



Corporate Report

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CD.21 - DOW

DATE: March 9, 2011

TO: Mayor and Members of Council
Meeting Date: March 9, 2011

FROM: Edward R. Sajecki
Commissioner of Planning and Building

SUBJECT: Interim Control By-Law for the Downtown Core

- RECOMMENDATION:**
1. That staff be directed to engage a consultant to undertake a study on an expedited basis to determine the appropriate land use to support the Downtown21 vision for the future of Mississauga's Downtown Core for the areas that are zoned "H-CC1", "CC1", "CC1-1", "H-CC2(2)", "CC2(2)" and "H-CC2-3" as shown on Attachment 1.
 2. That an interim control by-law be enacted pursuant to Section 38 of the *Planning Act* for a period of one year for those lands shown on Appendix 1 of this Report.
 3. That notwithstanding the provisions of the City's Purchasing By-law 374-06, due to time constraints City Council approve retaining LiveWorkLearnPlay, Inc. to undertake the study of the Downtown Core on a single source basis; and confirm the authority of the Purchasing Agent under the Purchasing By-Law to enter into the requisite contracts with LiveWorkLearnPlay, Inc.

BACKGROUND: On April 23, 2009, Mississauga City Council approved *Our Future Mississauga*, the new Strategic Plan setting out a 40 year vision for the City which identifies one of its Strategic Goals as "Create a Vibrant Downtown".

In order to implement the goal of a vibrant downtown, the Downtown21 Master Plan study was initiated. On April 28, 2010, City Council received the Downtown21 Master Plan, which puts forward an aggressive vision for change and calls for a paradigm shift involving the transformation of a suburban, auto-oriented downtown, to one that is truly urban, rich in character, memorable and geared to the pedestrian experience.

Recently, large format type of retail developments, such as Whole Foods, Crate and Barrel and LCBO have located in the Downtown Core, near the transit terminal. This type of use is permitted under the current zoning provisions, however their intensity of use and form do not support the vision for the downtown.

The current zoning provisions are not adequate to deal with and properly manage the development of uses in the Downtown Core, especially near proposed transit stations, to implement the vision of the Downtown21 Master Plan and intent of the new Mississauga Official Plan. This results in unpredictability of development which could be detrimental to the long term vitality of the Downtown Core and its ability to support transit, particularly higher order transit.

Official Plan

Mississauga Plan

On January 17, 2001 City Council approved a three-prong planning approach for the Downtown Core:

- 1) Revised District Policies (OPA 20);
- 2) Implementing Zoning By-law; and
- 3) Urban Design Guidelines.

The City Centre District (now Downtown Core) policies of Mississauga Plan designate the subject lands "Retail Core Commercial" and "Mixed-Use". Both of these designations permit a range of uses including, but not limited to: high density residential development, offices, civic/cultural facilities and retail commercial uses. The major difference between these designations is that the "Retail Core Commercial" designation permits stand alone retail stores

whereas the "Mixed Use" designation only permits retail stores as accessory to another use, and limits their size (20% of the total Gross Floor Area). The City Centre Transit Terminal is also situated on lands designated "Retail Core Commercial". While "mixed use" is encouraged throughout the Downtown Core, there are no requirements to have a mix of uses nor are there any corresponding minimum/maximum height or density limits.

Proposed New Mississauga Official Plan ("New OP")

The New OP was adopted by City Council on September 29, 2010, but has not yet been approved by the Region of Peel. The City is currently addressing proposed modifications to the Plan.

The purpose of the New OP is to serve as the statutory review of Mississauga Plan mandated by the Planning Act. The New OP establishes a new urban structure wherein the Downtown or Urban Growth Centre ("UGC") will contain the highest densities, tallest buildings and greatest mix of uses, and carries forward the intent of the UGC and Hurontario Street as "intensification areas". The Downtown is intended to be a vibrant city and regional centre. The Downtown Core will be the primary location for mixed use development served by higher order transit facilities. To this end, major offices are expressly permitted within the mixed use designation in the Downtown Core. The policies state that ground floor retail or office will be required in Mixed Use or Downtown Core Commercial.

Downtown21 Master Plan

Downtown21 builds on the success of previous plans and visions for the downtown, shaping all of the great ingredients that exist within the core today into a plan of opportunities and action.

The downtown vision is intended to advance a number of key principles and sustainable objectives such as:

- (1) Economic development strategies to catalyze and attract new office development and employment;
- (2) Providing multi-modal transportation choices;

- (3) Developing an integrated, mixed-use urban place that achieves a great public realm and a series of distinctive districts;
- (4) Deploying green technologies, low impact development standards and environmental conservation strategies;
- (5) Creating a dynamic Main Street District, as a catalytic project in the Downtown, linked to targeted private and public investments; and,
- (6) Providing a new development framework and policy regime founded on greater predictability and urban design excellence.

Zoning

The lands proposed to be included in the study and the ICB are zoned "H-CC1", "CC1", "CC1-1", "H-CC2(2)", "CC2(2)" and "H-CC2-3", which are the City Centre zones. Notwithstanding the "H" Holding Provision, "CC1", City Centre – Retail Core Commercial zone, which predates Downtown21 and the New OP, permits a mix of uses including offices, apartments, and a wide variety of retail uses. The retail commercial uses are permitted in free standing buildings or in conjunction with other permitted uses.

Notwithstanding the "H" Holding Provision, the "CC2" zone, City Centre Mixed Use, which also pre-dates Downtown21 and the New OP, permits a mix of uses including offices and apartments. However, retail uses are only permitted as accessory to a permitted use. The "H-CC2-3" exception zone permits motor vehicle uses in addition to the "CC2" uses.

COMMENTS:

Planning Study

The intent of Mississauga Official Plan, New OP and the Downtown21 Master Plan is to create an intense, mixed use, transit oriented and pedestrian friendly downtown. The existing City Centre zones, however, do not effectively convey the intent of those documents. They allow free standing commercial uses in the "CC1" zones without determining the appropriateness, especially where near

transit locations.

The "CC2" zones allow a variety of uses; however do not require a mix of uses or ground floor retail uses. Some of the ground floor uses will be driven by higher order transit stations proposed to be located within the lands proposed to be included in the study. The as-of-right zoning does not align with the pedestrian oriented, mixed use development envisioned in Mississauga Official Plan and the Downtown21 Master Plan.

Recent and anticipated retail developments are not consistent with the City's initiatives, and there appears to be an imminent threat of additional automobile-oriented retail expansion to the Downtown Core which is in direct contradiction to the City's vision for the downtown, as articulated in the Downtown21 Master Plan, the Hurontario Higher Order Transit Study, the Official Plan, and New OP.

In order to determine an appropriate mix of uses in a form that supports the Downtown21 vision for the areas of the Downtown Core that are zoned "H-CC1", "CC1", "CC1-1", "H-CC2(2)", "CC2(2)" and "H-CC2-3" and outlined in Appendix 1, staff should be directed to engage a consultant to undertake a study of land uses and forms permitted in the "CC1" and "CC2" zones vis-a-vis those envisioned in the Downtown21 Master Plan, Mississauga Plan and the proposed new Mississauga Official Plan, so as to ensure the vision of Council and the community set out in these instruments will not be frustrated.

Interim Control By-law

Section 38 of the *Planning Act* provides as follows:

"Where the council of a local municipality has, by by-law or resolution, directed that a review or study be undertaken in respect of land use planning policies in the municipality or in any defined area or areas thereof, the council of the municipality may pass a by-law (hereinafter referred to as an interim control by-law) to be in effect for a period of time specified in the by-law, which period shall not exceed one year from the date of the passing thereof, prohibiting the use of land, buildings or structures within the municipality or within the

defined area or areas thereof for, or except for, such purposes as are set out in the by-law."

In this case, an interim control by-law ("ICB") is appropriate and necessary in order to ensure that a planning study can be carried out to protect for City Council's approved direction for the Downtown Core before any development occurs that would prejudice the results of the study, or preclude or prejudice the achievement of the approved policies.

The *Planning Act* provides that where Council has directed that a study or review of land use planning policies be undertaken, Council may then pass an ICB, which can prohibit the use of land, buildings or structures for certain uses, or except for certain uses, in the area to which the ICB applies. The ICB is to be in effect for a period of up to one (1) year.

Unless set out in the ICB, an ICB does not generally prohibit interior renovations or the conversion of uses that existed on the day before an ICB is enacted to another use that is specifically permitted in that zone. Further, an ICB will not act as a prohibition on the submission of development applications; however, potential applicants should be advised that an ICB is in place and what it restricts. Potential applicants should also be advised that the Planning and Building and Legal departments will be reviewing all development applications for land within the ICB area and that the issuance of a building permit that would contravene the ICB is not permitted under the *Building Code Act*.

In this case, the immediate cause of concern is the potential construction of land uses that are incompatible with City Council's vision. Such construction could prejudice the City's ability to carry out the objectives of the approved policies, which call for an intense, compact, mixed use, transit supportive and pedestrian friendly Downtown.

For these reasons it is appropriate that City Council enact an ICB, as recommended in this Report. This control will allow the City to

ensure that the study can be completed, and appropriate zoning regulations put in place, to ensure that the approved Downtown Core vision can be carried out.

The ICB will apply to the entirety of the area shown on Appendix 1 for one (1) year, and may be extended to two (2) years, should this be necessary to allow for the study to be completed. Staff recommends that the ICB permit continued use of lawfully existing buildings for the uses permitted by City of Mississauga Zoning By-law 0225-2007. It should be noted that these lands cannot be placed under an ICB for any reason again for a period of three (3) years beyond the expiry of this ICB. An exemption from the ICB is recommended for the application for Whole Foods under file SP 10/063 W4, because the use is permitted under the current zoning and a conditional building permit has been issued.

Sole Source to LiveWorkLearnPlay, Inc.

Following completion of the Downtown21 Master Plan, the City arranged continuing services contracts with AECOM, (formerly Glatting, Jackson) the lead Downtown21 consultant, Ken Greenberg, N Barry Lyon and Real Estate Search Corporation, (sub-consultants to AECOM on Downtown21), to provide the City with strategic guidance with respect to implementation of the Master Plan. The City does not have the expertise to deal with the issues we are facing and has reached out to our strategic advisors to request the names of firms that are qualified to assist the City. The City requested a firm with the following expertise:

- retail/economics/business acumen;
- leasing;
- development;
- mixed-use specialists, (vertical integration of buildings);
- placemakers - understanding of how to deliver great places

Our strategic advisors recommended LiveWorkLearnPlay, Inc. as being the right company that can deliver what is required in the Downtown Core. While there are a small number of companies that can deliver on individual aspects of the criteria the City requested,

LiveWorkLearnPlay, Inc. differs from most traditional consulting firms as they are a fully integrated mixed-use development advisory firm. Although other firms complete many of the front end consulting work that LiveWorkLearnPlay, Inc. is engaged in, their work continues much further through the planning process where they work with urban planners and architects to help form the physical master plan, a development plan with associated financials that are required for a project to obtain financing and be implemented.

As many of the senior executives from LiveWorkLearnPlay, Inc. have a background in the development industry (have actively developed large scale projects) their advisory work comes from experience on developing these places from the ground up. Additionally, their firm has an in-house division to implement on the activation of these large scale projects. As such, their focus is to engage in projects and advise on how to make them economically viable with sound business decisions and at the same time deliver great places.

Given the short timelines for the study, the nature of an Interim Control By-Law, and the need to carry out the study expeditiously, it was not possible to solicit competitive bids for this work.

LiveWorkLearnPlay, Inc. has developed a detailed scope of work, and included in the scope is a break-down of hourly rates and average hours per month on the project as follows:

- Principal - \$375 (average of 15 hours/month)
- Vice-President - \$325 (average of 25 hours/month)
- Director \$285 (average of 32 hours/month)
- Manager \$175 (average of 40 hours/month)
- Analyst \$125 (average of 21 hours/month)

The proposed total contract is for \$325,000 plus \$15,000 in expenses.

LiveWorkLearnPlay, Inc. is an international urban development, retail expert and advisory firm, dedicated to creating and redeveloping mixed-use real estate projects and environments. The firm is based in Toronto and Montreal and has extensive experience in the planning, development, and implementation of mixed-use projects.

LiveWorkLearnPlay, Inc. has successfully managed multiple stakeholders in large-scale mixed-use developments with proven results, developing many mixed-use projects throughout North America, Europe and the Caribbean.

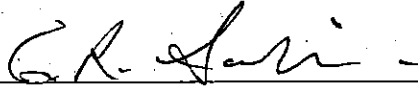
FINANCIAL IMPACT: The contract amount recommended for LiveWorkLearnPlay, Inc. totals \$340,000. This can be accommodated within the 2011 Budget Request for the Downtown21 - Main Street project.

CONCLUSION: The City Council approved Official Plan Policies and the Downtown21 Master Plan considered appropriate development for the downtown that would place some controls on auto-oriented and large format retail; however, Design Guidelines, Zoning By-Law, Mississauga Plan and New OP controls have not yet been implemented. It is therefore recommended that the City of Mississauga undertake a study of land uses as envisioned in the Downtown21 Master Plan, Mississauga Plan and the proposed new Mississauga OP for the areas of the Downtown Core that are zoned "CC1" and some areas zoned "CC2" and outlined in Appendix 1, to determine an appropriate mix of uses in a form that supports the Downtown21 vision for the future of Mississauga's Downtown Core.

In order to ensure that City Council's vision for the Downtown Core is adhered to, and to ensure that the guidance of the Council adopted New OP and Downtown21 Master Plan is respected and implemented, it is critical that City Council take action by implementing an interim control by-law for the Downtown Core.

It is recommended that the City of Mississauga award a single source contract to LiveWorkLearnPlay, Inc. to carry out a study to determine the commercial/retail zoning permissions that will implement the City's vision for Mississauga's Downtown Core.

ATTACHMENTS: Appendix I: Interim Control By-Law Area
Appendix II: Aerial Photograph




Edward R. Sajecki
Commissioner of Planning and Building

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 LANDS SUBJECT TO INTERIM CONTROL BY-LAW

 GREENBELT OVERLAY

CITY OF MISSISSAUGA

THIS IS APPENDIX "B" TO

BY-LAW _____

