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April 25, 2017

Via Email and Courier

Mayor and Members of Council
Toronto City Hall,
10th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Your Worship and Members of Council:

Re: 2017.PG19.3 - Dufferin-Wilson Regeneration Area Study - City Initiated Official Plan Amendment - Directions Report (the "Report")

We are the solicitors for Dymon Investments Limited ("Dymon"), the owner pursuant to an agreement of purchase and sale of the property known municipally as 3621 Dufferin Street (the "Dymon Lands") and which is within the geographic area recommended for the consideration of an official plan amendment in the Report. Our client is concerned with a number of the draft official plan policies set out in the Report, including but not limited to prohibitions on use set out therein.

By way of background, as is set out in the Report, Dymon's application for site plan approval of a self-storage warehouse with retail and office uses (the "Proposed Development") appears to have been a trigger for the enactment of Interim Control By-law 63-2017 ("By-law 63-2017") which applies to the precinct under consideration in the Report. As an aside, we disagree with staff's characterization of the size of the retail component and submit that no application to remove the holding provision is required. In any event, Dymon has appealed By-law 63-2017 and we attach a copy of the appeal letter hereto as a number of matters discussed therein are relevant to the draft official plan policies set out in the Report.

As a preliminary matter, we submit that it is unfair to attempt to burden Dymon with a new policy regime at this stage of the approval process for the Dymon Lands which commenced with a pre-consultation process in the context of as-of-right zoning.

Furthermore, we submit that the proposed restrictions on Dymon's proposed self-storage use in the draft official plan policy insufficiently acknowledge the entire model for the delivery of this use employed by Dymon. In the Dymon model, which is implemented in the Proposed Development, self storage is accompanied by retail uses at grade and office space with support functions thereto (e.g. conference rooms, administration facilities). There are no individual doors to storage units from the outside: all loading and access to storage units is internal. The overall effect is that of architecture typical of *Mixed Use Areas* including the public realm at grade enhanced by a significant retail presence. Thus a number of objectives proposed in the

Report for land use compatibility, buffering other uses and the creating of employment floor space would be promoted by the Proposed Development.

Our client would appreciate the opportunity to pursue the consensual resolution of its concerns with the City. In this respect we respectfully request that Planning Staff be directed to meet with Dymon's representatives at the earliest practicable opportunity.

Thank you for your consideration.

Yours truly,



John A.R. Dawson

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(encl.)



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March 30, 2017

Via Courier

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

**Attention: Nancy Martins, Administrator,
Planning and Growth
Management Committee**

Dear Sirs/Mesdames:

**Re: Notice of Appeal - Interim Control By-law No. 63-2017
Dymon Investments Limited**

We are the solicitors acting on behalf of Dymon Investments Limited (the "Company") with respect to the above referenced matter. The Company has an interest in the lands municipally known as 3621 Dufferin Street (the "Property"), which is located within the area subject to proposed Interim Control By-law No. 63-2017 ("ICB 63-2017"), pursuant to an agreement of purchase and sale.

For the reasons set out herein, among others, the Company hereby appeals proposed Interim Control By-law No. 63-2017 in its entirety to the Ontario Municipal Board pursuant to Section 38(4) of the *Planning Act*.

Background

The lands subject to ICB 63-2017 are located on the east side of Dufferin Street, between Wilson Avenue to the north and Highway 401 to the south (the "Study Area").

In 2011 the previous owner of the Property submitted an application to redesignate the Property from *Employment Lands* to *Mixed Use Areas* in order to permit a mixed-use development consisting of an 11-storey mixed-use development, 186 townhouse units, a public park and a public road with a temporary cul-de-sac. On November 8, 2011, the Planning and Growth Management Committee directed staff to review the proposed change of land use concurrently and in the context of the statutory Five Year Review/Municipal Comprehensive Review of the City's Official Plan.

In a Staff Report, dated October 23, 2012, which contained draft policies and designations for *Employment Lands* in the association with the City's Five Year Review/Municipal Comprehensive Review, Staff indicated as follows with respect to the potential conversion of the Property together with the Study Area as a whole:

"Although the Municipal Comprehensive Review has not been completed, a preliminary assessment based on the criteria in the Growth Plan and the Provincial Policy Statement has determined that the [Property], along with [Study Area] could be converted through re-designation to Regeneration Areas, but only through the creation of a site and area specific policy to address Section 4.7 of the Official Plan and also matters such as:

- a land use buffer to separate residential uses from the abutting Employment Areas to the east and the Dufferin/Highway 401 interchange and Highway 401 to the south;
- a street and block plan, including a public street connecting Billy Bishop Way to Wilson Avenue and other appropriate connections;
- a net gain in employment gross floor area with re-development; and
- an affordable housing component."

Similarly, in the subsequent Final Report with respect to the City's Official Plan and Municipal Comprehensive Reviews, dated November 5, 2013, Staff recommended the redesignation of the Study Area, including the Property, from *Employment Areas* to *Regeneration Areas* together with the adoption of a new Site and Area Specific Policy ("SASP 388") for the Study Area which provides as follows:

"Instead of a Secondary Plan, a Site and Area Specific Policy is required to set out a framework for new development on the lands to address those matters identified in Section 4.7.2 of the Plan and also matters such as the following:

- (a) Land use buffers to appropriately separate residential and sensitive non-residential uses from the abutting Employment Area lands directly to the east and from the Dufferin Street/Highway 401 interchange and Highway 401 to the south;
- (b) The design of any residential uses and buildings containing sensitive non-residential uses to mitigate noise and vibration from the Employment Area lands directly to the east and from the Dufferin Street/Highway 401 interchange and Highway 401 to the south;
- (c) A street and block plan that includes a public street to connect Billy Bishop Way to Wilson Avenue and other appropriate connections; and
- (d) A requirement that development including residential units also increase the non-residential gross floor area."

On December 18, 2013, City Council adopted Official Plan Amendment No. 231 ("OPA 231") which, among other things, proposed to redesignate the Study Area, including the Property, from *Employment Areas* to *Regeneration Areas*, and introduce SASP 388, as set out above.

At its meeting of August 25, 26, 27 and 28, 2014, City Council received a Status Report from City Staff with respect to the study directed in SASP 388 with respect to the Study Area (the "Dufferin Wilson Regeneration Area Study") together with sixth other Regeneration Area Studies

directed in the Council-adopted OPA 231 (the "Status Report"). In the Status Report, Staff indicated that the Dufferin Wilson Regeneration Area Study was currently in progress with an expected completion date in the first quarter of 2015 and a Final Report targeted for the first half of 2015.

On December 29, 2016, the Company filed an application for Site Plan Approval with the City in order to permit the redevelopment of the Property with a three-storey mixed-use building including a self-storage facility and approximately 4,400 square metres of ground floor and second-storey retail uses (the "Proposed Development"). The Proposed Development was, we submit, at the time of the application, permitted as-of-right under both the former City of North York Zoning By-law No. 7625, as amended, and the City of Toronto Zoning By-law 569-2013, as amended.

On January 31, 2017, City Council enacted ICB 63-2017 pursuant to a motion without notice introduced on the floor of Council. In conjunction with the adoption of ICB 63-2017, City Council directed Staff to:

"...complete the Regeneration Area Study that is underway pursuant to the requirements for Regeneration Areas as set out in OPA 231 for the [Study Area] and in connection with the ongoing study, to complete its review of land use permissions in the Dufferin Wilson Regeneration Area, and to review the zoning regulations and permitted uses that apply to the proposed study area."

And further:

"If it is determined through the Regeneration Area Study that new zoning standards and land use policies are required to reduce land use conflict and to ensure uses are complementary to the vision of the study, City Council direct the Chief Planner and Executive Director, City Planning to bring forward new zoning regulations and land use policies for the study area."

The Council-enacted ICB 63-2017 provides that, for a period of one year, the following uses shall be prohibited:

"car washing establishment, gasoline station, motor vehicle body repair shop and dealership, manufacturing, contractor's establishment, custom workshop, car rental agency, parking lot, public self-storage warehouse, retail over 5,000 square metres, service station, transportation terminal and warehouse." [emphasis added]

As such, ICB 63-2017 would have the effect of prohibiting the Proposed Development.

The accompanying Staff Report, dated January 31, 2017, recommending the enactment of ICB 63-2017, indicates that City Staff anticipate that the Final Report for the Dufferin Wilson Regeneration Area Study will be reported in the second quarter of 2017. The report concludes that ICB 63-2017 "will enable City Planning staff an opportunity to complete the Dufferin Wilson Regeneration Area Study currently underway and bring forward recommendations on a planning framework for the Dufferin Wilson Regeneration Area to support future growth in the study area."

Reasons for Appeal

In our view, ICB 63-2017 is not appropriate and does not represent good planning. We further submit that an Interim Control By-law is an extraordinary remedy and should not be employed except where justified by special circumstances which are absent in this case.

Further, we submit that the practical implications of ICB 63-2017 are inconsistent with both the existing and proposed new policy framework applicable to the Study Area.

As indicated above, Council directed, in conjunction with the adoption of ICB 63-2017, that Staff bring forward new zoning standards and land use policies required to reduce land use conflict and ensure uses are complementary to the vision of the study as determined through the completion of the Regeneration Area Study. From a land use compatibility perspective, however, the proposed self-storage facility and grade related retail uses are compatible and, in fact, supportive of both the residential and non-residential uses contemplated for the Dufferin Wilson Regeneration Study Area. Further, the proposed uses contemplated in the Proposed Development are consistent with the general direction in SASP 388 to preserve or increase non-residential gross floor area within the Study Area.

We submit that the use of an Interim Control By-law (ICB 63-2017 here) is inappropriate given the timing of the planning review relied upon as justification therefor. The notion of conducting a comprehensive review of land use permissions for the Property was first supported by the City in November, 2011 with Staff being directed to carry out the review of the previous landowner's proposed redesignation of the Property in conjunction with the City's Official Plan/Municipal Comprehensive Review. Shortly thereafter, in 2012, Staff first introduced the notion of expanding the review of land use permissions to include the Study Area and set out a framework for a further study, consistent with the provisions of SASP 388.

Following the adoption of SASP 388 through OPA 231, Staff indicated in August, 2014 that the Final Report with respect to the Dufferin Wilson Regeneration Area Study was targeted for the first half of 2015. No further update was provided until the January 31, 2017 Staff Report, recommending the enactment of ICB 63-2017, which indicated that City Staff anticipated that the Final Report would be brought forward in the second quarter of 2017. No explanation was provided for the delay.

In our view, this history demonstrates that the City has been aware of any issues raised by existing permissions in the Study Area for a number of years, and ought not be able to suggest it be afforded "breathing room" to consider the topic at this stage.

Further, in this regard, we submit that it was not indicated at any point throughout the Dufferin Wilson Regeneration Area Study up until the January 31, 2017 Staff Report that the uses contemplated in the Proposed Development should be prohibited. To the contrary, we submit that the Proposed Development forwards the general intent set forth in SASP 388 and reviewed in the Dufferin Wilson Regeneration Area Study insofar as it is compatible with both residential and non-residential uses, achieves a net gain in non-residential gross floor area and would provide an appropriate buffer from Highway 401 to the south and the employment uses to the east to the remainder of the Regeneration Area.

We would respectfully submit that the Company's Proposed Development is evidently the proximate cause of the City's invocation of Section 38 of the *Planning Act*. Given, however, the uses and the built form contemplated therein, the circumstance falls short of justifying the extraordinary remedy of an Interim Control By-law, especially given the City's long standing knowledge of the matters it seeks "breathing room" to study. Accordingly, for the reasons set out herein and such other reasons as may be advanced at the hearing of this appeal, the Company hereby appeals ICB 63-2017 in its entirety to the Ontario Municipal Board pursuant to Section 38(4) of the *Planning Act*.

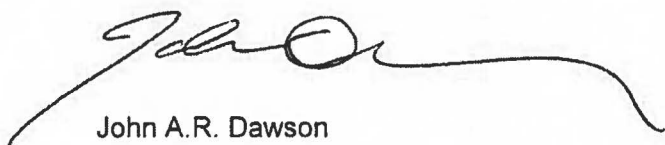
In this regard, please find enclosed:

1. an executed copy of the Ontario Municipal Board's Appellant Form (A1); and
2. a firm cheque in the amount of \$300.00 payable to the Minister of Finance, representing the appeal fee for the within appeals.

At this juncture it is difficult to assess with precision the number of witnesses or the hearing time required since it is not apparent to us what the actual City concerns are given the specific uses contemplated in the Proposed Development and the positions articulated thus far by the City through the Dufferin Wilson Regeneration Area Study and SASP 388. However, we can indicate on a preliminary basis that our client would certainly call a land use planner and may call a land economist, transportation engineer/planner or an expert on the area environmental conditions. The length of the hearing is likely to be three (3) days.

Should you have any questions or require further information, documentation or any other thing to constitute the within appeal to and before the Ontario Municipal Board, please do not hesitate to contact us forthwith.

Yours truly,



John A.R. Dawson

JAD/sc
Enclosures