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The Honourable Peter Tabuns, MPP (Toronto – Danforth)
Rm 165, Main Legislative Building
Queen's Park
Toronto, ON M7A 1A5

Dear Mr. Tabuns:

**Re: Concerns re Bill 171, the Building Transit Faster Act, 2020
11 & 20 Sunlight Park Road, Toronto**

Borden Ladner Gervais LLP submits this correspondence on behalf of Talisker (Sunlight) GP Inc. (“**Talisker**”), the registered owners of lands located at 11 & 20 Sunlight Park Road (the “**Subject Lands**”) in the Toronto – Danforth provincial riding in the City of Toronto (the “**City**”). The purpose of this letter is to express concern with respect to certain changes proposed by Bill 171, the *Building Transit Faster Act, 2020* (“**Bill 171**”) which was recently tabled by the Minister of Transportation.

The Subject Lands

The Subject Lands consist of two parcels on Sunlight Park Road in the City of Toronto. Each of the properties that make up the Subject Lands are used as automobile dealerships (including automobile servicing). The northern parcel at 20 Sunlight Park Road is occupied by ‘Mini Downtown’. The southern parcel at 11 Sunlight Park Road is occupied by ‘BMW Toronto’.

The Subject Lands are adjacent to a planned station along the proposed Ontario Line corridor.

The Subject Lands are designated employment and have the potential for a future mixed use, which would increase density and also the actual employment yield possible on Subject Lands, while providing residential housing, retail and jobs, and a more cohesive and complete transit-oriented community.

Comments

Talisker’s chief concerns include, but are not limited to the following:

1. Inappropriate Elimination of Inquiries;
2. Corridor Development Permits Will Slow Appropriate Growth; and
3. Lack of Compensation Clarity: Reference to *Expropriations Act* Required.

1. Inappropriate Elimination of Inquiries

As written, Bill 171 s. 44 would eliminate a landowner's traditional right to request an inquiry or "hearing of necessity" to challenge and investigate the need for the land taking on transit corridor land and for priority transit projects.

The hearing of necessity process provides an important opportunity, before an impartial adjudicator, for dialogue between the government and landowners, such as private industry, to develop mutually beneficial sites and projects. An example of a beneficial outcome of such collaboration would be connecting tunnels between major transit stations and adjacent buildings.

It cannot be the legislature's intention that the interaction between private industry and public entities be stifled. But without hearings of necessity, the government is scrapping an important opportunity to coordinate designs with private industry to establish optimal transit station areas.

Bill 171 s. 45 would allow the Minister of Transportation to establish an "alternative process" through regulation, allowing for the receipt and consideration of comments from impacted landowners. But such a mechanism is not a sufficient alternative to the hearing of necessity.

2. Corridor Development Permits Will Slow Appropriate Growth

Bill 171 would require private landowners to obtain development permits for work on or within 30 metres of transit corridor land, once the corridor has been designated.

The government's objective is to build transit faster, but certainly it cannot be the government's intention to slow private development, given the government's stated mandate to increase the Province's housing supply and its demonstrated goal of increasing employment opportunities.

By adding this additional roadblock, the government is stalling improvements such as improvement of the Subject Lands with additional employment in the immediate proximity of a planned major transit station.

For example, the Subject Lands are a prime location for additional employment, which is in line with the government's stated objectives, adjacent to the proposed Ontario Line corridor. There is no need for an additional corridor development permit for the Subject Lands. Talisker is already prevented from building in proximity to an existing rail corridor, making the additional permit an unnecessary roadblock to adding employment to the Subject Lands.

As an alternative, Bill 171 could be amended to allow for the exemption by regulation of certain lands from requiring corridor development permits as appropriate.

3. Lack of Compensation Clarity: Reference to *Expropriations Act* Required

Most significantly, Bill 171 would allow removal of buildings and improvements where they are in the designated corridor of one of the select transit projects, with 30 days' notice.

The *Expropriations Act* was enacted in 1968 based on the recommendations of the Ontario Law Reform Commission report on expropriation to regulate governmental taking of land, which, prior to the said act had been heavily criticized. The said act is substantially unchanged today and has

served as a code of conduct for the regulation of how expropriations are effected and the determination of compensation for over 50 years.

The Supreme Court of Canada has described the expropriation of property as “one of the ultimate exercises of governmental authority. To take all or part of a person’s property constitutes a severe loss and a very significant interference with a citizen’s private property rights.”¹ It is therefore incumbent upon the authority taking the land to ensure that the affected owner is made whole.

But section 83 of Bill 171 provides that obstruction removal would not constitute an expropriation or injurious affection within the meaning of the Ontario *Expropriations Act* or otherwise at law.

In addition, the amount of compensation for land taken and for obstruction removals appears to be in the Minister of Transportation’s discretion. Bill 171 attempts to create its own compensation scheme, but the scheme created is vague in a manner that is not commensurate with the seriousness of the taking of land, including with respect to the following:

- who may make a claim (e.g. in addition to owners, would tenants and security holders qualify?);
- what types of compensation claims are permitted (e.g. compensation for land value, injurious affection, disturbance damages to the property caused by the project, etc.)
- whether a landowner’s reasonable costs incurred to determine their fair compensation will be covered in a manner akin to the *Expropriations Act*.

Without clarity regarding these questions, impacted owners cannot be made whole in accordance with the Supreme Court of Canada’s ruling.

These items have been specified in the *Expropriations Act* to clarify and simplify the determination of compensation. Bill 171 would revert to an undefined process that will surely complicate determination of compensation akin to the pre-1968 expropriation process.

The procedure for determining compensation under Bill 171 appears to be variable on a case-by-case basis, at the discretion of the Minister of Transportation, with the obstruction removal notice particularizing the procedure for determining compensation (s. 14). Under the *Expropriations Act*, where compensation is disputed, the project can nevertheless proceed while the fair compensation owing is determined, through a standardized process that includes set heads of damage, mandatory negotiation prior to a contentious hearing. Determining compensation in accordance with the said act would be a reasonable way to ensure that landowners are fairly dealt with and would not unduly delay the priority projects.

Fairness requires that s. 83 be amended and that the Bill 171 compensation scheme set out in s. 42 instead refer to the *Expropriations Act* by reference.

¹ *Dell Holdings Ltd. v. Toronto Area Transit Operating Authority*, [1997] 1 S.C.R. 32 (S.C.C.), at para 20, available online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1465/index.do>> [“*Dell Holdings*”].

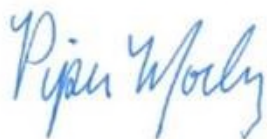
Conclusion

We respectfully request that you present these concerns to the Legislative Assembly and any Standing Committee struck with respect to Bill 171.

We would be pleased to discuss these concerns with you and remain available for further dialogue.

Yours very truly,

BORDEN LADNER GERVAIS LLP



Piper Morley
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