



AFFLECK GREENE MCMURTRY LLP
BARRISTERS

PG24.3.1

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November 14, 2017

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

City of Toronto
Planning and Growth Management
Committee Secretariat
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attn: Nancy Martins, Secretariat Contact

Dear Members of the Committee:

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

We are the lawyers for Lalu 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).

There has been inadequate notice of this matter such that our client has been deprived of a reasonable opportunity to participate in this matter. It is also likely that many owners of properties in the area or affected parties have been equally deprived of the opportunity to participate. There is plenty of time for a proper public consultation to take place in that 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.

Our client only became aware very recently that City Staff were recommending adoption of a zoning by-law in this matter. Our client also discovered very recently that a public meeting had apparently been held over two months ago about which it never received notice. Our client – and likely many others – wishes to provide comments and participate in the process. It cannot do so in such short order and without the help of outside experts.

Our client requests that the matter be referred back to staff to conduct a proper public consultation amongst all of the stakeholders and report back. There is adequate time in which to complete this process.



Improper Notice

If, as the items suggests, statutory notice of the meeting was given under the federal *Aeronautics Act*, then there has been insufficient notice. The *Aeronautics Act* would have required notices to be published in two newspapers and in the Canada Gazette.

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*).

This agreement between the federal Minister of Transport and the City has not been made public. We kindly ask for that document to be provided to us. There is a reference to this agreement having been signed on August 21, 2017 in the most recent Staff Report on the Item dated October 18, 2017. Assuming there are no issues with the agreement, the City can only exercise jurisdiction in this domain in the same manner and to the same extent as it may regulate the use of lands within its jurisdiction, which is to say by way of a zoning by-law.

Zoning by-laws require public notice to be given under the *Planning Act*, which requires at least one public meeting. The City has chosen to hold two public meetings on this Item. Both required proper notice. The regulations to the *Planning Act* require at least 20 days’ notice and in various forms and combinations of the following: directly to owners within 400 feet, a sign on the property, a newspaper of sufficiently general circulation in the area to which the proposed by-law would apply that it would give the public reasonable notice of the public meeting or open house, or directly to parties who have registered an interest, amongst others.

No Evidence of Notice to Owners

It would have been easy for the City to identify interested parties. We have conducted title searches of addresses within two blocks of each direction of Sick Kids Hospital and located 50 municipal addresses. We would have thought that the persons most affected – those directly under the lowest part of the flight path – would have been given notice. Attached is a chart of the municipal address within two blocks and the owners’ names for your reference. One of the addresses is a condominium building directly under the flight path, so the potential number of directly affected people could be in the hundreds. Perhaps this will help the City notify the most affected parties.



No Notice to Parties Who Registered an Interest

In the most recent staff report on this item dated October 18, 2017, the TOcore planning process was put into play. Our client's previous lawyers had registered our client's interest and request to participate in the TOcore planning process to the City Clerk in December 2016, and again dealt with that issue in letters dated January and March 2017. In that City Staff are now relying upon TOcore as part of the rationale to recommend that the Committee and Council adopt Item PG24.3, then our client's previous signalling to the City of its interest in the matter in fact triggered a requirement on the City to notify our client directly of its intention to adopt the zoning by-law contemplated in Item PG24.3 pursuant to the *Planning Act*.

Inadequate Newspaper Notice

To the extent the City did attempt to notify persons of the September 26, 2017 public meeting by newspaper, which we submit was unreasonable in the circumstances, it was already less than the 20 days required under the *Planning Act*. Moreover, there is no evidence in the October 18, 2017 Staff Report on this Item as to which newspaper(s) or when notices of the September 26, 2017 public meeting were made. What we do know is that only three people showed up other than hospital representatives.

As for the November 15, 2017 PGM meeting, there is equally little evidence of what notice was made and where and whether it was timely. The *Planning Act* requires a combination of personal notice, newspaper notification, and notification to persons who have registered an interest in the matter. There is no evidence of what was done. Here too, our client did not receive notice of the PGM meeting and this item until very recently.

To the extent the *Planning Act* permits the City to provide newspaper notice, it only permits it in a "newspaper of sufficiently general circulation in the area to which the proposed by-law would apply that it would give the public reasonable notice of the public meeting or open house." In that only three people attended the public meeting on September 26, 2017 (notwithstanding that it was less than the required 20 days' notice), it is clear that whatever newspaper or form of notice that was used, the public was not given reasonable notice of that meeting. The same can be said for the November 15, 2017 PGM meeting. There is a passing reference in the Agenda Item to the Public Notice being "dated" October 25, 2017, at the bare minimum of the notice required, but no evidence that it was published or when or where.

None of the notices appear on the City's website of public notices.



No Imminent Expiry of Provincial Regulation

The preliminary Staff Report dated August 1, 2017 made reference to a provincial regulation governing these flight paths that was set to expire on September 30, 2017. That no doubt informed the PGM meeting on September 7, 2017 to hold a public meeting. Since then, the Province has extended this date to March 31, 2018. The most recent Staff Report dated October 18, 2017 references the new expiry of March 31st, but not that the City had been operating up until a point before that time on the basis that the regulation was about to expire.

This extension has provided the City and interested parties with more time in which to have a proper discussion about this matter.

For the reasons above, we respectfully request that the item be referred back to City Staff for proper public consultations.

Sincerely,

Affleck Greene McMurtry LLP

A handwritten signature in blue ink, appearing to read 'Michael I. Binetti', with a long horizontal flourish extending to the right.

Michael I. Binetti

Encls.

University Avenue

Simcoe Street

Elm Street

Murray

St Patrick

Elizabeth Street

Edward Street

Bay Street

Yonge Street

43 PIN 10328-0178; 21103-0095); POLISHCHUK, IHOR
BUTTA-POLISHCHUK, YULIYA;
2336767 ONTARIO LTD.
45 (PIN 21103-0096);
577813 ONTARIO LIMITED
49 (PIN 21103-0097);
COOPER, DAVID
COOPER, ANNETTE
51 (PIN 21103-0098);
ZANTAV LIMITED
55 (PIN 21199-0067);
2220277 ONTARIO INC.
57 (PIN 21199-0068); 57 ELM
HOLDCO INC.
59 (PIN 21199-0069); 59 ELM
HOLDCO INC.
61 (PIN 21199-0070); 61 ELM
HOLDCO INC.
63 (PIN 21199-0071);
MAURIZIO, MARIA ANNA
65 (PIN 21199-0072);
PRATTAS, GUS
PRATTAS, HELEN
PRATTAS, ANGELO
PRATTAS, KALLIOPI
PRATTAS, STEVE
PRATTAS, ATHENA
67 (PIN 21199-0073); HA,
EDMUND CHEUNG SZE
69
71 (PIN 21199-0074);
KOPOLOVIC, BENJAMIN
77 (PIN 21199-0076); THE
HOSPITAL FOR SICK
CHILDREN
85
87
159
175 (PIN 21208-011); THE
CAMROST GROUP (ELM
STREET) LIMITED
176
180
200
222 (PIN 21208-0269); ELM
PLACE INC.
15A (no address match, but
there are two 15 PIN 10328-
0065; 21103-0086); COOPER,
DAVID JTEN
COOPER, ANNETTE

University Avenue

Simcoe Street

Elm Street

Murray

St Patrick

Elizabeth Street

Edward Street

Bay Street

Yonge Street

17A (no address match for
17A; but one 17 - PIN 21103-
0087); TRUSTEES OF MAPLE
LEAF AERIE NO. 2311
FRATERNAL
ORDER OF EAGLES
71B (no address match for
71B; but one for 71 - PIN
21199-0074); KOPOLOVIC,
BENJAMIN