AIRD BERLIS

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June 6, 2018

BY EMAIL

Our File No. 136381

City Clerk Planning and Growth Management Committee, City of Toronto, City Hall, 100 Queen Street West 10th Floor, West Tower, Toronto, Ontario, M5H 2N2

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

Dear Chair and Members of the Planning and Growth Management Committee:

Re: Item: PG30.4 Midtown in Focus Proposed City-Initiated Official Plan Amendment No. 405, including the proposed Yonge-Eglinton Secondary Plan Update ("OPA 405") 2245883 Ontario Inc. / 808 Mount Pleasant Road

We are the solicitors for 2245883 Ontario Inc., the owner of the property municipally known as 808 Mount Pleasant Road (the "Lands"). The Lands are located mid-block, on the west side of Mount Pleasant Road between Roehampton Avenue and Eglinton Avenue East, directly adjacent to the under-construction Mount Pleasant Road Crosstown LRT Station. The Lands are within the proposed Yonge Eglinton Secondary Plan Update and are subject to proposed OPA 405.

1. Overview: Active Rezoning Application for 808 Mount Pleasant Road

The Lands are the subject of a rezoning application ("**Application**") that was submitted to the City on November 14, 2017 and deemed complete as of January 9, 2018.

The Application proposes to redevelop the Lands with a 37-storey residential point tower above a 7-storey mixed use podium, for a combined height of 44 storeys (the "**Proposed Development**"). The Application conforms entirely with the City's in-force Official Plan, as amended and, therefore, no Official Plan Amendment is required.

2. Our Client's Concerns with, and Participation in, the OPA 405 Process To Date

A. Council Resolution on December 5, 2017

Our client has a fundamental concern with Item 3 of City Council's decision, adopted on December 5, 2017 (the **"Council Resolution**"), which states as follows:

3. City Council determine that the comprehensive update to the Yonge-Eglinton Secondary Plan is necessary prior to rendering a decision on new development applications submitted in the Secondary Plan area after the November 15, 2017 Planning and Growth Management Committee meeting until the adoption of the revised Yonge-Eglinton Secondary Plan.

It appears that, through the Council Resolution, the City may be attempting to improperly, and unlawfully, restrict or negate the application of the long-standing *Clergy* principle to development applications submitted not just prior to the date of adoption of any updated Yonge-Eglinton Secondary Plan, but prior to November 15, 2017. The Clergy principle stands for the proposition that, in general, an application (like our client's Application) must be tested against the policy documents –including the Official Plan policies – in place at the date of the application.¹

There is no basis in law for Council to determine, as it appears to have done in the Council Resolution, that the adoption of a revised Yonge-Eglinton Secondary Plan is necessary prior to rendering a decision on new development applications submitted after the November 15, 2017 Planning and Growth Management Committee meeting.

Notwithstanding our opinion in this respect, our client's Application was submitted on November 14, 2017. In their Preliminary Report dated January 30, 2018, regarding the Application, staff stated they will not be in a position to bring forward a final report on the application until after a revised Secondary Plan is adopted since the application was submitted after November 15, 2017. In our view, this is an error. We note that, at this point, staff have been cooperative in processing our client's Application and our expectation is that this will continue in a manner that is not dependent on the timing of any Council adoption (or, for that matter, any Ministerial approval) of a revised Yonge-Eglinton Secondary Plan.

B. April 11, 2018 Submission to Staff Regarding November 2017 Draft Secondary Plan

Our April 11, 2018, our client's planning consultants, WND Associates ("**WND**"), submitted a detailed letter on our client's behalf to Paul Farish, Senior Planner at the City. The letter outlines a number of our client's concerns with the November 2017 draft version of the proposed Yonge Eglinton Secondary Plan. Notwithstanding WND's willingness to meet with City staff, as noted in the April 11, 2018 letter, City staff have not provided any response to the April 11th letter. We understand that City staff held a Developers Working Group Meeting on May 10, 2018 with a number of landowners within the Secondary Plan area. Our client was not invited to that meeting, and only found out about it after the fact.

C. Improper Use of Section 26 for Proposed Adoption of OPA 405

Our client has other concerns with the City's process to date. In particular, our client is concerned about the City's decision, well after the Midtown in Focus and Secondary Plan Update process had already been commenced, to adopt the proposed Secondary Plan Update (i.e. OPA 405) pursuant to section 26, rather than section 17, of the *Planning Act*, thereby purporting to eliminate any right of appeal by affected landowners², should OPA 405 be adopted

² By operation of Subsections 17(36.5) and 21(3) of the *Planning Act*, which Subsections only came into force and effect on April 3, 2018.



¹ Clergy Properties Ltd. v. Mississauga (City), [1996] O.M.B.D. No. 1840 (O.M.B.); affirmed Clergy Properties Ltd. v. Mississauga (City), 1997 CarswellOnt 5385 (Div. Ct.); leave to appeal refused: Clergy Properties Ltd. v. Mississauga (City), 1998 CarswellOnt 451 (Ont. C.A.).

by City Council and approved by the Minister of Municipal Affairs. The provisions in the *Planning Act* that now operate to eliminate any right of appeal of Official Plans or Official Plan Amendments adopted pursuant to section 26 of the *Planning Act* were first proposed in May 2017, after the Midtown in Focus/Secondary Plan Update was well underway, and only came into force and effect on April 3, 2018. In the circumstances, the City's decision to purport to adopt proposed OPA 405 under section 26 of the *Planning Act* is improper, invalid and a denial of natural justice.

Finally, we have concerns that the special public meeting scheduled for June 7, 2018 is a formality only to the extent that it will not afford the public meaningful opportunity to have its concerns made known, or meaningfully considered, prior to Council adoption of proposed OPA 405 and the updated Secondary Plan.

3. <u>Concerns with Substantive Policies in Proposed OPA 405 and Updated Secondary</u> <u>Plan</u>

While it is our view, as noted above, that our client's Application must conform to the currently in-force policies of the City's Official Plan, including the existing Yonge-Eglinton Secondary Plan, we have reviewed proposed OPA 405 and the proposed updated Secondary Plan, and continue to have a number of concerns with some of the policies therein, including policies that do not conform with the Growth Plan's directions regarding transit supportive intensification.

A. Concerns Outlined in WND's Letter Dated April 11, 2018 Not Addressed

The majority of the concerns outlined in WND's April 11, 2018 letter have not been addressed and remain of concern. We enclose a copy of that correspondence and will endeavour not to repeat those concerns in detail here.

B. Change to Mount Pleasant Right-of-Way Width

Section 2(b) of OPA 405 proposes to change the existing 20 metre right-of-way width for Mount Pleasant Road between Eglinton Avenue East and Broadway Avenue to 23 metres. There is no justification for this proposed increase from a transportation perspective. The 23 metre right-of-way requirement, if it were to apply to the Lands, would significantly impact the Proposed Development which relies on the existing 20 metre right-of-way width.

C. Prescriptive Height Policies Do Not Conform to Growth Plan

In general, the policies of the proposed updated Secondary Plan are overly prescriptive and inflexible.

The height policies in the proposed Secondary Plan which, for instance, prescribe a maximum permitted height of 27-29 storeys on the Lands, contain an inappropriate level of prescriptiveness. The effect is to limit the ability of lands within the Secondary Plan area and, in particular the Lands, to achieve the intensification, density and transit-first objectives of the Growth Plan.

In this respect, the Lands are within the Station Area Core on Map 21-3: Midtown Transit Station Areas of the proposed Secondary Plan. The Lands are situated at the intersection of two higherorder rapid transit lines. Directly south of the Lands (within approximately 5 metres of the Lands)

is an under-construction Crosstown LRT station, at the north west corner of Mount Pleasant Road and Eglinton Avenue East. As set out in proposed Policy 2.4.2(a)(i), Station Area Core zones "includes the transit station(s) and highest density, use and activity within the Midtown Transit Station Area…". A prescribed height limit of 27-29 storeys for the Lands does not conform with the Growth Plan's direction to maximize high density development around Major Transit Stations Areas (which are generally defined as the area within in an approximate 500-metre radius of a transit station) and it does not conform with Section 2.2.4, including policy 2.2.4.2 which states:

For *major transit station areas* on *priority transit corridors* or subway lines, upper- and single-tier municipalities, in consultation with lower-tier municipalities, will delineate the boundaries of *major transit station areas* in a *transit-supportive* manner that maximizes the size of the area and the number of potential transit users that are within walking distance of the station.

The proposed Secondary Plan, in Policy 2.4.4, identifies minimum density targets for various major transit station areas which is a requirement of Growth Plan policy 2.2.4.3, we have seen no rationale for the minimum density targets, nor have we seen any indication of how future development will be able to meet the identified minimum density targets, given the policies of the proposed Secondary Plan and given the fact that a number of sites within the Secondary Plan area will not, realistically, ever redevelop.

There are other policies in the proposed Secondary Plan that conflict with, or do not conform to, the direction in the Growth Plan with respect to intensification of <u>all</u> major transit stations. For example, Section 1.3.5 of the Secondary Plan states: "The scale and form of intensification will be significantly less in Davisville Station, Mount Pleasant Station and Bayview Focus Area than exists, and is planned, at the Yonge-Eglinton Crossroads".

In summary, the height and density policies related to the Midtown Transit Station Areas do not conform to sections 1.2.1, 2.2.2.4.a and e, 2.2.4.1, 2.2.4.2, 2.2.4.6, 2.2.6.1, 3.2.2.1, and 3.2.3.a, b, and d of the Growth Plan. Additionally, these policies are not consistent with sections 1.1.1.a to c, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.6, 1.1.3.7, 1.4.1, 1.4.3, and 1.6.7.4 of the PPS.

D. Prescriptive Housing Policies Do Not Conform to the Growth Plan

The prescriptive requirements for housing unit types and sizes in Section 7 of the proposed Secondary Plan may preclude appropriate forms of intensification in a manner that does not conform to the Growth Plan and is not consistent with the Provincial Policy Statement. In this respect, the policies in proposed OPA 405 potentially conflict with Growth Plan policies 1.2.1 and 2.2.1.4 which promote a mix and range of housing types. Additionally, they are inconsistent with PPS policies to similar effect, specifically 1.4.1 and 1.4.3.

The prescribed unit types and sizes, which mandate larger units than a developer might otherwise wish to provide, will be more costly for unit owners and are not consistent with the direction in the PPS to provide an appropriate range and mix of residential uses, including affordable housing (PPS Policy 1.1.1b).

E. Other Inappropriately Prescriptive Policies

There are a number of other policies in the proposed Secondary Plan update that, individually and collectively, are inappropriately prescriptive, including:

- a) Policies in Section 5.3.34 and 5.3.36 related to Built Form (which do not conform to Growth Plan sections 1.2.1, 2.2.2.4 and 2.2.6.1, and which are inconsistent with a number of PPS policies, including 1.1.1.a-c, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.6, 1.1.3.7, 1.4.1, and 1.4.3);
- b) Policies in Section 2.5.6 that require tall buildings to provide the greater of 15 percent of the total gross floor area for office, institutional and/or cultural uses (which policies do not conform to Growth Plan policies 1.2.1 (regarding appropriate mix of housing) and 2.2.1.4(a) and (c), and which are inconsistent with, for example, PPS policies 1.4.3 (be)); and
- c) Policies in Section 5.6.2 and 5.6.4 that require applicants to demonstrate that proposed development will cast no net new shadow on parks and open spaces, including the existing Northern Secondary School playfield, on March 21st and September 21st between 9:18 a.m. to 6:18 p.m.

F. Implementation Policies of the Proposed Secondary Plan

The policies in Section 9.4, including Sections 9.4.1, 9.4.5 and 9.4.6 are unduly onerous and of questionable legal validity. The requirement in Section 9.4.5 that "the amount of monetary contribution will be equal to 25% of the gross floor area above the density identified" is unprecedented in the City and could result in an extraordinary and excessive approach to Section 37 agreements, akin to a tariff that is not linked to any specific identified needs in the Secondary Plan area.

4. Conclusion

For the reasons stated above, we respectfully submit that it is incumbent upon the City to:

- a) Meaningfully consider our client's concerns outlined herein, and modify the proposed OPA and Secondary Plan accordingly; and
- b) Defer Council adoption of the proposed OPA and Secondary Plan until after the proposed modifications have been circulated to the public, and the public has had a meaningful opportunity to review same.
- c) Reconsider the adoption of OPA 405 and the proposed Secondary Plan under Section 26 of the *Planning Act* and, instead, adopt any updated Secondary Plan pursuant to Section 17 of the *Planning Act*;
- d) Alternatively, if the intention is to eliminate the public's appeal rights, refer the draft OPA back to City staff so that the City can comply with all of the requirements of Section 26 of the *Planning Act*, including by consulting with the province early in the process and sharing the Province's comments with the public.

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Please provide our office with notice of any further reports, Community or Council meetings, as well as notice of any Community or Council decisions related to proposed OPA 405 and the proposed Yonge-Eglinton Secondary Plan update.

Finally, we expect that this correspondence will be placed before Council for its consideration, prior to any Council decision to adopt proposed OPA 405 and the Yonge-Eglinton Secondary Plan update.

Yours truly,

AIRD & BERLIS LLP

Andrea Skinner

AS/np Encl.

cc. WND Associates Client

32753995.4



April 11, 2018

Strategic Initiatives, City Planning Division Metro Hall, 22nd Floor 55 John Street Toronto, ON, M5V 3C6

Attention: Paul Farish, Senior Planner

Dear Paul,

RE: Midtown in Focus Comments re Proposed Secondary Plan Update 2245883 Ontario Inc. / 808 Mount Pleasant Road 17.529

Background

WND has been retained by 2245883 Ontario Inc c/o Streetwise Capital Partners who currently have an active rezoning application located at 808 Mount Pleasant Road (the "Subject Site") within the Yonge/Eglinton Secondary Plan Area in the City of Toronto. The application was submitted to the City on November 14, 2017. Staff prepared a Preliminary Report dated January 30, 2018 which was considered by Community Council on February 21, 2018.¹ A community consultation meeting has been scheduled for April 19, 2018.

The proposed redevelopment of the Subject Site is oriented towards Mount Pleasant Road and consists of a 37 storey residential point tower above a 7 storey mixed use podium for a combined height of 44 storeys (143.8 metres) (the "Proposed Development").

We are writing to provide comments with respect to the proposed policies set out in the Midtown in Focus: Proposed Yonge-Eglinton Secondary Plan Update (the "Proposed Update"), dated November 2017, as they are proposed to relate to the Subject Site. The Proposed Update seeks to amend the Yonge-Eglinton Secondary plan which, most recently, was amended by Official Plan Amendment 289 ("OPA

¹ Page 15 of the Preliminary Report states that staff will not be in a position to bring forward a final report on the application until after a revised Yonge-Eglinton secondary plan is adopted, since the application was submitted after November 15, 2017. However, as per the submission receipt our client received from the City, our client's application was submitted on November 14, 2017.

289"). OPA 289, which was adopted by City Council on June 12, 2015 and subsequently appealed by several land owners within the Secondary Plan Boundary, was intended to guide improvements to the public realm including the development of improved streetscapes, parks, and other open spaces within the Yonge-Eglinton Centre. Our understanding is that many of the OPA 289 appeals have, to date, been withdrawn/resolved but that OPA 289 remains under appeal. The Proposed Update, as we understand it, seeks to build on OPA 289 and to update the planning framework for the Yonge-Eglinton Secondary Plan in a comprehensive manner.

Comments on the Proposed Secondary Plan Update

1. Height and Density

<u>Map 21-5</u>

On Map 21-5: Development Potential (Yonge-Eglinton Area), the Subject Site is appropriately identified as having Tall Building Development Potential.

<u>Map 21-8</u>

On Map 21-8: Maximum Tall Building Heights (Yonge-Eglinton Area), the Tall Building Height Limits identify the Subject Site as having a maximum height of 27-29 storeys. There is no report available to justify this height. Our firm's planning justification report which was filed with the rezoning application supports a height of 44 storeys for the Subject Site.

As a general comment with respect to Map 21-8, the map does not reflect recently approved applications in the Yonge/Eglinton Secondary Plan area, including heights recently supported by City staff and approved by City Council. This should be corrected.

Map 21-2 and Map 21-12

On Map 21-2: Area Structure, the Subject Site is identified as being within the Station Area Cores- Major Transit Station Areas, adjacent to a Major Transit Station. We agree that this is appropriate. "Major Transit Station Area" is a term referenced throughout provincial planning policy documents, including The Big Move - Transforming Transportation in the Greater Toronto and Hamilton Area and the Growth Plan 2017, and is defined as an area within 500 metres of a Major Transit Station 3.1.6(a)(i) recognizes that a Station Area Core shall have "the most intense density, use and activity within the major transit station area...".

On Map 21-12: Character Areas, the Subject Site is located within, although on the edge of, the Midtown Cores (Mount Pleasant Station) Character Area. Given some of the policies that are proposed to apply to the Mount Pleasant Station Character Area in Section 4.4.5 of the Proposed Update (for example, policy 4.4.5.3 which states that "the Mount Pleasant Station area will generally have a distinct six- storey character with a two storey streetwall condition"), in our opinion it is inappropriate for the Subject Site to be included within the proposed Character Area boundary.

In summary, the Proposed Update does not currently reflect the Province's policy direction for major transit station areas, in particular the objective to prioritize intensification and higher densities within 500

metres of Major Transit Station Areas in order to maximize the efficient use of land and infrastructure and to support transit viability.

The Proposed Update should consider an alternative to the Mount Pleasant Station Character area boundary more in keeping with the Province's definition of major transit station areas, which encourages high density development within 500 metres of a major transit station area.

Summary

While some of the proposed policies, mapping and direction in the Proposed Update are appropriate, as they relate to the Subject Site, including for example section 3.1.6(a)(i), a number of sections and mapping in the Proposed Update would limit the development potential of the Site and surrounding area in a manner that is inconsistent with provincial policy.

For example, the proposed height on Map 21-8 is inappropriate, particularly when combined with proposed Policy 3.3.6 which states that "in no instance will the height of a new tall building... exceed the height limits identified on Maps 21-8-21-10". As noted above, the proposed height restriction on Map 1-8 for the Subject Site has not been justified and represents an arbitrary restriction that is not consistent with the provincial direction regarding development surrounding Major Transit Station Areas. The policies in the Proposed Update that do not align with provincial policy should be revised.

2. Mount Pleasant Station Character Area

On Map 21-12: Character Areas, the Subject site is within D.3, known as Mount Pleasant Station area within Midtown Cores. Section 4.4.5.1 provides that this area "*will emerge as a new focal point in Midtown enlivened by the new transit station, schools and adjacent office and retail clusters. The area will include mid-rise and tall buildings of a modest height that will contribute to a well-established mix of affordable and seniors' housing.*" Further to this, on Map 21-5: Development Potential (Yonge-Eglinton Area), the Proposed Update permits tall buildings only on sites that are specifically identified as having tall building potential and at specific heights. It should be noted in this section that schools, offices, retail clusters, a church, community centre and seniors' housing already exist in the area. Many sites in the character area will not be subject to future development due to the existing uses such as school sites and churches. As a result, it is recommended that Map 21-5 be revised to reflect that these existing uses have no development potential.

Section 4.4.5.1 provides that "New mixed-use development will provide an approximate ratio of 70 per cent residential and 30 percent office, institutional, cultural uses, complemented by retail uses at grade." There is little guidance provided regarding the definition of these uses and no consideration given to the appropriateness or current function of these uses, as they currently exist in the area. The Mount Pleasant Station area is comprised of all these uses, including two schools, a community centre, seniors housing, various retail/office clusters, a church and office space. As noted above, these existing uses will not be subject to future redevelopment.

Section 4.4.5.1 does not reflect the existing context of the Mount Pleasant Station Character area and requires developers to provide uses that are currently dominant in the area. Further to this, this Section 4.4.5.1 is only specific within the Mount Pleasant Station Character area and does not apply to any other

areas of the Yonge-Eglinton Secondary Plan Area. No justification is given for the provision of this policy to be included specifically for the Mount Pleasant Station, especially considering its existing context of sites with no future development.

We request that this provision be removed or modified to protect the existing uses within the Mount Pleasant Station Character area, while removing the provisions requiring new development to provide an approximate ratio of 70 percent residential and 30 percent office, as significant office uses currently exist within the Mount Pleasant Station area.

3. Sun Protected Parks and Open Spaces

On Map 21-4: Parks and Open Space Network, surrounding parks and open space networks are identified. Proposed Policy 2.20 provides that all development should be located and designed to protect access to sunlight on Eglinton Park, and other parks identified on Map 21-4.

Section 3.3.19 provides that "Development proposals will demonstrate that no net new shadow is cast on the following parks and open spaces on March 21st and September 21st from 9:18 a.m. to 6:18 p.m." Section 3.3.19 (f) identifies the school yard at Northern Secondary School as a protected open space.

Our client has concerns with the "no new net shadow" approach which does not take into account the existing buildings, including buildings recently constructed, that create existing shadows, and the effect they have on the current function of park space. To the extent that the reason for the proposed 29 storey height limit for the Subject Site might relate to the protection of the Northern Secondary School field, we do not agree that this is an appropriate basis upon which to limit the height on the Subject Site. No justification or shadow studies have been provided to indicate that anything above 29 storeys would negatively impact the school site. Further, we confirm that the Proposed Development, at 44 storeys has been designed to ensure that there would be no adverse shadowing to any surrounding parks and open space areas, particularly, Northern Secondary School fields. In our view, the City has not justified its reasoning for the proposed maximum height for the Subject Site, set out in the Proposed Update. In our opinion, a building with a height of 44 storeys can be built on the Subject Site without providing any significant "Net New Shadow." Significantly, the Toronto District School Board recently provided comments on our client's rezoning application and did not identify any concerns with respect to shadow effect of the Proposed Development or the proposed height of 44 storeys.

We are requesting that the height limit on Map 21-8 be revised to reflect a maximum permitted height of 44 storeys and that the city reconsider the "Net New Shadow" requirement in Section 3.3.19.

4. Mid-Block Connections and the Public Realm

On Map 21-13: Pedestrian Network, a "Conceptual Future Mid-Block Connection" is proposed to run through the Subject Site, extending west from Mount Pleasant directly through the Subject Site. Further thought should be given to the appropriateness of requiring such mid-block connections whereas, in this case, there is no reasonable prospect of completing the connection through an adjacent parcel of land. There is no guidance for the delivery of such mid-block connections and such implementation contradicts, and will inappropriately and unjustifiably impede, intensification initiatives set out in the Proposed Update and provincial policy.

We understand that the City's intent of including the proposed mid-block connection on Map 21-13 that would run through the Subject Site, is to provide rear pedestrian access to the future Mount Pleasant LRT Station. The Proposed Development has been designed to provide rear pedestrian access to the future Mount Pleasant LRT Station, meeting the intent of the mid-block connection.

We request that the "Conceptual Future Mid-Block Connection" that penetrates the Subject Site on Map 21-13, be removed as the intent of the midblock connection can, and is proposed to be provided, in a more appropriate manner that better meets the intent of the City's Official Plan and provincial policy.

5. Other Proposed Policy Standards

Proposed Section 3.2.3 provides that "where a more intense form of development was approved in a Character Area prior to the adoption of this Secondary Plan, it will not be considered as a precedent in the review of development proposals. The height limits and policy directions of this Secondary Plan will prevail." This contradicts the City of Toronto's Official Plan where a review of both the existing and planned context is required when considering built form matters. It is improper to mandate that the existing context of the built form should not be considered, and secondary plan policies should be consistent with the City of Toronto Official Plan policies.

Proposed Sections 5.3.1 and 5.3.2 provide new Density Incentive policies related to Section 37 of the Planning Act. Section 5.3.5 provides that "Monetary contributions for the community benefits identified in policy 5.3.2 will be based on a per square metre of residential gross floor area in excess of density identified. The amount of the monetary contribution will be equal to 25 percent of the market value of the gross floor area above the density identified". Requiring 25 percent of the market value of residential gross floor area in excess of other prescribed densities is an excessive approach and deviates from the City's current approach to Section 37 agreements. We request that this section be removed and the City continue its current approach for Section 37 agreements.

Conclusion

We trust that these comments will be considered and we would be pleased to engage in further discussion with City staff, as necessary. Please provide our office with Notice of any further reports, Community or Council meetings. We are also requesting that we be provided with the Notice of Decision with respect to any Official Plan Amendment resulting from this study.

Yours very truly,

WND associates planning + urban design

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Robert A. Dragicevic, MCIP, RPP Senior Principal

cc: Kareem Sethi (Streetwise Capital Partners Inc) David Driedger, Senior Planner, Community Planning, Toronto & East York District