



MUNICIPAL, PLANNING & DEVELOPMENT LAW

14 April 2014

Sent via E-mail

City Councillors
 & Planning and Economic Development Department
 Planning Division - Development Planning - West Section
 71 Main Street West, 5th Floor
 Hamilton, Ontario, L8P 4Y5

Dear Councillors:

**Re: Urban Hamilton Official Plan Amendment Application (File No. OPA-13-012) &
 Zoning By-law Amendment Application (File No. ZAC-13-044) (PED14057)
 Re: 1125, 1143 and 1185 Wilson Street West, Ancaster
 Public Meeting 15 April 2014
 Submissions by Calloway Real Estate Investment Inc.**

We are solicitors for Calloway Real Estate Investment Trust Inc. ("Calloway"), the owner of property located at 1051 Garner Road West, in the former Town of Ancaster. Calloway's property is located on the south side of Wilson Street, in close proximity to 1125, 1143 and 1185 Wilson Street West (the "Trinity Site"), the subject site of the above-noted applications (the "2013 Applications").

On behalf of Calloway, we provided written comments on the 2013 Applications dated 3 January 2014, a copy of which is attached. Calloway and its planning consultant have now reviewed the staff report prepared in connection with the 2013 Applications (the "Staff Report"). Calloway continues to have the concerns set out in the January letter, and offers the following additional comments on the Staff Report for Council's consideration.

Additional Submissions

First, Calloway is concerned that a Department Store would be permitted on Blocks C, D and E, notwithstanding that urbanMetrics Inc. did not study a Department Store use in its Commercial Needs and Impact Assessment. It would clearly be inappropriate to permit this use absent the appropriate market study to support it.

Second, it does not appear that the proposed zoning by-law includes any minimum or maximum sizes for the proposed retail and service commercial uses. It has been our client's experience that minimum and maximum sizes are typically applied to larger commercial developments in the City.

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14 April 2014



Third, Calloway remains concerned that this development will proceed without being evaluated within the context of a municipal comprehensive review. The key Urban Hamilton Official Plan ("UHOP") policy in this regard is Policy F.3.2.7.2, which states that:

A commercial needs assessment shall address the following matters to the satisfaction of the City:

...

(j) If the proposed development creates a commercial node or cluster of retail space greater than 25,000 square metres, it shall only be considered through a municipal comprehensive review of the City's urban structure. (underline added)

The Staff Report appears to conclude that this policy does not apply because there is less than 25,000 square metres of District Commercial uses proposed. However, it is clear from the wording of this policy that all commercial uses must be included when assessing the size of the node. Therefore, the Arterial Commercial uses in Blocks A and B must also be included. When those uses are factored in, the total size of the commercial node that is created (Blocks A, B, C, D and E) exceeds 25,000 square metres, and therefore the proposed development must to be considered through a municipal comprehensive review.

Although not part of the 2013 Applications, Block A is clearly part of the overall development being proposed, and therefore must be included in assessing the total size of the commercial node.

On Page 19 of 24 of the Staff Report, staff appear to accept the appropriateness of evaluating the size of the overall commercial node, rather than on an application by application basis. They indicate that:

...It should be noted that if additional applications to further increase the amount of district commercial uses are proposed either on the subject lands or on surrounding lands, these proposals would be evaluated on a cumulative basis with the 15,807 sq. m. that may be approved through the current applications. It is not the intent of the UHOP to allow multiple new district commercial developments be proposed in the area each under 25,000 sq. m., but cumulatively over 25,000 sq. m. (underline added)

However, Policy F.3.2.7.2 (j) requires a consideration of the entire commercial node, including Arterial Commercial uses and District Commercial uses. The policy wording does not support an interpretation that only District Commercial uses must be considered in calculating the size of the commercial node as suggested in the excerpt provided above.

The Staff Report further states that "the proposal alters the types of commercial uses already permitted on the subject lands by UHOP, and therefore does not create or establish a new major commercial area.

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The arterial commercial designation already exists in the Official Plan and Zoning By-law permissions, and therefore the intent of the policy is not applicable to the subject applications" (Page 9 of 24). In our opinion, the wording of the policies does not support this interpretation. In determining whether a municipal comprehensive review is required, it is the size of the proposed development that must be assessed, not the underlying land use designation or zoning.

Our client has approached staff with its concerns, and would welcome a further opportunity to discuss these submissions and any other comments or issues that may arise.

Request of Planning and Economic Development Department and City Council

On behalf of Calloway, we request that the Planning and Economic Development Committee and City Council defer consideration of the 2013 Applications until such time that the above concerns have been addressed.

In the event Council decides to proceed in considering the Applications, Calloway requests that the by-law be amended to specifically prohibit department stores as a permitted use and impose maximum and minimum use restrictions.

Yours very truly,

Wood Bull LLP

A handwritten signature in black ink, appearing to read 'Shapira', written over a large, loopy circular flourish.

Johanna R. Shapira

c. client



MUNICIPAL PLANNING & DEVELOPMENT LAW

3 January 2014

Sent via E-mail

City Council, City of Hamilton
Attention: Heather Travis
Planning and Economic Development Department
Planning Division - Development Planning - West Section
71 Main Street West, 5th Floor
Hamilton, Ontario, L8P 4Y5

Dear Councillors:

**Re: Urban Hamilton Official Plan Amendment Application (File No. OPA-13-012) &
Zoning By-law Amendment Application (File No. ZAC-13-044)
Re: 1125, 1143 and 1185 Wilson Street West, Ancaster
Preliminary Submissions & Request for Notification**

We are solicitors for Calloway Real Estate Investment Trust Inc. ("Calloway"), the owner of property located at 1051 Garner Road West, in the former Town of Ancaster. Calloway's property is located on the south side of Wilson Street, in close proximity to 1125, 1143 and 1185 Wilson Street West (the "Trinity Site"), the subject site of the above-noted applications (the "2013 Applications").

Our client obtained copies of the 2013 Applications and supporting reports (the "Reports") in mid-December 2013, just prior to the holiday season. On behalf of Calloway, we have reviewed Trinity's materials and offer the following preliminary submissions. Calloway has also circulated Trinity's materials to their consultants, and will forward any additional comments the consultants may have as soon as they are available.

Background

As you know, Trinity submitted planning applications for a portion of the Trinity Site in 2010 (the "2010 Applications"). The 2010 Applications were approved by City Council and ultimately appealed to the Ontario Municipal Board (the "Board") by our client.

In its decision on the appeal, the Board modified Trinity's 2010 planning instruments to be consistent with the Arterial Commercial Designation in the Urban Hamilton Official Plan (the "UHOP"). Specifically, the Board directed that Trinity's planning instruments only permit those uses permitted in Policy E.4.8.2 and prohibit those uses prohibited in Policy E.4.8.3 of the UHOP.

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3 January 2014



A Board Order dated November 2013 approved a zoning by-law implementing the Trinity planning instruments as modified by the Board.

Calloway Submissions

Calloway continues to have similar concerns with the 2013 Applications as it did with the 2010 Applications. It appears that through its 2013 Applications, Trinity is seeking to re-introduce permissions similar to those that were refused by the Board, without properly addressing the policy requirements of the UHOP that relate to new retail and service commercial uses within Commercial and Mixed Use Designations.

First, within the general policies for all Commercial and Mixed Use Designations, Policy E.4.2.11 provides that:

Official Plan amendment applications for retail and service commercial development exceeding 5,000 square metres of gross floor area shall be required to undertake a commercial needs and impact assessment, in accordance with Policy F.3.2.7 - Commercial Needs and Impact Assessment. The Commercial Needs and Impact Assessment shall assess the impact of the proposal on designated retail areas and the potential for negative impacts to the planned function of these areas. ... (underline added)

Policy F.3.2.7.2 provides the following:

A commercial needs assessment shall address the following matters to the satisfaction of the City:

...

(j) If the proposed development creates a commercial node or cluster of retail space greater than 25,000 square metres, it shall only be considered through a municipal comprehensive review of the City's urban structure. (underline added)

If approved as drafted, it appears that the proposed official plan and zoning by-law amendments attached to the planning justification report supporting the 2013 Applications (the "Planning Report") (the "Proposed Amendments") would permit at least 26,282 square metres of retail and service commercial uses on the Trinity Site. As such, the requirement for a municipal comprehensive review in Policy F.3.2.7.2 would be triggered by the 2013 Applications.

3 January 2014



With respect, neither the Planning Report nor the commercial needs and impact assessment prepared by urbanMetrics in support of the 2013 Applications (the "Market Report") properly respond to Policy F.3.2.7.2(j). In reference the policy, the Planning Report states that:

This UHOP amendment and zoning application is for retail and service commercial uses of a non-arterial commercial nature to a maximum of 13,551 square metres. Accordingly, no amendment to the urban structure is required. (page 20) (underline added)

This language makes reference to non-arterial commercial uses, however the policy specifically relates to "a commercial node or cluster of retail space", which in this case, appears to be greater than 25,000 square metres. The Market Report similarly references only non-arterial space in reference to Policy F.3.2.7.2 (j):

Project Size: The Trinity development proposal is to permit 176,500 square feet (16,397 square metres) of non-arterial commercial uses. The existing permitted commercial space in the vicinity of Duff's Corners, including the permitted space on the north side of Wilson Street, is already in excess on 25,000 square metres. Therefore, the subject proposal does not create a commercial node or cluster of retail space greater that 25,000 square metres. (page 83) (underline added)

The latter comment above respecting the existing permitted commercial space in the vicinity of Duff's Corners fails to take into consideration that the lands south of Wilson Street, bounded by Garner Road, Shaver Road and Wilson Street West, and a portion of the lands lying west of McClure Road, are subject to their own area specific policy (UA-4) in the UHOP, and that the UHOP clearly does not intend for the retail and service commercial uses on those lands to be expanded without an amendment to the Urban Structure.

Second, UHOP Policy E.4.2.8 states that:

Applications for retail and service commercial uses or areas greater than 25,000 square metres in gross floor area that are not of an arterial commercial nature shall require an amendment to the urban structure to create a new Urban Node or extension of an Urban Corridor. (underline added)

Policy E.2.2.4 provides that changes to the urban structure can only be considered during the five year review of the official plan.

3 January 2014



As drafted, it is not clear whether the Proposed Amendments limit the non-arterial commercial uses on the Trinity Site to less than 25,000 square metres, and therefore whether Policies E.4.2.8 and E.2.2.4 apply.

As a final matter, as illustrated in part by the quotations included above, there appear to be inconsistencies amongst the Planning Report, the Market Report, and the Proposed Amendments in regard to what permissions are being proposed. Clarification is required in order to properly assess Trinity's proposal in the context of the UHOP policies.

Our client would welcome an opportunity to meet with City staff to discuss these submissions and any other comments or issues that may arise.

Request for Notification

On behalf of Calloway, we request to be notified of any public meetings, staff reports, and Committee/Council decision(s) of the City of Hamilton with respect to the above noted proposed Official Plan Amendment and Zoning By-law Amendment applications.

Yours very truly,

Wood Bull LLP

A handwritten signature in dark ink, appearing to read "Shapira", is written over a circular stamp or seal.

Johanna R. Shapira

c. client