PG 2.5.83

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April 7, 2011

Mayor Rob Ford and Members of Council
City of Toronto
100 Queen Street West
Toronto, Ontario M5H 2N2

Attention: City Clerk

Attention: Merle MacDonald, Administrator, Planning Growth Management Committee

Your Worship and Members of Council:

Re: Repeal of Zoning By-law No.: 1156-2010 (the "New Zoning By-Law")

Planning And Growth Committee Item PG2.5

(a) The Repeal of a By-law cannot be appealed;

(b) The New Zoning By-law was not passed as an Official Plan conformity exercise; and

(c) No formal Notice is required to repeal the New Zoning By-law

Further to the meeting of Planning and Growth Management Committee of March 24, 2011 and on behalf of the clients identified in our previous correspondence to the City, we are writing to address three specific issues which have been raised in respect of the Motion to Repeal the New Zoning By-law which we are hopeful will assist in your implementation of such repeal.

(a) Council's Decision to Repeal the New Zoning By-law CANNOT be Appealed"

When the Planning and Growth Management Committee put forward a motion to Repeal the New Zoning By-law, City Staff suggested that such repeal of the by-law would trigger further appeals to the Ontario Municipal Board, thereby extending the time period whereby two by-laws would still be in effect.

The repeal of a by-law which has yet to be "in force and effect", which by-law is currently under appeal, cannot be appealed. The Courts and the Ontario Municipal Board have ruled on this matter, which decisions are outlined below. The two decisions which confirm that there is no right of appeal, when Council repeals a by-law which is still under appeal, are as follows:

Re Cadillac Development Corp. Ltd. and City of Toronto (1973), 1 OR (2d) 20, 39 DLR (3d) 188;

Re Hamilton (City) Official Plan Amendment 12 and Zoning By-laws 84-46 and 88-86, (1989) 23 OMBR 476.

A repealing by-law is not a zoning by-law passed under Section 34 of the *Planning Act, and as such, there is no requirement to enter into the same public process as required in respect of the passage of a zoning by-law.*

Furthermore, the Ontario Municipal Board, in the *Hamilton* case, relies upon the Decision of the Courts, when it states:

> "As stated by the courts, no express limitation is to be found in this statute [i.e., the *Planning Act*] on Council's right to repeal in whole or in part a by-law passed but not yet in force. No right of appeal from such action is given in the statute. Therefore, none exists and this Board is without jurisdiction to hear such "appeals"."
>
> (emphasis added)

(b) The New Zoning By-law was not passed so as to conform with the New Official Plan

We understand that there has been some suggestion that the requirement to adopt the New Zoning By-law was a legislated "conformity" exercise under the *Planning Act* and that repeal of the New Zoning By-law would run afoul of this exercise. With respect, this is quite simply not the case.

A zoning by-law conformity exercise is only required by the *Planning Act* in the circumstances set out in Section 26(9) of the Act. The requirement to update the City's zoning by-laws within a three-year time period applies only **after** the City has revised its Official Plan to conform with provincial plans in effect (i.e., the Growth Plan for the Greater Golden Horseshoe) under Section 26 of the Act.

The City's Growth Plan conformity exercise required by the *Places to Grow Act* remains incomplete, and the City's five-year Official Plan review has not even commenced. Therefore, the three-year time period referred to in Section 26(9) of the Act has not yet started to run.

(c) There is no requirement to provide notice of Council's repeal of the New Zoning By-law

Once again, we understand there is a suggestion that City Council must give notice of its intention to repeal the New Zoning By-law. As noted in the Court and Ontario Municipal Board Decisions referenced above, the repeal of Council's intention (given that such by-law is under appeal), does not require any prior notice, with such repeal placing the issue "at and end". In other words, the withdrawal of the City's intent to proceed with the repeal of the New Zoning By-law does not require any prior notice. In any event, in this particular instance, anyone who was notified of the public meeting before the Planning and Growth Committee had actual notice of the recommendation to repeal the New Zoning By-law.

We hope that the responses set out herein are of assistance when you make your decision in respect of the above-noted matter.

Yours truly,

Adam J. Brown
AJB/jn