



BUILDING A GREATER GTA  
Building Industry and Land  
Development Association

May 9, 2011

**Chair Peter Milczyn and the Members of the Planning & Growth Management Committee**

City of Toronto  
City Hall  
100 Queen Street West  
Toronto, Ontario  
M5H 2N2

**Attention: Merle MacDonald**

**Sent via email: [pgmc@toronto.ca](mailto:pgmc@toronto.ca)**

**Re: PG4.1 Public Meeting - Repeal of Zoning By-law 1156-2010**

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The Building Industry and Land Development Association (BILD) represents more than 1,300 members and is the voice of the land development, home building and professional renovation industry in the Greater Toronto Area (GTA). In 2010, the industry represented 358,300 jobs attributing to 60,433 housing starts and contributed \$39.1 billion dollars to the provincial economy. In the GTA, in 2010, our industry created 168,000 jobs, 32,753 housing starts and contributed over \$17.3 billion dollars to the economy.

On behalf of the Toronto Chapter members of BILD, we re-submit our letters to this committee (*as attached*) for your review and consideration at the May 10 Public Meeting for PG4.1 Repeal of Zoning By-law 1156-2010. As expressed in these letters, BILD maintains significant concerns for this by-law, and our concerns are now compounded with further complexity added by the adopted amendments. In turn, we firmly support the repeal of this by-law as written in the City's Staff Report, dated April 26, 2011.

BILD appreciates the opportunity to re-submit our comments. Please feel free to contact the undersigned should you have any comments or concerns.

Sincerely,

Danielle Chin, MCIP, RPP  
Municipal Government Advisor

Cc: Leona Savoie, BILD Toronto Chapter Chair  
Steve Deveau, BILD Toronto Chapter Chair  
Paula Tenuta, BILD  
David Bronskill, Goodmans LLP  
BILD Toronto Chapter Members

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February 10, 2010

Our File No.: 000031

**Via Email**

Planning and Growth Management Committee  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Merle MacDonald**

Dear Sirs/Mesdames:

**Re: New Draft Zoning By-law  
Planning and Growth Committee Item No. PG35.1**

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Further to previous oral submissions to the Planning and Growth Management Committee regarding the new draft zoning by-law (the "Draft By-law"), we are writing to provide comments on our client's behalf regarding the staff report dated January 28, 2010 (the "Staff Report").

**Background**

The Staff Report indicates that it provides a brief, high-level review of outstanding public comments and concerns received to date. However, BILD has raised certain issues with City staff regarding the Draft By-law that are not discussed in the Staff Report. While our client has met with City staff to discuss some of these issues, and welcomes future meetings, the absence of a revised Draft By-law at this time prevents our client and its individual members from understanding important aspects of the Draft By-law and providing detailed submissions to this Committee.

**Requested Action by This Committee**

At its meeting held on November 4, 2009, the Planning and Growth Management Committee directed City staff to bring forward the revised Draft By-law in a report to the February 11, 2010 meeting of this Committee for consideration as a deputation item, **prior to** the scheduling of a statutory public meeting. This has not occurred.

Given the number of outstanding issues raised by BILD, some of which are briefly discussed below, and other stakeholders, BILD requests that this Committee uphold its previous direction and decline to schedule a statutory public meeting regarding the Draft By-law until the revised Draft By-law is brought to this Committee in a report for consideration as a deputation item. This report should include a formal response to issues raised by BILD, including but not limited to the tall building guidelines, parking, definition of gross floor area, transition and the chemical separation distances. This information and material is required by the *Planning Act* to ensure that the public can understand the zoning proposal being considered by the City.

### **Issues with the May 2009 Version of the Draft By-law**

#### *1. Tall Building Guidelines*

BILD continues to oppose the incorporation of the tall building guidelines as performance standards in the Draft By-law. As a policy document, these guidelines have been a useful tool to assist in evaluating the design of tall buildings in the City. However, as performance standards in the Draft By-law, the guidelines would result in an overly prescriptive approach to urban design that stifles creativity and effectively sterilizes intensification opportunities in most of the City, and in particular the downtown. This approach does not represent good planning and raises conformity issues with the City's Official Plan and the Province's Growth Plan.

Absent a detailed analysis of the rationale and impact of this approach, and a corresponding assessment of opportunities to implement increased height and density in the City, this approach should be abandoned, with the tall building guidelines remaining as guidelines and not part of the Draft By-law.

#### *2. Parking*

BILD has concerns regarding certain aspects of the proposed parking standards. However, it is impossible to conduct the necessary analysis regarding these concerns until the revised Draft By-law is released. Once the revised Draft By-law is available, BILD will provide comments to City staff regarding flexibility in the increased visitor parking requirement, the approach to blended parking in mixed use developments and potential decreased parking standards for avenues and centres.

#### *3. Definition of Gross Floor Area*

BILD have identified for City staff that the new definition of gross floor area effectively down-zones the entire City. The potential application of this new definition to approved but unbuilt developments can only be assessed when the provisions regarding site-specific approvals are released by City staff. However, there are clear conformity issues for secondary plan areas that contain specific density permissions and no analysis of these issues have been provided by City staff.

#### 4. *Transition*

BILD has met with City staff to discuss transition issues and provided additional comments in writing. The Draft By-law is incomplete until the provisions regarding site-specific approvals, prevailing by-laws and minor variances are released by City staff and the approach to existing applications is finalized. Until this is done, **all members of BILD** are unable to review the potential impact of the Draft By-law on their lands.

#### 5. *Chemical Separation Distances*

The Staff Report does not contain a detailed analysis of the new requirements on the use and storage of hazardous chemicals as directed by this Committee. This is of concern to BILD because the current wording in the Draft By-law is vague and it is unclear how the proposed minimum separation distances are to be calculated from "the lot" containing a hazardous chemical. It is also unclear how the proposed minimum separation distances will be applied to rezoning applications for residential uses that may not comply with these minimum distances. Again, this prevents the individual members of BILD from reviewing the potential impact of the Draft By-law on their lands.

#### **Conclusion**

For all of these reasons, BILD requests that this Committee defer the scheduling of the statutory public meeting until the revised Draft By-law is brought to this Committee as a deputation item. There are significant outstanding issues that cannot be meaningfully assessed and discussed until the revised Draft By-law is released.

While BILD appreciates the hard work of City staff, the recommendation to establish meeting dates in advance of the release of the revised Draft By-law will prevent the comprehensive analysis required for these important issues.

Yours very truly,

**Goodmans LLP**



David Bronskill  
DJB/  
GOODMANS\5813293.1

April 20, 2010

Our File No.: 000031

**Via Email**

Planning and Growth Management Committee  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Merle MacDonald**

Dear Sirs/Mesdames:

**Re: New Draft Zoning By-law  
Planning and Growth Committee Item No. PG37.7**

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Further to our previous oral and written submissions regarding the new draft zoning by-law (the "Draft By-law"), we are writing to provide comments on our client's behalf regarding the staff report dated April 7, 2010 (the "Staff Report").

**Background**

The Staff Report indicates that it will explain all the major changes made to the Draft By-law (released in May 2009). Over the last few months, BILD has participated in numerous meetings with City staff to discuss issues raised in our previous submissions. Based on these constructive meetings, we understand that there will be revisions to the Draft By-law to address some of BILD's concerns. However, the text and maps will not be released until April 21<sup>st</sup>, which means that BILD is not in a position to provide comments regarding these revisions at this time.

The current timeline approved by the Planning and Growth Management Committee proposes a statutory public meeting in June. BILD supports the staff recommendation for further meetings in the coming weeks because BILD cannot provide a meaningful response regarding the revisions to the Draft By-law until we have had an adequate opportunity to review the proposed revisions.

Some of the previous issues raised by BILD, and the potential response from City staff, are outlined below.

1. *Tall Building Guidelines*

City staff are proposing a new approach in the revised Draft By-law to zoning for tall buildings. The new approach would apply revised tall building requirements to certain parts of the Downtown, while otherwise continuing to apply the tall building standards as guidelines on a site-by-site basis through rezoning applications for greater height or density. BILD will need to review the text and maps in the revised Draft By-law before it can provide a meaningful response to this Committee.

2. *Parking*

BILD's transportation consultants provided detailed comments to City staff regarding certain aspects of the new parking regulations. Again, while we understand that there will be changes to certain parking space regulations, for example to the sharing standards, BILD has not yet had an opportunity to review the revised text or maps.

3. *Definition of Gross Floor Area*

BILD continues to have significant concerns with the proposed definition of gross floor area. While City staff have suggested that the definition will be revised to exclude certain below-grade aspects of a building, the proposed definition will still effectively down-zone the entire City. While this may only seem to be a theoretical concern, there are practical applications that may not have been comprehensively addressed by the City. For example:

1. Approved But Unbuilt Developments: The potential application of this new definition to approved but unbuilt developments can only be assessed when the provisions regarding the recognition of site-specific approvals are released on April 21<sup>st</sup>. However, depending on the wording of the site-specific zoning by-law and its treatment in the revised Draft By-law, the new definition could result in landowners losing approved gross floor area through a technical change to this definition.
2. Application to Other Planning Act Matters: It is unclear how the new definition of gross floor area will be applied to other *Planning Act* matters, especially when the City undertakes a valuation exercise based on approved gross floor area. Two such examples are Section 37 benefits and cash-in-lieu of parkland.
3. Secondary Plan Conformity: Although, in general, the Official Plan does not contain specific height or density numbers, certain secondary plans set out as-of-right density permissions, often as an incentive for rezoning applications. One example is the Sheppard East Subway Corridor Secondary Plan, which assigns certain lands a density of 3.0 times the lot area "in anticipation of redevelopment". There is no discussion yet of how a density allocation in a Secondary Plan will be impacted by the new definition of gross floor area in the Draft By-law.

These are only three such examples, with other potential concerns including the provision of parking and floor plate restrictions both based on the definition of gross floor area.

4. *Transition/Site-Specific Zoning*

City staff have proposed a transitional approach for rezoning applications that will be considered by City Council during its current session and three mechanisms for addressing the issue of site-specific zoning permissions. Again, BILD will need to review the text and mapping, once released on April 21<sup>st</sup>, before it can be in a position to provide meaningful comments. We should note that BILD's membership will also be shown these provisions for the first time on April 21<sup>st</sup>, meaning that many landowners may have comments or concerns on a site-specific basis.

**Conclusion**

BILD continues to appreciate the hard work of City staff and the constructive dialogue to date. Given the tight timeline for bringing forward the revised Draft By-law to City Council for its consideration, BILD is hopeful that the Planning and Growth Management Committee will accept the staff recommendation for additional meetings regarding outstanding issues and concerns.

Yours very truly,

**Goodmans LLP**



David Bronskill  
DJB/  
GOODMANS\5837847.1

May 18, 2010

Our File No.: 000031

**Via Email**

Planning and Growth Management Committee  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Merle MacDonald**

Dear Sirs/Mesdames:

**Re: New Draft Zoning By-law  
Planning and Growth Committee Item No. PG38.3**

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Further to our previous oral and written submissions regarding the new draft zoning by-law (the "Draft By-law"), we are writing to request that the Planning and Growth Management Committee **defer the statutory public meeting** currently scheduled for June 16, 2010.

**Background**

Over the last few months, BILD has participated in numerous meetings with City staff to discuss issues associated with the Draft By-law. Based on these constructive meetings, there have been revisions to address some of BILD's concerns, although there are some outstanding issues (outlined below).

However, the **final** version of the Draft By-law has still not been released. Instead, it is our understanding that there will be **three** versions released between April 21 and May 27.

- The version released April 21, 2010 included all revisions made to the version of the Draft By-law released in May 2009.
- A version was released on May 10, 2010. However, we do not know the revisions from the version released on April 21, 2010. A staff report dated May 4, 2010 indicates that a staff report explaining the changes will be included on the supplementary agenda, although this report was not available at the time of this letter.



- The City's web site indicates that there will be another version released May 29, 2010, although the staff report indicates this version will be prepared for the open house on May 27, 2010.

Unfortunately, the ongoing release of new versions of the Draft By-law prevents BILD and its members from providing final comments on the Draft By-law at this time. This is compounded by the lack of a blackline version, which means that BILD (and other members of the public) must review each version in its totality to understand all changes and the potential implications. At some point, a final version of the Draft By-law must be released by the City with adequate opportunity for the public to review the final version before a statutory public meeting is held.

The evolution of the Draft By-law is compounded by numerous internal inconsistencies in the text and conflicting treatment of properties between the on-line maps and the printable maps. In some instances, the proposed zoning for a property is different on-line than on the printable maps. This kind of conflict is worrisome because it is still unclear how the "official" zoning for a property will be determined by the Chief Building Official.

BILD's membership is also advising that there are dozens of properties that would be zoned incorrectly by the Draft By-law. While we understand that City staff are working through these site-specific issues, BILD has concerns that there is insufficient time to address these issues before the statutory public meeting. In addition, the release of every new version of the Draft By-law places an obligation on landowners to confirm the zoning for their properties.

In the face of these concerns, the current timeline approved by the Planning and Growth Management Committee still proposes a statutory public meeting in June. This timeline is too tight and prevents BILD and all members of the public from providing a meaningful response to each version of the Draft By-law. The statutory public meeting should be deferred to allow an adequate opportunity to review a final version.

### **Other Issues**

Some of the previous issues raised by BILD, and the potential response from City staff, are outlined below.

#### *1. Parking*

BILD's transportation consultants have provided detailed comments to City staff regarding certain aspects of the new parking regulations. There appears to have been good progress with respect to clarification, changes and reconciliation of conflicting sections, but some of these revisions have not yet been fully incorporated into the Draft By-law and others may arise upon further review of the changes. This continuing evolution supports the request that a final comprehensive draft must be released with sufficient time for comment before a statutory public meeting is scheduled.

## 2. *Definition of Gross Floor Area*

BILD continues to have significant concerns with the proposed definition of gross floor area. City staff initially suggested that the definition would be revised to exclude certain below-grade aspects of a building, but the definition included in the April 21 and May 10 versions is unchanged from the definition in the May 2009 version of the Draft By-law.

The proposed definition will still effectively down-zone the entire City. While this may only seem to be a theoretical concern, it is inconsistent with the approach taken in other municipalities. Examples of definitions from other municipalities are attached.

There are also practical applications that have not been comprehensively addressed by the City, although we have presented these concerns in previous correspondence to this Committee. For example:

1. Approved But Unbuilt Developments: The potential application of this new definition to approved but unbuilt developments can only be assessed when the provisions regarding the recognition of site-specific approvals are released on April 21<sup>st</sup>. However, depending on the wording of the site-specific zoning by-law and its treatment in the revised Draft By-law, the new definition could result in landowners losing approved gross floor area through a technical change to this definition.
2. Application to Other Planning Act Matters: It is unclear how the new definition of gross floor area will be applied to other *Planning Act* matters, especially when the City undertakes a valuation exercise based on approved gross floor area. Two such examples are Section 37 benefits and cash-in-lieu of parkland.
3. Secondary Plan Conformity: Although, in general, the Official Plan does not contain specific height or density numbers, certain secondary plans set out as-of-right density permissions, often as an incentive for rezoning applications. One example is the Sheppard East Subway Corridor Secondary Plan, which assigns certain lands a density of 3.0 times the lot area "in anticipation of redevelopment". There is no discussion yet of how a density allocation in a Secondary Plan will be impacted by the new definition of gross floor area in the Draft By-law.

These are only three such examples, with other potential concerns including the provision of parking and floor plate restrictions both based on the definition of gross floor area.

## 3. *Site-Specific Zoning/Conflict Provisions*

There are two significant concerns with the site-specific zoning and conflict provisions in the Draft By-law. First, the list of site-specific and prevailing by-laws remains a work in progress. The list is continually being updated, which means that the City is placing an obligation on landowners to check each newly released list to see if the appropriate by-laws have been and remain included.

Second, the operation of the conflict provisions is unclear.\* The test suggests that a prevailing by-law governs only to the extent of any conflict with the Draft By-law. The application of this approach remains unclear on a site-by-site basis, when we understand that the intention is not to take away any existing zoning permissions. For example, a recently enacted zoning by-law in the downtown may not provide for a maximum tower floor plate. However, the Draft By-law would impose such a restriction on certain sites in the downtown and it could be suggested that there is no conflict with a prevailing by-law that is silent on this issue. This would effectively change the recently enacted zoning provision without any planning analysis as to the appropriateness of such a change.

### **Conclusion**

BILD continues to appreciate the hard work of City staff and the constructive dialogue to date. However, the timeline for bringing forward the revised Draft By-law to City Council for its consideration is too short. An initial review of the recently released text, on-line maps and printable maps has identified inconsistencies and concerns that must be addressed prior to consideration of the Draft By-law by City Council.

BILD is hopeful that the Planning and Growth Management Committee will defer the statutory public meeting to enable all members of the public a meaningful opportunity to understand the full implications of the Draft By-law.

Yours very truly,

**Goodmans LLP**



David Bronskill

DJB/

GOODMANS\5847787.1

August 17, 2010

Our File No.: 000031

**Via Email**

Planning and Growth Management Committee  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Merle MacDonald**

Dear Sirs/Mesdames:

**Re: New Draft Zoning By-law  
Planning and Growth Management Committee Item No. PG40.10**

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Further to previous oral submissions to the Planning and Growth Management Committee ("PGMC") and three written submissions regarding the new draft zoning by-law (the "Draft By-law"), we are writing to request that PGMC **defer this item** to ensure compliance with statutory notice requirements and to allow City staff to provide a response to all submissions regarding the Draft By-law.

**Notice Issue**

On July 29, 2010, City staff released a final version of the Draft By-law, although technical issues delayed the release of portions of the Draft By-law for a few days. There is no blackline of this version, which means that BILD (and other members of the public) must review the new version in its totality to understand all changes and the potential implications. Hard copies of the zoning maps were released on August 11, 2010, only eight days before the statutory public meeting. Further, we understand that changes may still be made to the Draft By-law up until its consideration by City Council.

Even though this version should have addressed outstanding issues, BILD's membership is still advising that there are dozens of properties that would be zoned incorrectly by the Draft By-law. While we understand that City staff are still working through these site-specific issues, BILD has concerns that there is insufficient time to address these issues before City Council considers the Draft By-law.

In the face of these concerns, there is also a serious issue as to whether the public has been provided with sufficient information and material to understand the zoning proposal being considered by City Council. This is the statutory requirement pursuant to subsection 34(12)(a)(i) of the *Planning Act*. BILD submits that the members of PGMC should err on the side of caution when it comes to such statutory notice requirements.

There are at least two reasons to question the sufficiency of information provided to the public. First, the release of repeated versions of the Draft By-law without detailed explanation – indeed, the staff report accompanying this version of the Draft By-law was not released until August 11<sup>th</sup> – means it is difficult to track changes and understand the implications of each new version. City staff have not had sufficient time to answer most letters identifying issues and concerns. It is doubtful that subsection 34(12)(a)(i) can be satisfied with a general notice announcing consideration of a new version of the Draft By-law without more detailed information and material accompanying the new version.

Further, our understanding is that PGMC will be asked to consider the version of the Draft By-law attached to the staff report released on August 11, 2010. This version now includes approximately 7,000 pages of text and maps, compared to approximately 5,000 pages released on April 21, 2010. It appears that over 500 pages were added even since the last version. A review of the interactive mapping, posted text and final PDF versions of the text and maps still reveals inconsistencies and conflicts. All of this information, which we submit is required to enable the public to understand what has changed and what is therefore being proposed, should have been provided at least 20 days before the statutory public meeting.

Second, Chapter 990 of the Draft By-law refers to official map sheets that form a full and integral part of the Draft By-law. PGMC – and potentially City Council – will be considering these maps and not the on-line interactive maps. These maps were not posted on-line until August 11<sup>th</sup> and any access to the hard copies was inadequate to service the public. These maps form part of the Draft By-law before PGMC, pursuant to Section 34(7) of the *Planning Act*, and represent the only way officially to understand the potential scope and effect of the Draft By-law. As such, the failure to provide appropriate and sufficient access to these maps before the statutory public meeting means that the City may not have met the notice requirements of the *Planning Act*.

For all of these reasons, a deferral is the best and most prudent course of action. BILD is not proposing an indefinite deferral. Instead, City staff could use the fall of 2010 to address outstanding technical issues and release a revised version in 2011 well in advance of a statutory public meeting. This would address the statutory notice issue while giving all parties a meaningful opportunity to produce a better version of the Draft By-law.

### **Outstanding Issues**

While discussions between City staff and BILD have resulted in good progress on many issues, there are certain issues that remain unresolved.

# *1. Definition of Gross Floor Area*

BILD have identified for City staff that the new definition of gross floor area effectively down-zones the entire City. Further, there are clear conformity issues for secondary plan areas that contain specific density permissions and no analysis of these issues have been provided by City staff. The application of this change to numerous matters has not been addressed by City staff. For example:

1. Approved But Unbuilt Developments: The new definition will result in landowners losing approved gross floor area through a technical change and not through a planning assessment.
2. Application to Other Planning Act Matters: It is unclear how the new definition of gross floor area will be applied to other *Planning Act* matters, especially when the City undertakes a valuation exercise based on approved gross floor area. Two such examples are Section 37 benefits and cash-in-lieu of parkland.
3. Secondary Plan Conformity: Although, in general, the Official Plan does not contain specific height or density numbers, certain secondary plans set out as-of-right density permissions, often as an incentive for rezoning applications. One example is the Sheppard East Subway Corridor Secondary Plan, which assigns certain lands a density of 3.0 times the lot area “in anticipation of redevelopment”. There is still no discussion of how a density allocation in a Secondary Plan will be impacted by the new definition of gross floor area in the Draft By-law.

These are only three such examples, with other potential concerns including the provision of parking and floor plate restrictions, both of which are based on the definition of gross floor area.

BILD’s concerns are increased when City staff appear to create exemptions for certain uses or standards. Why is there an exemption for loading and not parking? Why is a different definition of gross floor area used for manufacturing uses in Section 60.50.1.10?

This also effectively undercuts any argument that this is only a harmonization exercise because true harmonization would create a consistent approach for all uses and standards. Indeed, the use of “holes” for certain classes of employment and institutional uses calls into question whether this is still a comprehensive zoning by-law. By appearing to exempt schools, certain manufacturing uses and certain other institutional uses, the Draft By-law is appearing more like a residential zoning by-law than a comprehensive zoning by-law.

# *2. Parking*

BILD still has concerns regarding certain aspects of the proposed parking standards.

- BILD is still waiting for a map showing the extent of the Policy Areas (PA1 – PA4), similar to the map for “Downtown Parking and Loading Zone” in By-law 438-86 of the former City

of Toronto. This is important because it allows landowners to determine proximity to a policy area.

- Parking and loading standards are not applied throughout the City. There is no shared bicycle standard.
- The definition of gross floor area artificially increases parking standards, particularly within commercial areas.
- The City of Toronto's long-standing policy regarding small car parking stalls should be included in the Draft By-law.
- Provisions for off-site parking should be restored for portions of the City, particularly the downtown, growth centres and along avenues.

### 3. *Transition*

BILD's concern with the site-specific zoning and conflict provisions in the Draft By-law is that the operation of these provisions is unclear. The test suggests that a prevailing by-law governs only to the extent of any conflict with the Draft By-law. Indeed, the recently released staff report indicates that this is the interpretation of City staff.

The application of this approach remains unclear on a site-by-site basis, when we understand that the intention is not to take away any existing zoning permissions. For example, a recently enacted site-specific zoning by-law in the downtown may not provide for a maximum tower floor plate. However, the Draft By-law would impose such a restriction on certain sites in the downtown and it could be suggested that there is no conflict with a prevailing by-law that is silent on this issue. This would effectively change the recently enacted zoning provision without any planning analysis as to the appropriateness of such a change.

Further, the Draft By-law is not clear as to the order of priority when a property is subject to multiple site-specific exceptions or prevailing by-laws. The language regarding order of priority does not appear to address this issue.

### 4. *Minor Variances*

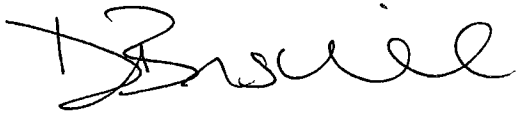
Sections 2.1(1), 2.1(2) and 2.1(3) are not sufficient to protect existing minor variance permissions. It is not clear whether these sections protect historic variances or only variances to the Draft By-law, especially when there are additional provisions scattered throughout the Draft By-law that contain greater specificity (such as Section 10.5.40.200) for certain performance standards, but not for all standards and not for uses. If the true intent is to recognize minor variances from the Draft By-law and all previous zoning by-laws, then this should be clearly stated.

## Conclusion

BILD has always indicated that it appreciates the hard work of City staff on this important matter. However, BILD's members continue to report numerous errors and inconsistencies in the Draft By-law. We suspect that the list of deputants and record of written submissions will be overwhelming. This should cause members of PGMC to pause and consider the result of moving forward. This is too important a matter to be rushed, especially when some additional time could address many outstanding issues and concerns.

Yours very truly,

**Goodmans LLP**

A handwritten signature in black ink, appearing to read "Bronskill", with a stylized initial "B" and a checkmark-like flourish at the end.

David Bronskill

DJB/

cc: Client

GOODMANS\5875542.2



September 30, 2010

Our File No.: 10-2408

**By Courier**

City of Toronto, City Clerk  
Toronto City Hall, 10th Floor, West Tower  
100 Queen Street West  
Toronto, ON  
M5H 2N2

**Attention: Merle MacDonald, Committee Administrator**  
**(Planning and Growth Management Committee)**

Dear Sirs:

**Re: Appeal of New City of Toronto Zoning By-law 1156-2010**

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. We are writing on behalf of our client to appeal Zoning By-law No. 1156-2010 (the "New Zoning By-law") to the Ontario Municipal Board pursuant to subsection 34(19) of the *Planning Act* R.S.O. 1990, c.P13, as amended.

Our client made numerous oral submissions to the Planning and Growth Management Committee and four written submissions regarding the New Zoning By-law. Most of the concerns raised by BILD remain unresolved. Further, BILD's members have reported numerous errors and inconsistencies throughout the New Zoning By-law. As such, our client has no choice but to appeal the New Zoning By-law. A summary of specific issues is included below.

## **Notice**

On August 17, 2010, our client proposed that the City defer consideration of the New Zoning By-law because of notice issues. Our client remains of the position that the public has not been provided with sufficient information and material to understand the zoning proposal being considered by City Council, pursuant to subsection 34(12)(a)(i) of the *Planning Act*.

There are at least two reasons to question the sufficiency of information provided to the public. First, the release of repeated versions of draft by-laws without detailed explanation means it is difficult for the public to track changes and understand the implications of each new version. It is doubtful that this subsection can be satisfied with a general notice announcing consideration of a

new version of the draft by-law without more detailed information and material explaining changes. We understand that there may be instances where landowners were not made aware of significant and substantive changes to the zoning for their property.

Second, Chapter 990 of the New Zoning By-law refers to official map sheets that form a full and integral part of the New Zoning By-law. However these map sheets were not posted online until August 11<sup>th</sup> and any access to hard copies was inadequate to service the public. Further, we understand that there were discrepancies between the official map sheets posted on-line and the hard copies made available for review.

These maps form part of the by-law, pursuant to Section 34(7) of the *Planning Act*, and represent the only way to officially understand the potential scope and affect of the New Zoning By-law. As such, the failure to provide appropriate and sufficient access to these maps before the statutory public meeting means that the City did not meet the notice requirements in subsection 34(12)(a)(i) the *Planning Act*.

BILD also remains of the position that the City failed to provide the prescribed materials at least 20 days before the statutory public meeting, pursuant to Section 34(14.1) of the *Planning Act*. The statutory public meeting occurred on August 19<sup>th</sup>. Our understanding is that the version of the draft by-law considered at the statutory public meeting was not made public until it was attached to a staff report released on August 11<sup>th</sup>, just over a week before the statutory public meeting.

This version of the draft by-law included approximately 7,000 pages of text and maps, compared to approximately 5,000 pages released by the City on April 21, 2010. It appears that over 500 pages were added even since the previous version of the draft by-law had been released. The *Planning Act* requires that this information should have been provided at least 20 days before the statutory public meeting.

Given that the City has failed to satisfy the notice provisions of the *Planning Act*, it is not appropriate to proceed with a hearing in respect of the appeals filed against the New Zoning By-law. We will undertake to have discussions with City staff regarding the appropriate course of action. At a minimum, please be advised that we will be raising this issue at the first pre-hearing conference.

#### **Definition of Gross Floor Area**

The definition of gross floor area in the New Zoning By-law, which is not consistently applied to all uses, has the ability to artificially down-zone the entire City. Approved but unbuilt developments may lose approved gross floor area through this technical change and not through a planning assessment. Existing sites may be rendered legal non-conforming. Conformity issues have been created for secondary plan areas that provide for specific density provisions. Despite our client's repeated expression of this concern, no analysis of these issues have been provided by City staff. Indeed, no analysis of best practices for defining gross floor area in other municipalities was

provided. While certain exemptions have been included in the New Zoning By-law, it does not appear that these exemptions are broad enough to eliminate BILD's concern.

Other potential concerns include the application of this new definition to other provisions in the new Zoning By-law which are based on the definition of gross floor area, such as parking and floor plate restrictions. It is also unclear how the new definition will be applied to other *Planning Act* matters, especially when the City undertakes a valuation exercise based on gross floor area when looking at Section 37 benefits and cash-in-lieu of parkland.

### **Parking**

BILD has consistently raised issues regarding certain aspects of the proposed parking standards:

- BILD is still waiting for a map showing the extent of the policy areas, similar to the map for "Downtown Parking and Loading Zone" in By-law 438-86 of the former City of Toronto. This is important because it allows landowners to determine proximity to a policy area.
- Parking and loading sharing standards do not apply throughout the City. There is no shared bicycle standard.
- As noted above, in some cases, the new definition of gross floor area artificially increases parking standards, particularly within commercial areas. While certain exemptions have been included in the New Zoning By-law, it does not appear that these exemptions are broad enough to eliminate BILD's concern.
- The City of Toronto's long-standing policy regarding small car parking stalls should be included in the New Zoning By-law.
- Provisions for off-site parking should be restored for portions of the City, particularly the downtown growth centres and along avenues.

### **Minor Variances**

BILD's understanding is that City staff intended that the New Zoning By-law would recognize minor variances from existing zoning by-laws. However, BILD submits that Section 2.1, as recommended by City staff, is not sufficient to protect existing minor variance permissions. Further, while City Council revised these provisions on the floor of City Council, it is unclear whether the new language is supported by City staff or captures the intent of City staff when it comes to protecting minor variances.

Regardless of the final language, it is not clear whether historic variances are protected or whether the proposed provisions apply only variances to the New Zoning By-law, especially when there are additional provisions scattered throughout the New Zoning By-law that contain greater specificity (such as Section 10.5.40.200) for certain performance standards, but not for all standards and not for

uses. If the true intent is to recognize minor variances from the New Zoning By-law and from all previous zoning by-laws, than this should be clearly stated. We understand that many submissions made to the City on this issue proposed alternative language and serious consideration should be given to these alternative proposals.

### **Below-Grade Setbacks**

The definition included in the New Zoning By-law is unclear as to whether proposed setbacks apply only above-grade. The general provisions only exclude footings. This should be broadened and more clearly stated in the New Zoning By-law. The concern is that the application of setbacks to below-grade portions of structures would prevent current construction practices that allow for parking garage walls to be built to property lines for, among other reasons, efficient construction and safety.

### **Transition and Prevailing Zoning By-laws**

BILD's concern with the site specific zoning and conflict provisions is that the operation of these provisions is unclear. Our understanding of the intended approach, from reviewing City staff reports, is not to take away any existing zoning provisions and that prevailing by-laws are to govern to the extent of any conflict with the New Zoning By-law.

However, the application of this approach remains unclear. For example, a recently enacted site-specific by-law in the downtown may not provide for a maximum tower floor plate. However, the New Zoning By-law would impose such a restriction on certain sites in the downtown and it could be suggested that there is no conflict with the New Zoning By-law when a prevailing by-law is silent on this performance standard. This would effectively change a recently enacted zoning provision without any planning analysis as to the appropriateness of such a change. Other examples that may not create "conflicts" include new parking standards and new development standard sets.

Further, the New Zoning By-law is not clear as to the order of priority when a property is subject to multiple site-specific exceptions or prevailing by-laws. The language regarding order of priority does not appear to address this issue. We are also troubled that certain prevailing by-laws appear to be included in the list of site-specific by-laws but not carried forward into the prevailing by-law section.

Finally, the language in Section 950.1.1(3) is unclear. Prevailing by-laws often refer to former general zoning by-laws. While the New Zoning By-law would apply the former general zoning by-law to the extent necessary to support a prevailing by-law, the former general zoning by-laws shall not have priority over the New Zoning By-law. It is unclear how this is intended to operate when an aspect of a prevailing zoning by-law has priority over the New Zoning By-law but the implementing former general zoning by-law does not.

This is indicative of the vague language in the site-specific and prevailing zoning by-law sections, which is why these sections need further consideration before they can be approved. As such, BILD

reserves the right to raise other issues with this aspect of the New Zoning By-law as it reviews other appeals filed because many of its members have raised similar issues that may require further refinements to the language in these sections.

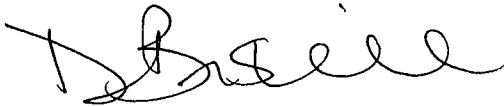
## **Conclusion**

While BILD has always indicated that it appreciates the hard work of City staff in bringing forward the New Zoning By-law, BILD's members have reported numerous errors and inconsistencies throughout the New Zoning By-law. These errors and inconsistencies, when combined with the issues and concerns noted above, mean that BILD must appeal the New Zoning By-law in its entirety.

Please find enclosed a cheque in the amount of \$125.00. If any other information is required, please do not hesitate to contact us.

Yours very truly,

**Goodmans LLP**



David Bronskill

DJB/ dl

encl.

cc: Client

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March 23, 2011

Our File No.: 10-2408

**Via Email**

Planning and Growth Management Committee  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Merle MacDonald**

Dear Sirs/Mesdames:

**Re: New Zoning By-law  
Planning and Growth Management Committee Item Nos. PG2.5, 2.6, 2.8**

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Our client is one of 694 appellants of the new zoning by-law.

We are writing to request that PGMC recommend to City Council that Zoning By-law 1156-2010 be repealed and that City staff be directed to bring the new zoning by-law back to PGMC in six months time, with any recommended amendments from City staff, and at least thirty days before any statutory public meeting.

**Notice Issue**

During the public process leading to the enactment of Zoning By-law 1156-2010, BILD raised concerns to PGMC regarding the sufficiency of notice provided to the public. Our appeal letter stated the same concerns and we have indicated to the Ontario Municipal Board that we will be bringing a preliminary motion regarding this issue. We understand that many other appellants have raised concerns regarding notice.

In the face of this identified concern, we again question whether the public has been provided with sufficient information and material to understand the proposed amendments to Zoning By-law 1156-2010. First, the staff report and ten proposed amending by-laws (177 pages in total) were released only one week before the statutory public meeting and additional material was posted on March 21, 2011. This fails to meet the requirements of the *Planning Act* and the City's Official Plan.

Second, the materials provided by City staff appear to recommend over 1,700 changes to Zoning By-law 1156-2010. While City staff suggest that these changes are housekeeping corrections, as best as we can tell in the limited time available, the proposed changes also include new, substituted or revised regulations. It also appears that the ten separate amending by-laws contain related and duplicative provisions.

The purpose of the notice provisions in the *Planning Act* and the City's Official Plan is to provide the public with a meaningful opportunity to review and comment on any proposed amendments. There simply has not been enough time to determine the impact of the proposed changes to Zoning By-law 1156-2010.

### Legal Issues

Zoning By-law 1156-2010 is before the Ontario Municipal Board (with 694 appeals). However, City staff are now recommending the enactment of ten zoning by-law amendments that would purportedly amend a zoning by-law that is already under appeal. It is unclear whether the City can amend a zoning by-law that is now within the jurisdiction of the Ontario Municipal Board. Further, if any of the 694 appeals are successful and result in amendments to Zoning By-law 1156-2010, those amendments may come into force on the date of the Board's order. This raises serious legal issues regarding the applicability of the ten recommended zoning by-law amendments.

In addition, we expect that many of the 694 appellants will identify concerns with the ten recommended zoning by-law amendments. We also expect that new parties will come forward to PGMC with issues regarding the ten recommended zoning by-law amendments. This will likely result in numerous appeals filed in respect of some or all of the ten recommended zoning by-laws, thereby substantially increasing the number of appeals to the Ontario Municipal Board.

### Transition Issues

We (and other counsel) have raised emerging transition issues with City staff. However, these issues are not addressed in the reports before PGMC. For example, appellants of Zoning By-law 1156-2010 are concerned with the current practice of the City to approve amendments to Zoning By-law 1156-2010, in the context of site-specific planning applications, without notice to the 694 appellants. Not only may these approvals serve as precedents in the eventual OMB hearing but also this may unnecessarily complicate the litigation process and delay otherwise meritorious development proposals.

The even more problematic aspect of this approach is that these amendments to Zoning By-law 1156-2010 are being given in advance of the crystallization of the definitions and performance standards in Zoning By-law 1156-2010. For example, certain appellants are seeking a less restrictive definition of "residential gross floor area" than proposed in Zoning By-law 1156-2010. If successful, this could effectively "upzone" the site-specific applications currently being approved by City Council which rely on the more restrictive definition. This is only one example of the potential

problems that result from applying a zoning by-law that may be amended by the Ontario Municipal Board.

These technical issues are in addition to the increasing delay being experienced in the application of Zoning By-law 1156-2010. Until all 694 appeals are resolved, City staff will continue to review all planning applications – from minor variances to rezoning – against at least two zoning by-laws. We know that times for zoning and building permit reviews have significantly increased and will not decrease until the appeals are resolved or Zoning By-law 1156-2010 is amended to include detailed transition provisions. Other jurisdictions have included transition provisions in new comprehensive zoning by-laws with, in at least one instance, the support of the Ontario Municipal Board.

### Other Outstanding Issues

BILD submits a repeal would allow time to resolve other substantive issues raised in the 694 appeals, some of which are set out below. Other site-specific issues could easily be addressed as well.

#### *1. Transportation Matters*

BILD's transportation consultants (BA Group) provided an extensive list of proposed amendments to Zoning By-law 1156-2010 to address numerous concerns regarding parking and loading before and after enactment. However, it appears that most of the comments provided have not been included in the ten recommended zoning by-law amendments.

#### *2. Transition*

As noted above, other jurisdictions have included transition provisions in new comprehensive zoning by-laws with, in at least one instance, the support of the Ontario Municipal Board. These provisions could be provided to City staff for inclusion in a revised zoning by-law.

#### *3. Minor Variances*

It remains unclear whether historic variances are protected or whether the language in Zoning By-law 1156-2010 applies only to variances to the new zoning by-law. If the true intent is to recognize minor variances from Zoning By-law 1156-2010 and from all previous zoning by-laws, then this should be clearly stated. We understand that many submissions made to the City on this issue proposed alternative language that could be included in a revised zoning by-law.

#### *4. Prevailing By-laws*

BILD's concern with the site-specific zoning and conflict provisions in Zoning By-law 1156-2010 is that the operation of these provisions is unclear. The test suggests that a prevailing by-law governs only to the extent of any conflict with Zoning By-law 1156-2010. The application of this approach remains unclear on a site-by-site basis.



For example, a recently enacted site-specific zoning by-law may not provide for a maximum tower floor plate in the downtown or bicycle parking in accordance with the new standards in Zoning By-law 1156-2010. As such, it could be suggested that there is no conflict with a prevailing by-law that is silent on this issue. This would effectively change the recently enacted zoning provision without any planning analysis as to the appropriateness of such a change. Again, we understand that many submissions made to the City on this issue proposed alternative language that could be included in a revised zoning by-law.

### **Conclusion**

The request to repeal Zoning By-law 1156-2010 and bring it back to PGMC in six months time, with any recommended amendments from City staff, and at least thirty days before any statutory public meeting, is not made lightly. However, BILD's members continue to identify numerous errors and inconsistencies and to report problems created from the above-noted transition issues. While our client and its members may not have fully appreciated the full extent of problems that would arise, our client is receiving significant feedback from its members regarding transition issues. The most appropriate and efficient course of action is to repeal Zoning By-law 1156-2010, address the issues raised by the appellants and bring a revised new zoning by-law back to PGMC in six months time.

Yours very truly,

**Goodmans LLP**



David Bronskill

DJB/

cc: Client

April 11, 2011

Our File No.: 10-2408

Mayor Rob Ford and Members of Council  
City of Toronto  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: City Clerk**

Your Worship and Members of Council:

**Re: Repeal of Zoning By-law 1156-2010  
Item PG2.5 – Amendments to Zoning By-law 1156-2010**

We are solicitors for the Building, Industry and Land Development Association (“BILD”). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Our client is one of 694 appellants of the New Zoning By-law (By-law No. 1156-2010).

We are writing to confirm our request, made to Planning and Growth Management Committee, that City Council repeal the New Zoning By-law and that City staff be directed to bring the new zoning by-law back to PGMC, with any recommended amendments from City staff and from consultation with various stakeholders, with at least 30 days notice before any statutory public meeting. The reasons for this request are outlined in the attached letter.

We are also writing to address certain issues raised at PGMC and in the staff report dated April 8, 2011:

1. Can a by-law repealing the New Zoning By-law be appealed to the Ontario Municipal Board?
2. Is a public meeting required to repeal the New Zoning By-law?
3. Is the New Zoning By-law a conformity exercise under the *Planning Act*?

**Potential Appeal of a Repeal**

It was suggested at PGMC that a repeal of the New Zoning By-law was a matter that could be appealed to the Ontario Municipal Board. However, in our view, a decision by City Council to repeal the New Zoning By-law cannot be appealed.

The case law on this issue is settled. As succinctly stated by the Ontario Municipal Board in *Re Hamilton (City) Official Plan Amendment 12 and Zoning By-laws 84-46 and 88-86* (1959) 23 O.M.B.R. 476, “No right of appeal from such action is given a statute. Therefore none exists and this Board is without jurisdiction to hear such “appeals”.” This line of cases was recently affirmed by the Ontario Municipal Board in 2010.

### **Public Meeting Requirement**

Contrary to the assertion in the staff report dated April 8, 2011, a repealing by-law is not a zoning by-law passed under Section 34 of the *Planning Act*. As such, the public process associated with the enactment of zoning by-laws, including the requirement to hold a public meeting, is not required. Further, personalized notice to every appellant of the New Zoning By-law is not required.

### **“Conformity” Exercise**

We also understand that it has been suggested that the repeal of the New Zoning By-law would violate Section 26(9) of the *Planning Act*. Not only is this incorrect, but also it is a fundamental misstatement of the purpose of the harmonization exercise that led to the enactment of the New Zoning By-law.

A zoning by-law conformity exercise is only required pursuant to Section 26(9) after the City has revised its official plan to conform with provincial plans in effect. Our understanding is that the City’s growth planning conformity exercise remains incomplete and the City’s Five-Year Official Plan Review has not commenced. Therefore, the three-year time period referred to in Section 26(9) of the *Planning Act* has not yet started to run.

In any event, the New Zoning By-law was never intended to be a conformity by-law. Indeed, there are many “holes” in the New Zoning By-law that were created because of concerns regarding lack of conformity with the City’s official plan. The stated purpose of the enactment of the New Zoning By-law was harmonization, not conformity. It is not accurate to suggest that the enactment of the New Zoning By-law was part of a conformity exercise when the representations in public notices and to PGMC did not focus on conformity.

**Conclusion**

Contrary to the position in the City staff report, the Ontario Municipal Board is not the most efficient forum for resolution of outstanding issues and concerns. Indeed, our understanding is that **four appeals** have been resolved in the **approximately 6 months** since enactment of the New Zoning By-law by City Council. Further, the 10 amending by-laws recommended by City staff would not resolve many existing appeals but, instead, would likely trigger more appeals as evidenced by the correspondence on the record with PGMC and City Council. These appeals could number in the hundreds, especially when many of the existing 694 appellants to the New Zoning By-law determine that they must appeal the 10 amending by-laws.

We hope this information is of assistance to you regarding the above-noted matter. BILD remains strongly of the view that a repeal is the only way to address the numerous issues associated with the New Zoning By-law. The most appropriate and efficient course of action remains to repeal the New Zoning By-law and it is well within the jurisdiction and authority of City Council to do so at its meeting on April 12-13, 2010.

BILD also remains committed to work City staff to address the numerous identified issues. Throughout this process, BILD has indicated its appreciation for the hard work of City staff on a difficult project. Similarly, City staff have also undertaken constructive dialogue with BILD and its representatives and we have no doubt that such dialogue will continue.

Yours very truly,

**Goodmans LLP**



David Bronskill

DJB/mr

cc: Client

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