

November 27, 2017

By E-Mail Only to *clerks@richmondhill.ca*

Council for the Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, ON
L4B 3P4

Attention: Stephen Huycke, Town Clerk

Dear Members of Counsel:

**Re: Item: SRPRS.17.197 Yonge and Bernard Key Development Area Secondary
Plan and Zoning By-law
File Numbers D11-17001 and D24-17001 &
Application File Nos: D01-16003 and D02-16018 (the "Applications")**

As you are aware, we are counsel to TSMJC Properties Inc. (the "Applicant"), the registered owner of the lands known municipally as 10909 Yonge Street, Richmond Hill (the "Property").

BACKGROUND

The Property is located at the south-east corner of Yonge Street and Bernard Avenue and is currently occupied by a plaza containing various commercial uses and a large-format food store. It also comprises a disproportionately large proportion of the Key Development Area, and the majority of its south-east quadrant.

The south-east portion of the Property is currently occupied by an underutilized parking lot (the "Development Site") for which applications for Official Plan Amendment (to the previous Official Plan) and the zoning by-law were filed to permit a residential development consisting of a 16 storey apartment building located mid-block, and a row of stepped, 3-storey back-to-back townhouses with frontage on Yorkland Street, which form the Applications. The Applications are now before the Ontario Municipal Board (the "Board").

In addition, on June 17, 2011, our client filed an appeal to the Board with respect to the failure of the Regional Municipality of York to announce a decision respecting the proposed Official Plan for the Town (the "OP Appeal").

Since the filing of the OP Appeal, our client's appeal, as related to various policies our client had under appeal, have been withdrawn, settled or scoped.

However, many policies applicable to the Property remain under appeal including, amongst others, many related to Yonge and Bernard Key Development Area (the "KDA"). As a result, many of the policies on which the proposed Yonge and Bernard Key Development Area Secondary Plan (the "KDA Plan") and Zoning By-law (the "KDA ZBLA") are based remain under appeal and subject to change.

THE KDA PLAN AND KDA BY-LAW

Our client has reviewed staff's report and the draft KDA Plan and KDA By-law (the "KDA Instruments"). At the Statutory Public meeting held in respect of those instruments, our client's consulting land use planner delivered a deputation outlining some of our client's issues with these instruments.

Our client has now enjoyed the benefit of a thorough review of the KDA Instruments and offers the following additional comments.

Density Policies and Definitions

In reviewing the definition of *Floor Area, Gross* ("GFA") within the KDA By-law, our client's land use planner identified that typical above-grade exclusions for GFA calculations are not included other than those for loading areas and mechanical penthouses.

As the Town is aware, the water table in Richmond Hill is quite high. As a result, it is expected that parking requirements within the KDA will need to be addressed in *above grade* parking structures.

The Water Table

Based on water table levels identified in the reports prepared as components of the Applications, we anticipate only two levels of underground parking may be achieved on lands closest to Yonge Street, but only one level on the balance of the Property. Through our client's initial review of the development anticipated in the Secondary Plan on the KDA 1 zoned lands, we expect development will require 2-5 storeys of above grade parking structures to support the needs of such development.

Further, the pressurized water table below the Property (and most of the KDA) results in the need to constantly de-water any building whose lower levels punctures the water table. Our client is familiar with such requirements as this constant dewatering is already necessary for one of the existing buildings at the Property which penetrates below the layer of earth capping the water table.

However, in Staff Report SRPRS.17.197, Town Staff responded to this concern by stating that:

"Including above grade parking in the height and density calculations is intended to incentivize underground parking and maximize the potential space for non-residential leasable uses to animate the street and provide jobs within the KDA".

Given the potential impacts to the water table, we found the interest in incentivizing underground parking at this location peculiar when the urban design objectives of including parking below grade could be achieved using other mechanisms.

Impact to Responsible Growth

Based on the definition of GFA, such above grade parking structures will be counted towards any development's GFA. This will reduce the available floor area for residential, commercial and/or employment uses by approximately 15%. As only one storey of underground parking will be possible on the KDA 2 lands, we anticipate an even greater effective reduction.

Another effective reduction comes from the lack of the typical exclusions for stairwells, elevators, voids and other service spaces. For example, in the building proposed by the Applications, these spaces account for 6.5% of the space above "Established Grade" – or approximately 1-1.5 entire floors. If excluded from the definition of GFA, this space could instead be used to help accommodate the targeted residential growth.

Thus, failure to exclude above grade parking, stairwells, elevators, voids and other service spaces from the definition of GFA serves to reduce the amount of floor area intended for residential and/or employment uses within the KDA. The practical effects of which are that the KDA By-law, combined with its definition of GFA, negatively impacts on the ability to meet the Official Plan Part 1 (the "Part 1 Plan") density targets and negatively impacts on the ability to meet the residents and employment targets contained in the KDA Plan.

Location of Density, Public Amenities and Height Limitations

In reviewing the KDA Plan, our client noted that the highest densities are directed to the lands designated as "KDA 1" along the Yonge Street frontage. The policies of the KDA Plan also require these areas to include:

1. most of the commercial/office uses;
2. a park;
3. a linear park; and
4. the Bernard Bus Terminal *in its current or reconfigured form.*

Our client has a significant concern these goals cannot be implemented within the identified area if the unapproved height limits in the Part 1 Plan which are replicated in the KDA Plan and the Zoning By-law remain unchanged.

In order to achieve the Part 1 Plan and the KDA Plan's laudable objectives, we believe the height limitations proposed for this quadrant of the KDA must be reconsidered.

Development Blocks

The KDA Plan does not define "Development Blocks", as required by policy 4.4.1 (6) of the Part 1 Plan. While we note that this policy remains under appeal, the Part 1 Plan contains a minimum floor-space-index (FSI) of 2.5 and a maximum FSI of 3.0 FSI for each "Development Block".

All development applications for the KDA must conform to the Part 1 Plan – or must seek to amend it.

If a "Development Block" is to be defined as the entire KDA, or a significant portion thereof, applications for only a portion of the KDA would struggle to meet the minimum density of 2.5 FSI for the Development Block – *being the entirety of the KDA*.

When applied to the site-by-site development of the KDA a development application for a site within the area designated as KDA1 (by the KDA Plan) that had the *proposed* permitted density of 4.0 FSI would thus exceed the Part 1 Plan's maximum of 3.0 FSI. Conversely, an application for lands within an area designated as KDA2 (by the KDA Plan) that had the *proposed* maximum density of 2.0 FSI, would similarly fall below the Part 1 Plan's minimum requirements.

Employment Uses

The current draft of the KDA Plan speaks to maintaining the amount of existing commercial/office and employment uses currently existing on the various sites comprising the KDA. The KDA Plan also seeks to add *Major Office* uses to the KDA. While our client certainly understands staff's desire and the objective of increasing such uses, it is concerned that the KDA Plan is not interpreted in a way that increases this obligation on those lands that are already providing the lion's share of such uses.

In reviewing the built form and parking policies of the KDA Plan (including those below related to public streets), our client raises a concern that the current form of those policies are not conducive to the successful retention and operation of the employment uses that are to be maintained and enlarged within the KDA.

Public Streets

The KDA Plan and KDA By-law require public streets to be implemented in conjunction with development applications for lands within the KDA. Neither the phasing of these new public roads or interim treatments are discussed in either the KDA Plan or KDA By-law.

Our client is concerned that the existing grades – particularly at the Development Site – and current on-site conditions will not allow the implementation a new public highway, built to municipal standards, along the north boundary of the Development Site as required in Schedule 4 of the KDA Plan.

In addition, as mentioned above, the water table in this area of the Town is particularly high. As a result, there is limited opportunity to include below-grade parking under new buildings within the KDA. If parking is prohibited under public streets – as proposed by the KDA Plan – there will be considerable constraints on providing sufficient parking for developments as the prohibition will force additional parking above-grade, thereby exacerbating the density issue noted above.

As noted above, the Property comprises a large proportion of the overall KDA, and the majority of its south-east quadrant. In light of the KDA Plan's goal of **maintaining the amount of existing commercial/office and employment uses**, our client is concerned that the public benefit is not served in providing for public streets bisecting the Property. Such an initiative will only serve to limit the ability to maintain a healthy, vibrant and flexible commercial area that is necessary in today retail climate.

Shadow

In reviewing the shadow policies, our client's land use planner identified that there appears to be a conflict in the KDA Plan between its shadowing policies and the proposed location and intended character of the urban square and linear park.

These community amenities have been *specifically* placed directly adjacent to the *highest heights and densities* at the southeast corner of the Yonge and Bernard intersection. They are also adjacent to the existing bus terminal. Thus, it is our client's position that it is questionable whether it is even possible to achieve the growth-related goals of the KDA Plan while accounting for the shadowing policies and the intended character of the urban square and linear park.

November 20 Motion by Councillor West, Approved by Committee of the Whole

We understand that at the November 20th meeting of the Committee of the Whole, Councillor West brought a motion that would, amongst other matters, restrict development within the KDA to 15% of the total projected housing units until certain additional infrastructure projects were completed.

If such restrictions were integrated into the KDA Plan and/or the KDA By-law – or were added as additional amendments to the applicable planning instruments, such restrictions will significantly limit the ability of the KDA to address both growth targets required by the *Growth Plan* and the goals of the *Provincial Policy Statement, 2014*.

Limiting residential growth to only 15% of the projected growth prior to the implementation of a series of long range transportation improvements, instituting Hold provisions to enforce this restriction and/or refusing to approve any building over 4 storeys, before the BRT is completed, is in direct contravention of the greater policy goals and the requirements of the *Growth Plan* and do not conform to the Region's Official Plan.

In Staff Report SRPRS.17.197, Town Staff stated that:

“the transportation analysis concluded that the only new transportation infrastructure that is required to support the planned level of development is the Bus Rapidway project along Yonge Street and the planned new public collector and local streets”.

Staff also stated that:

“The transportation analyses undertaken to prepare the Secondary Plan were based on the conservative assumption that the street network outside of the KDA did not include any of the transportation infrastructure projects noted above. As the surrounding transportation improvements are implemented, it is anticipated that traffic re-routing and operation on some of the local streets will improve”.

If the *only* transportation improvement required outside the KDA, being the BRT, serves the transportation needs at full build-out, delaying *all* development which exceeds the 4 storeys (only two storeys more than the minimum height requirement for the KDA), lacks any planning justification and is not justified by the empirical evidence supporting the KDA Plan and the KDA By-law. The same is true of the 15% limit to residential growth until improvements - *that staff and the Town's consultants did not even find necessary* - are completed.

This motion is not supported by the planning or technical assessments completed in support of the KDA Plan and KDA By-law. Such modifications will only serve to delay the implementation of growth contemplated by the KDA Plan and KDA By-law, and expected by the Region's Official Plan and the *Growth Plan*.

We strongly recommend that Council strike the recommendations in the motion and also request that the KDA Plan and the KDA By-law be revised to address the comments provided herein.

Finally, we hereby request notice of any further reports, meetings, or recommendations related to this matter.

Should members of Council or the Town's staff have any questions, please do not hesitate to contact me directly.

Yours truly,
DAVIES HOWE LLP



Aaron I. Platt

AIP:AIP

copy: Peter Swinton, *PMG Planning Consultants*
Client

