



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