

MUNICIPAL, PLANNING & DEVELOPMENT LAW

22 May 2012

Sent via E-mail (clerk@hamilton.ca) and Facsimile (905-546-2095)

City Council, City of Hamilton
City of Hamilton
71 Main Street West, 1st Floor,
Hamilton, ON L8P 4Y5

Attention: Clerk's Office

Dear Members of Council:

**Re: Market Study for Trinity Development Group Inc. and Peer Review re Applications
ROPA-10-002, OPA-10-012, ZAC-10-035, and 25T-201005
Ontario Municipal Board Case No. PL110766
Submissions - Meeting of City Council, 23 May 2012
Planning Committee Report 12-008, Recommendation 9**

We represent Calloway Real Estate Investment Trust Inc. ("Calloway"), the owner of property located at 1051 Garner Road West in the former Town of Ancaster. Our client's property is located on the south side of Wilson Street West, in close proximity to the lands assembled by Trinity Development Group Inc. on the north side of Wilson Street West (the "Trinity Site"). Our client's property is currently developed with retail and service commercial uses.

As Council knows Calloway has appealed Regional Official Plan Amendment No. 43 ("ROPA 43"), Official Plan Amendment No. 137 to the Ancaster Official Plan ("OPA 137"), and Zoning By-law 11-191 amending Ancaster Zoning By-law 87-57 (the "Trinity By-law") to the Ontario Municipal Board. One of the grounds for our client's appeals was our client's concern that the applicant had failed to provide a justification for the proposed development taking into consideration the relevant policies of the new Urban Hamilton Official Plan and/or the Regional Official Plan and the Ancaster Official Plan.

We understand that at its meeting on 23 May 2012, Council will consider Planning Committee's recommendation relating to the Retail Market Demand and Impact Analysis prepared by urbanMetrics inc. for Trinity Development Group Inc. ("Trinity") (the "Market Study") and the peer review of the Market Study prepared by Robin Dee & Associates (the "RDA Peer Review").

At the meeting of the Planning Committee on 15 May 2012, we made written and oral submissions, on behalf of our client.

Dennis H. Wood Direct: (416) 203-7718 dwood@woodbull.ca

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22 May 2012



Request of Council

On behalf of our client, we reiterate the submissions in our letter dated 15 May 2012, and request that Council confirm that the development tested in the Market Study is not what was requested by Trinity in its applications and was not the type and size of development that was supported by the Planning Committee and Council in 2011.


In the context of Trinity's true intentions regarding the development of the Trinity Site, as evidenced in the Market Study, our client requests that Council repeal ROPA 43, OPA 137 and the Trinity By-law and require that Trinity file new applications regarding the development of the Trinity Site under the Urban Hamilton Official Plan.

At a minimum, the Council should confirm that, if Trinity seeks to develop anything more than the amount and type of development that was supported by the Planning Committee and Council in 2011, Trinity would have to file appropriate applications and comply with the requirements of the Urban Hamilton Official Plan.

Yours very truly,

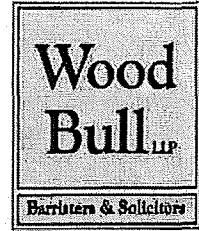
Wood Bull LLP

A handwritten signature in black ink, appearing to read "Dennis H. Wood", is written over the typed name.

 Dennis H. Wood

Encl.

c. Calloway Real Estate Investment Trust Inc.



MUNICIPAL, PLANNING & DEVELOPMENT LAW

15 May 2012

Sent via E-mail and Delivery

Planning Committee, City of Hamilton
c/o Vanessa Robicheau, Legislative Coordinator
City of Hamilton
71 Main Street West, 1st Floor,
Hamilton, ON L8P 4Y5
vanessa.robicheau@hamilton.ca

Dear Committee Members:

**Re: Market Study for Trinity Development Group Inc. and Peer Review
Ontario Municipal Board Case No. PL110766
Submissions - Meeting of the Planning Committee, 15 May 2012, Item 8.2**

We represent Calloway Real Estate Investment Trust Inc. ("Calloway"), the owner of property located at 1051 Garner Road West in the former Town of Ancaster. Our client's property is located on the south side of Wilson Street West, in close proximity to the lands assembled by Trinity Development Group Inc. on the north side of Wilson Street West (the "Trinity Site"). Our client's property is currently developed with retail and service commercial uses.

As the Committee knows our client has appealed Regional Official Plan Amendment No. 43 ("ROPA 43"), Official Plan Amendment No. 137 to the Ancaster Official Plan ("OPA 137"), and Zoning By-law 11-191 amending Ancaster Zoning By-law 87-57 (the "Trinity By-law"). One of the grounds for our client's appeals was our client's concern that the applicant had failed to provide a justification for the proposed development taking into consideration the relevant policies of the new Urban Hamilton Official Plan and/or the Regional Official Plan and the Ancaster Official Plan.

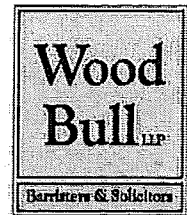
We understand that at tomorrow's meeting, the Planning Committee will consider staff's report and recommendations relating to the Retail Market Demand and Impact Analysis prepared by urbanMetrics inc. for Trinity Development Group Inc. ("Trinity") (the "Market Study") and the peer review of the Market Study prepared by Robin Dee & Associates (the "RDA Peer Review").

Our client and its consultants have reviewed the Market Study and the RDA Peer Review and continue to have serious concerns regarding Trinity's proposal.

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15 May 2012



Submissions

Market Study ignores the restrictions supported by Council in July 2011

Notwithstanding our client's submissions to the Planning Committee in June 2011 and to Council in July 2011, Planning Committee and Council supported Trinity's proposal to develop approximately 31,445 square metres (338,471 square feet) of retail and service commercial space on the Trinity Site. Accordingly, Council adopted ROPA 43 and OPA 137 and passed the Trinity By-law.

The Market Study tests a development of approximately 39,485 square metres (425,000 square feet), and ignores the restrictions in the Trinity By-law regarding the amount and type of development supported by Council in July 2011.

Market Study confirms Trinity's intention regarding the development of the Trinity Site

In our client's submissions to the Planning Committee in June 2011, we alerted the Committee to our client's concerns that what Trinity was seeking was a large shopping centre on the Trinity Site, and not an Arterial Commercial development. The Market Study has confirmed Trinity's true intention with respect to the development of the Trinity Site, as it tests a development far larger and with a wider range of uses than that supported by the Planning Committee and Council in 2011.

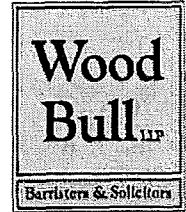
The Market Study does not address the requirements of the Urban Hamilton Official Plan

The Urban Hamilton Official Plan has extensive requirements relating to commercial needs and impact assessment that would be applicable to a proposal such as Trinity's proposal. The Market Study does not address the requirements of the Urban Hamilton Official Plan.

Trinity's Proposal does not meet the requirements of the Urban Hamilton Official Plan

As the Planning Committee is aware, the Urban Hamilton Official Plan designated the Trinity Site to Arterial Commercial pursuant to a Council exemption through the municipal comprehensive review process.

The development studied in the Market Study is prohibited in the Arterial Commercial designation in the Urban Hamilton Official Plan. Furthermore, as Trinity's proposed development represents a commercial node or cluster of retail space greater than 25,000 square metres, the Urban Hamilton Official Plan would require that the Trinity development proposal only be considered through a municipal comprehensive review of the City's urban structure. This has not been done.



15 May 2012

The Market Study does not appropriately address the requirements of the Regional Official Plan and the Ancaster Official Plan

The market analyst retained by Calloway advises that the Market Study does not appropriately address the requirements of the Regional Official Plan and the Ancaster Official Plan.

Commercial Strategy Study

The Market Study and the RDA Peer Review ignore the findings of the City's Commercial Strategy Study regarding the nature and scale of additional retail space in the City and the distribution of such space.

Request of Committee

Our client requests that Planning Committee and Council confirm that the development tested in the Market Study is not what was requested by Trinity in its applications and was not the type and size of development that was supported by the Planning Committee and Council in 2011.

In the context of Trinity's true intentions regarding the development of the Trinity Site, as evidenced in the Market Study, our client requests Planning Committee to recommend that Council repeal ROPA 43, OPA 137 and the Trinity By-law and require that Trinity file new applications regarding the development of the Trinity Site under the Urban Hamilton Official Plan.

At a minimum, the Planning Committee should confirm that, if Trinity seeks to develop anything more than the amount and type of development that was supported by the Planning Committee and Council in 2011, Trinity would have to file appropriate applications and comply with the requirements of the Urban Hamilton Official Plan.

Yours very truly,

Wood Bull LLP

DH Wood / sm

Dennis H. Wood

c. Calloway Real Estate Investment Trust Inc.

