondary Plan. After it was appealed to the LPAT, Mr. Li was added as a party to the proceeding. April 16, 2019, after Council adopted a motion to, in part, support increased heights and densities in the KDA, Mr. Li organized hundreds of residents in opposition. Many of the people who joined his association were content with the existing Secondary Plan, but opposed to the new proposed heights and densities. In response to their public reaction, Council voted to rescind the April 16, 2019 motion.

In cooperation with the City, the YRA brought a motion to adjourn the LPAT hearing scheduled for the summer of 2019. The YRA then consented to the settlements between the City, Yonge MCD and Richmond Hill Retirement Residence scheduled to be heard in August 2019. As a result of the YRA’s actions, that particular hearing was shortened if not halved and the City saved money on legal fees. The YRA has proven that its members are reasonable and looking for opportunities to cooperate where appropriate.

## **The 2020 Plan compared to the 2017 Plan**

Unfortunately, the proposed new Secondary Plan before council is not something that the YRA can support. Indeed, the YRA's members are shocked by the proposal for the following reasons:

- 1) It would raise maximum heights 173% from 15 stories to 41 stories;
- 2) It would increase the minimum number of residents and jobs by 33% from 8,000 to 10,600;
- 3) It is based on a maximum potential use of the transportation system, which will result in maximum potential traffic;
- 4) It is based on unrealistic assumptions regarding the transportation modal split and the number of parking spaces needed; and
- 5) The amount of parkland available within the KDA would be lower per person than any other area in the GTA, even though a higher percentage of residents than usual are expected to not own cars.

More generally, the YRA is concerned about the concept of planning as if it is 2041. We all recognize that 10,400 people would not move in the year after this plan is adopted, but they might move in before the bridge over the railroad tracks and the widening of Elgin Mills west to Bathurst. Meanwhile, what will happen if one 40-story building is built at Yonge and Brookside, surrounded by low-rise housing for five years? It will stick out like a sore thumb and many units might remain vacant for years, thus disrupting the neighbourhood. Alternatively, what will happen if the assumed modal splits do not materialize and half the people supposed to take transit drive instead? What will happen if units go unsold because people do not want to live at Yonge and Bernard without a parking space? How does Richmond Hill planning staff justify proposing such a major change from their opinion less than 3-years ago without any outside planning opinion?

Planning is not just about making space for people to meet regional and provincial targets - it is about planning a buildup over time so that neighbourhoods remain livable as density and height gradually increase. There is no need to adopt a plan for the expected 2041 built form in 2020.

### **Fair Planning Process**

The most disappointing aspect of the new Secondary Plan is that it goes beyond what any developer in the LPAT hearing proposed. When the Secondary Plan was first adopted in 2017, nobody who followed it closely could have anticipated the possible major changes proposed by staff.

This is, legally, an important point. Normally, when a planning decision is made residents and landowners can choose to appeal. When determining whether to appeal, they can anticipate that the LPAT is likely to consider various alternatives ranging from residents opposed to increased densities, to higher and denser buildings proposed by developers. What residents could not have anticipated was that almost 3-years later, on the eve of the LPAT hearing, the City might propose a new secondary plan allowing 33% more residents and jobs along with 173% taller buildings

(the second or third tallest buildings north of Toronto). The proposed KDA when fully built would have one of the five- highest densities in Ontario! Even beside the new planned subway station at Bayview and Eglinton, the province is only permitting 35 story buildings. No resident involved in consultations leading up to 2017 could have possibly anticipated the proposal now before council.

One of the *Planning Act*'s key purposes, which must be followed is:

- 1.1 (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;

In my opinion, adopting the Secondary Plan before council would be contrary to this requirement of the *Planning Act*. It would be the equivalent of repealing the 2017 Secondary Plan and replacing it with a new one. Under normal circumstances, this would restart the planning process. Council would be required to hold a Statutory Public Meeting and any person who made submissions would have a right to appeal the decision to the LPAT. If the City votes for the proposed Secondary Plan within the existing LPAT process, then the City is effectively avoiding the statutory process mandated by the province in the *Planning Act*. Although this Council Meeting is not technically a statutory meeting, my opinion is that to comply with the *Planning Act*, it must be. If the LPAT agrees with this opinion, as the YRA will argue, then adopting this new Secondary Plan will actually result in further delay.

This is particularly problematic because the plan might be adopted in an electronic hearing during the midst of a provincial State of Emergency. While electronic meetings are allowed and virtual submissions are possible, those changes do not amend the *Planning Act* or its requirement for a fair, accessible, timely and efficient process.

It is not fair to expect a group of residents to plan and raise money during our current state of emergency. It is not open to adopt a KDA Secondary Plan at a meeting where residents have no ability to exercise their freedom of assembly or express their collective views. It is not accessible to post the final version of the plan online only one-week before the hearing and only allow submissions by electronic means. It is not timely to wait until three years after the secondary plan was adopted, and two months before the scheduled hearing to finalize the plan, to be considered at the LPAT. It is not efficient to undo years of consultations, expert reports and planning on the basis of one revised traffic study.

As you may know, the City of Vaughan recently chose to delay the consideration of high-rise projects until at least June. I am aware that some councillors believe this should only apply to statutory public meetings. For the reasons I have given above, that should include consideration of this Secondary Plan. Vaughan's actions support the argument of the YRA that the hearing of controversial planning matters at this time is not realistic and it will be relevant if the matter is argued at the LPAT. For the sake of fairness and an open, accessible planning process, Richmond Hill should adopt the same policy for considering this Secondary Plan.

### **LPAT Timelines**

At the end of February 2020, the City was proposing to consider the new Secondary Plan on April 9 for a 14-day hearing starting June 22. For obvious reasons, staff's work was delayed. It

is now May 13, the hearing start has been adjourned and the LPAT is potentially keeping seven days available starting July 2. After a conference call with all counsel last week, the LPAT asked all lawyers when they would be available for a two-week hearing after June. As a result, we cannot even be certain that the early July dates will remain available. The City has no obligation to be prepared for a hearing in July that might not take place and Council should not be guided by any such supposed need.

City staff have worked admirably during this emergency to keep the City running and prepare for Council to operate despite the emergency. They have done their best to prepare the Secondary Plan but, unfortunately, due to the State of Emergency they were not able to hold the open house and public meeting that they planned. In the end, the final plan was not before council in a manner that was timely for a summer hearing and we are left with only half the allotted time even if the City were ready to proceed in July. It is highly unlikely that the hearing can be completed in seven days.

We are all disappointed that the state of emergency has delayed this matter yet again, but we need to be realistic about timelines and ensure that a proper planning process is followed. The Yonge Bernard Residents Association asks council to take these issues into consideration and adjourn the matter until it can be considered properly.

Yours truly,

Cherniak Law Professional Corporation

per:

A handwritten signature in black ink, appearing to read 'J. Cherniak', written over a horizontal line.

Jason Cherniak  
Barrister and Solicitor