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BARRISTERS

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File: 4143-001
By Email (clerk@toronto.ca)

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

Attn: Clerk of Council

Dear Members of Council:

Re: Lulu Canada Inc. re City of Toronto Airport Zoning Regulation to Protect Hospital Helicopter Flight Paths – PG24.3

We are the lawyers for Lulu Canada Inc., owner of the lands municipally identified as 650 Bay Street and 55-71 Elm Street, Toronto. We write in respect of Item PG24.3 – Airport Zoning Regulation to Protect Hospital Helicopter Flight Paths- Final Report (Ward 20, 27, 28 - Statutory: Aeronautics Act, RSC 1985, c. A-2).

Amend the Item to give the Hospitals More Say

The item should be amended to permit the hospitals in question the option to give consent to items being placed in the flight path **on a temporary basis**, using their discretion. If temporary items can be placed in the flight path, such as cranes, and if they do not impact on the operation of the air ambulance service, then the hospitals should have a say. They are sophisticated parties who may see some benefit in being given the option to decide on what impacts them directly. **The hospitals, not the City, are the best-placed parties to decide on temporary matters that affect them.**

Sick Kids in particular, has moved this flight path in the past to accommodate the building of its newest facility. The flight path in 2008 extended north of Elm Street and Bay Street, but was shifted southward when the new facility was built on that corner and right within what was then the flight path. The point is that Sick Kids can make decisions about this flight path as it has in the past.



City's Lack of Jurisdiction – Grounds for Judicial Review

Pursuant to an agreement with the City of Toronto under the *Aeronautics Act*, the City of Toronto is able to regulate the use of lands adjacent to or in the vicinity of an airport site such as the ones in question (the hospitals), but only “in the same manner and to the same extent as it may regulate the use of lands within its jurisdiction” (see s. 5.81(1) of the *Aeronautics Act*):

5.81 (1) The Minister may enter into an agreement with a provincial authority to authorize the provincial authority to regulate, in the same manner and to the same extent as it may regulate the use of lands within its jurisdiction, the use of lands adjacent to or in the vicinity of an airport or airport site that are not the subject of regulations made pursuant to subsection 5.4(2), for the purpose of ensuring that that use is not incompatible with the safe operation of an airport or aircraft.

The City and the federal government seem to be operating on the basis that the City is passing a federal regulation, which it cannot do. **The City has no jurisdiction to regulate anything in accordance with the *Aeronautics Act*. If the City purports to pass a federal regulation, then our client may move to set it aside on the basis that the City lacks jurisdiction.**

The agreement between the City and the federal government in fact references the *Planning Act*, which is the legislation that governs how the City would “regulate, in the same manner and to the same extent as it may regulate the use of lands within its jurisdiction, the use of lands adjacent to or in the vicinity of an airport.” This is evidence that it is the *Planning Act* that governs the whole process.

Improper Notice

There is no urgent need to pass this by-law at this time. A provincial regulation governing this matter that was set to expire on September 30, 2017 has been extended by the Province until March 31, 2018. There is plenty of time for a proper public consultation to take place.

Notwithstanding the time available, there has been inadequate notice of this matter such that our client has been deprived of a reasonable opportunity to participate in this matter. Staff publicized a public meeting for this matter by way of a Toronto Sun advertisement less than the 20 required days before the meeting. Thereafter, on the last possible day before the Planning and Growth Management meeting, staff once again publicized notice in the Toronto Sun. As an aside, the coreTO meetings were published in the Toronto Star on a Saturday.



No notice was provided directly to owners within 400 feet. No notice was provided to parties who registered an interest in the matter, which our client had done so. All that was done was a mid-week ad in the Toronto Sun, which did not meet the requirement of a newspaper of sufficiently general circulation in the area that would give the public reasonable notice of the public meeting or open house.

Only three members of the public attended the first public meeting into this matter. It is clear that the public, including our client, was not sufficiently notified. Staff admitted as much during the Planning and Growth Management Committee meeting on November 15, 2017: staff admitted that had a person *not* seen the Toronto Sun on the one specific day in question, they would *not* have known about the public meetings in this matter.

For the reasons above, we respectfully request that the item be referred back to City Staff for proper public consultations. At the very least, it should be amended to give the hospitals more control.

Sincerely,
Affleck Greene McMurtry LLP

A handwritten signature in blue ink, appearing to read 'Michael I. Binetti', written over the printed name.

Michael I. Binetti