

# NOVÆ RES URBIS TORONTO

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- 2 FOSTERING FILM FACILITIES  
Five Strategies
- 3 RESILIENT RE-IMAGININGS  
TO Islands Master Plan

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## RED LIGHT, GREEN LIGHT

# 'VIGILANTE PLANNING JUSTICE'

Rachael Williams

Planning and development lawyers are pushing back against three downtown Toronto city councillors who are attempting to slow down development applications in their wards using various tools at their disposal, contending this “vigilante planning justice” is a misuse of power and will only lead to more protracted legal battles.

Ward 10 Spadina-Fort York councillor **Joe Cressy**, Ward 11 University-Rosedale councillor **Mike Layton** and Ward 13 Toronto Centre councillor **Kristyn Wong-Tam** announced in a press conference on July 18 that they were implementing a “red light, green light” system to evaluate development proposals in their wards. The move was made in response to the provincial government mandating sweeping changes to the city-approved version of the Downtown Secondary Plan (OPA 406), which included removing blanket prohibition on erecting tall buildings in certain

areas designated mixed-use, softening requirements for office and rental housing replacement and lowering minimum floor area requirements for two- and three-bedroom apartment units.

Proposals that will be given a “green light” are those that are compliant with the city-approved version of its Downtown Secondary Plan. Applications that receive a “red light” will be deprioritized internally by councillors through holding provisions, denial of municipal permits and setting up other roadblocks, even if the applications are compliant with provincial plans.

“What did really surprise

me and disappoint me was the sense that if the councillors are happy with what the province does, then they are willing to enforce the law. But if they don’t like what the province does, then they will feel comfortable essentially taking the law into their own hands,” said **Devine Park LLP** partner **Patrick Devine**.

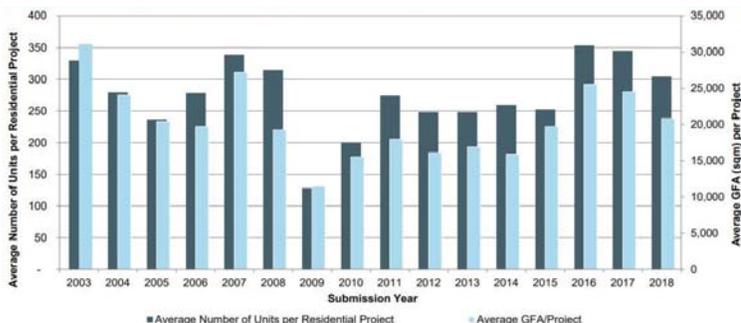
Acknowledging the fact that the province did nothing illegal when it made 224 changes to the Downtown Secondary Plan, Devine said the press conference could ultimately hurt the city at the Local Planning Appeal Tribunal (LPAT) because it demonstrates very clearly that there will

be political influence in the development approvals process.

“These were very public statements made by these councillors and widely reported. Many times before LPAT -- you deal with this cautiously -- but you allude to the fact that there may have been political interference in the decision made by council. In this case...the councillors have told the world, including LPAT up front, that we are deliberately going to interfere with the planning process because we don’t like what the new policies are under OPA 406 as modified,” said Devine.

“I admire their honesty. In another sense, I don’t think it’s

CONTINUED PAGE 8



Graph comparing number of proposed units and ground floor area per project from 2003 to 2018. Although there have been fewer projects submitted for approval, the projects are larger and more complex, requiring a longer review and construction process.

SOURCE: CITY OF TORONTO

# 'VIGILANTE PLANNING'

CONTINUED FROM PAGE 1

serving the City of Toronto very well.”

Layton told *NRU* the point of the red light, green light system is to signal to the development community that councillors are eager to get behind projects that reflect the planning principles of the Downtown Secondary Plan, which was approved after seven years of public engagement.

“If you look at the (city-approved OPA 406) map, a good chunk of the downtown is zoned for the tallest possible buildings. Some of those buildings are 90-storeys tall. What more could they possibly want from us? We are asking for things like appropriate park space and adequately sized bedrooms - like come on. If they're not even going to do the very minimum of building livable suites, why would we bend over backwards for them?” he said.

City councillors are proposing to deny ancillary municipal permits such as temporary road or sidewalk occupancy permits, or public tree removal permits, to slow down the development approvals process for projects deemed to be ‘red light’ (compliant with the provincial rather than the municipal plans for these areas) projects. They will also consider bumping

up site plan approvals to community councils for a public hearing and then to city council for a final vote, as well as changing the timing of various fee payments, which could include fees for occupancy, signs, demolition permits, on-site structures and other administrative fees. Holding provisions will also be recommended for developments that cannot be supported by existing infrastructure.

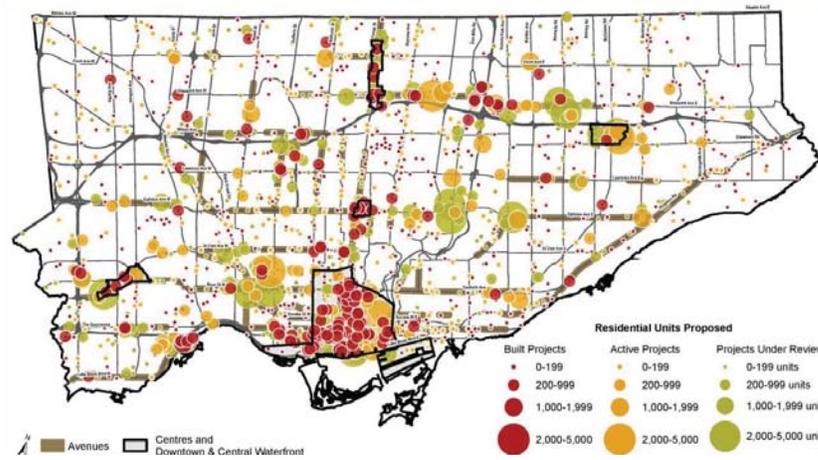
Layton said that from announcing the ‘red light, green light’ system, he expects more developers will want to work with city councillors and the communities to get their projects right and ensure they are a good fit for the neighbourhoods in which they are proposed. **McMillan LLP** partner **Mary Flynn-Guglietti** foresees a different outcome.

“At the end of the day, this is my caution... When Bill 108 comes into force and effect, which we anticipate that to be in September, you are going to have applications filed under that system and in Bill 108 they have reduced the appeal time. So putting on my thinking cap

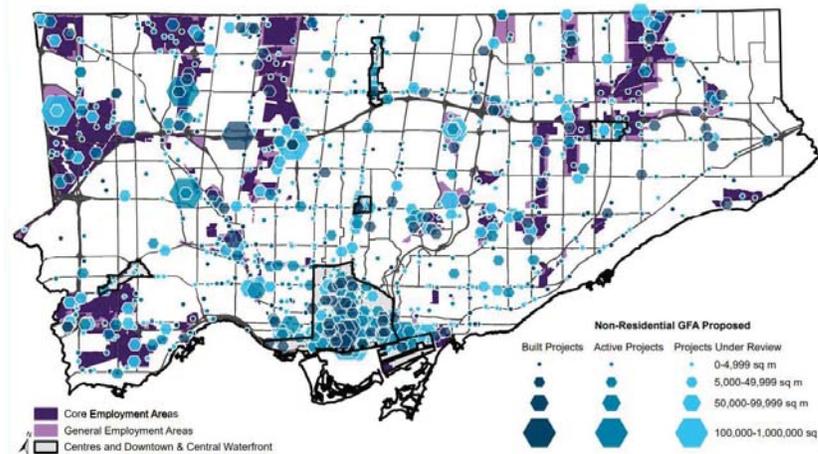
as someone who is acting for a developer, if you are in fact hit by the red light as opposed to the green light and they are doing everything to stall your application, then what are you going to do? The only thing you can do – you're going to appeal it,” Flynn-Guglietti told *NRU*.

Under Bill 108, the amount of time to complete an official plan amendment is reduced from 210 days to 120 days, and for a zoning by-law amendment, from 150 days to 90 days. Flynn-Guglietti said developers would prefer to work with the city to avoid lengthy LPAT hearings, but if their applications have already

CONTINUED PAGE 9



Map of proposed residential development across the city. The downtown and central waterfront areas account for 37 per cent of the residential gross floor area being built across the city.



Map of proposed non-residential development across the city. The downtown and central waterfront areas account for 39 per cent of the non-residential gross floor area being built across the city.

SOURCE FOR ALL: CITY OF TORONTO

# 'VIGILANTE PLANNING'

CONTINUED FROM PAGE 8

received the red light, the city is forcing their hand to submit an appeal to the tribunal.

And once the appeal is underway, Flynn-Guglietti added, the city will not have a strong case because they are attempting to enforce the city-approved version of the Downtown Secondary Plan, which is not in force and effect because it was essentially scrapped by the province. "If I know that the only objection to my development

is that I don't comply with a secondary plan that is not in force and effect, I would be appealing after 91 days," she said.

"To be honest, they were probably going [to LPAT] anyways," noted Layton. "But if they all go to the board, you know what that means? Big delays at the board. Developers know this. They are better off to work with the residents and the local councillor in the city if they want to get their shovels in

the ground. It's always been that way," said Layton.

In addition to the potential impacts at LPAT, Devine told NRU these councillors and the City of Toronto could be vulnerable to lawsuits alleging misuse of authority.

"I can see court challenges being launched on the basis [that] it is not legal, appropriate or fair for the municipality to be using other administrative mechanisms based upon their not agreeing with a planning development application. It just seems rather disturbing that they would consider doing that," he said.

Flynn-Guglietti also acknowledged that city council opted to pass the Downtown

Plan under section 26 of the *Planning Act*, which limited appeal rights. Once council passed OPA 406 under section 26, it required only approval from the municipal affairs and housing minister to be in force and effect.

"They chose to go through section 26. That put them in the hands of the province. The province has made their decision. They don't like it, they can't appeal it, well neither can anyone else because you went through section 26, so let's not forget where they started with this," she said. 🌱



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Non-Residential GFA	50,159.77 ft <sup>2</sup>
Total GFA	711,063.87 ft <sup>2</sup>

**OFFERS REVIEWED AFTER: AUGUST 29, 2019**



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