

AIRD BERLIS

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July 5, 2020

Our File No. 143421

BY EMAIL to TownClerk@oakville.ca

Mayor and Members of Council
Town of Oakville
1225 Trafalgar Road
Oakville, ON L6H 0G3

**Distributed at the Planning and Development
Council Meeting of July 6, 2020
Re: Item 3 - Recommendation Report, Zoning
By-law Amendment, Oakville Developments
(2010) Inc., 550 Kerr Street, File No. Z.1616.55**

Mayor Burton and Members of Council:

**Re: Rezoning Application - 550 Kerr Street (Oakville Developments
(2010) Inc.) File Z1616.55**

We are the solicitors for Oakville Developments (2010) Inc.

Along with our client's consultants, we have reviewed the report prepared by Planning Staff dated June 24, 2020 respecting our client's rezoning application for its lands located at 550 Kerr Street.

On behalf of our client, we wish to express their extreme disappointment with the Staff report and the recommendation made by Staff to refuse to approve our client's rezoning application. The purpose of this letter is to provide Council with a clearer understanding of the background respecting our client's application beyond what is provided in the Planning Staff report.

Background

Pursuant to the Town's Official Plan, our client's lands are designated Urban Core and are specifically contemplated for redevelopment for higher density residential and mixed use buildings. Pursuant to Policy 23.8.2, moreover, the Town's Official Plan specifically contemplates that building heights may be increased to 16 storeys in the context of the provision of community benefits pursuant to Policy 28.6.2 of the Official Plan. Our client's application is intended to implement the already approved policies for their lands.

Prior to filing a complete application with the Town in September, 2019, our client not only met with Town Staff, but also with adjacent landowners. A number of the concerns identified in the Staff report (for example, the need for phasing) were not identified at that time. Following submission of the application, our client also participated in a community meeting, a statutory public meeting, as well as two additional landowner meetings, in addition to further meetings and discussions with Town Staff. It was not until the end of April of this year that our client was provided with all formal comments on their application,

despite a number of requests for same. As the Staff report confirms, our client has been in a position to appeal its application for some time but had not done so, in the hope that it could work to resolve any issues and secure approval from the Town. Based upon the input received through the public processing and landowner/Town process, our client was in the process of refining its proposal to address comments when they were finally received from Staff. It was surprising then when Staff advised in mid-June, that it intended to bring forward a refusal report, a mere month and half following provision of staff and agency comments.

Role of Comprehensive Development Plan/Block Plan

In a number of places in the Staff report, there is reference to the block plan(s) prepared by other landowners in the area surrounding our client's lands. However, these plans are conceptual, remain in draft form, and were prepared to respond to our client's application. They were not prepared in support of formal applications by these other landowners. (To our knowledge, our client is the only landowner who has made an application for redevelopment of their lands.) Nonetheless, and prior to the COVID-19 emergency, our client had been in consultation with these owners with a view to narrowing differences between the respective plans.

The Town's Official Plan does not require lands in this area to redevelop together or at the same time. In contrast, the Official Plan specifically acknowledges that development will take place over time. A block plan is intended to illustrate potential build out of lands. Consequently, while it may be a tool to assist Staff with their review of the zoning application, it is not a statutory plan that necessarily needs to be approved prior to approval of a complete development application on an individual parcel of land.

The "deficiencies" identified with our client's block plan discussed in the report are not matters that should form the basis for a recommendation to refuse the rezoning application. This is particularly the case where Staff knew that our client was continuing to participate in a block plan review process with other landowners immediately prior to the COVID-19 emergency. The proposed block plan was undergoing revision to incorporate feedback from this process and to address Staff and agency comments which were received by the end of April, 2020. These revisions were being made despite the fact that many of the stated requirements for the application differed from those identified in the pre-consultation meeting with your Staff or in Town-issued Terms of Reference for supporting reports for our client's application.

Urban Square

At page 30 of their Report, Staff refer to the need to provide for a "park" in the area around our client's land . We note that the Town's Official Plan does not identify a park or urban square on our client's lands. More importantly, Policy 23.8.3, which applies to the broader area in which our client's lands are located, provides that an urban park/urban square "may" be provided in the context of redevelopment in this block.

Request to Remove "H" Holding Provision

As Council is aware, the lifting of an H or holding provision is a matter between the Owner and the Municipality. No rationale for the "concerns" about a request having been made were substantiated in the report from Staff. In particular, the conditions for H lifting are set out at page 26 of the report. It is clear that these are matters that would be implemented with a zoning approval and there is no reason for Staff to express concern with the request to lift the H which was done in order to ensure that the Owner's intentions to address these matters is identified clearly, and up front, with an application.

Phasing

Policy 23.7.1(b) provides guidance regarding phasing. That Policy is intended to be permissive not restrictive. In other words, it gives clear direction that lands may be redeveloped independently and are not required to develop as a block or at the same time as other surrounding lands. As a result, an individual landowner is not required to coordinate servicing, etc. for the larger land area before proceeding with a development application on their lands.

We also note that those matters identified in the Staff report as concerns regarding phasing are matters that would typically and normally be addressed at site plan approval. They are not matters that are required to be addressed prior to a rezoning application being considered and approved.

Information Respecting Easements

We are not aware of any decision that requires a *Planning Act* application to be determined in the context of title matters. In fact, the cases that we are familiar with acknowledge that title matters such as easements are separate from and independent of those matters that are intended to be addressed at the zoning stage. The presence of existing easements on our client's lands in no way impacts the ability for Council to exercise its jurisdiction under the *Planning Act* to approve a zoning application.

Kerr Street Underpass

Finally, we note that the position now expressed by your Staff regarding the Kerr Street underpass is directly opposite to the position they have taken previously in response to our client's application. As your Staff are aware, prior to filing the application, our client's consultants requested information from Metrolinx regarding the Kerr Street underpass, including CAD drawings to inform the application. These were never provided by Metrolinx. Town Staff advised our client's consultants via email that the application materials closely reflected the Metrolinx plans, stating further that "we would advise to continue with the base that you have created". The concerns expressed in the Staff report appear to be an entirely new position, recently arrived at by your Staff, and not previously expressed to our client's consultants.

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It is unfortunate that your Staff have determined to bring a refusal report to Council given the foregoing, as it will only force an appeal to the Local Planning Appeal Tribunal in circumstances where the applicant has been working with the Town to move an application forward.

Our client's planning consultants, Zelinka Priamo, will be available to address Council's questions regarding our client's application during the Council meeting on July 6, 2020.

Yours truly,

AIRD & BERLIS LLP



Patricia A. Foran

PAF/am

c. Client
G. Priamo/R. MacFarlane, Zelinka Priamo Ltd.

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