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March 28, 2011

Mayor and Members of Council
Toronto City Hall
100 Queen Street West
Toronto ON M5H 2N2

2011 MAR 28 P 3:46
CITY CLERK'S OFFICE
SECRETARIAT SECTION

Attention: Ulli Watkiss, City Clerk
Merle MacDonald, Administrator, Planning and Growth Management Committee

Your Worship and Members of Council:

Re: Wittington Properties Limited
1481, 1491, 1501 Yonge Street, 25, 27 and 29 Heath Street, 30 Alvin Avenue (the "Lands")
City file No 07-289051 STE 22 SA

We are the solicitors for Wittington Properties Limited ("Wittington"), the owner of the Lands, located in the northeast quadrant of Yonge Street and St. Clair Avenue East. The redevelopment of the Lands, as supported by City Council, provides for a new mixed use building fronting onto Yonge Street, two new residential condominium buildings interior to the site and townhouses facing Alvin Avenue and Heath Street (the "Development"). A new public park is to be constructed as part of the Development and conveyed to the City.

We are writing to request a technical clarification to By-law 1156-2011 (the "New By-law"), which would place all the Lands in a 'hole', such that the Lands are shown as being "Not Part of This By-law". We have reviewed the relevant mapping and it appears that perhaps a mapping error has occurred, placing some, but not all, of the Lands in a 'hole'.

Background

In support of the Development, Wittington submitted an application for Site Plan Approval to the City on December 21, 2007, under City file No 07-289051 STE 22 SA (the "Site Plan Application"). Wittington submitted a revision to the Site Plan Application on May 1, 2009. In its decision on July 21, 2009, the Ontario Municipal Board approved site specific official plan amendments and zoning By-law 810-2008. The site plan was not appealed to the Board and final approval of the Site Plan Application remains with the City.

Wittington is continuing to work on the Development and, as was agreed to in the context of the Ontario Municipal Board proceedings, an easement was obtained with Certificates issued by the Committee of Adjustment towards the end of last year on October 27, 2010.

As the Lands are the subject of an application for Site Plan Approval, the Lands meet the City's transition protocols for exclusion from the New By-law as identified by City Staff in their various Staff Reports and it was anticipated that the Lands would be excluded from the New By-law and placed in a "hole" shown as "Not Part of This By-law" on the relevant mapping.

New By-law Mapping

The Lands comprise a number of municipal addresses. As shown on the 51K-11 mapping series of the New By-law, that portion of the Lands identified with the municipal address of 1501 Yonge Street has been placed in a 'hole'. The balance of the Lands, with the municipal addresses of 1481 and 1491 Yonge Street, 25-29 Heath Street and 30 Alvin Avenue, are shown as being subject to the New By-law.

Additional Concerns

Wittington supports requests the exclusion of the Lands from the New By-law, in so far as it will allow the Development to proceed in accordance with site specific By-law 810-2008 and the active Site Plan Application. However, Wittington is concerned that the wording of the New By-law with respect to site-specific provisions, prevailing by-laws, prevailing by-law sections and exclusions ("holes") will be fully permitted by the New By-law and that nothing in the New By-law will impose any restrictions, impediments, or prohibitions that would prevent development of the Lands accordingly or alter its legal status.

In addition, appropriate direction is required regarding the potential use of transition protocols in the New By-law, including how and when properties that have been excluded as "holes' in the New By-law will be incorporated into the New By-law in the future.

We understand that City staff, pursuant to the staff report released on March 17, 2011 (the "Staff Report"), are now recommending that City Council approve an additional ten omnibus zoning by-laws in order to amend the New By-law. Details of these amendments were only very recently made available.

As the New By-law is the subject of a significant number of appeals, the New By-law is still subject to appeal and therefore revision by the Ontario Municipal Board. Proceeding with amendments to the New ZBL in this circumstance means that no one can advise with any certainty what the effects of these amendments will be. This applies both to the Amendments recommended in the Staff Report and any other amendments, site-specific or otherwise, as have been or as may be considered by Council. Thus, there is no way for any interested party to know whether an amendment will put it at risk during the transitional period before the New ZBL comes into force. The Staff Report, with all due respect, does not adequately explain the intended specific effects of the Amendments, nor does it deal with the difficulties created by proceeding with zoning by-law amendments during the transition period before the New ZBL is finally approved.

We are writing to express our Wittington's disagreement with the course of action that is being proposed by City staff and recommended to the Planning and Growth Management Committee and City Council. We note the following:

- The 180 pages of Amendments have again been released at the last minute and without the benefit of a blackline version, making review and comprehension of the nature and impact of the proposed changes extremely difficult, if not impossible.

- The Amendments as currently proposed will not add clarity to the New ZBL.
- In that regard, we note that there are substantive zoning changes proposed among the Amendments (such as changes to the requirements for bicycle parking spaces and access to certain types of loading facilities).
- As noted above, we are concerned about the legal effect of making changes to a document which is still subject to appeal and revision by the Ontario Municipal Board. At a minimum, appeals of the Amendments and the New By-law as a whole will likely be required in order to obtain clear guidance in this regard.
- Many of the Amendments are framed as additions or changes to the provisions of Chapters 900, 950, and 955. However, in many instances, these changes are presented without any clear references to the municipal addresses that they affect and the impact on the Lands is not known.

We recommend that the Planning and Growth Management Committee refuse to adopt the recommendations set out in the Staff Report.

We would be happy to discuss the matter with you further at your earliest convenience.

Yours very truly,

McCarthy Tétrault LLP

Per:

Cynthia MacDougall

Enc.

c: Mike Moyer, Wittington Properties Limited
Tim Burkholder, Community Planning