PG2.5.90

Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4299
dbronskill@goodmans.ca

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April 11, 2011

Our File No.: 10-2408

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

Attention: City Clerk

Your Worship and Members of Council:

Re: Repeal of Zoning By–law 1156-2010
Item PG2.5 – Amendments to Zoning By–law 1156-2010

We are solicitors for the Building, Industry and Land Development Association ("BILD"). With over 1,300 members, BILD is the voice of the land development, home building and professional renovations industry in the Province of Ontario. Our client is one of 694 appellants of the New Zoning By-law (By-law No. 1156-2010).

We are writing to confirm our request, made to Planning and Growth Management Committee, that City Council repeal the New Zoning By-law and that City staff be directed to bring the new zoning by-law back to PGMC, with any recommended amendments from City staff and from consultation with various stakeholders, with at least 30 days notice before any statutory public meeting. The reasons for this request are outlined in the attached letter.

We are also writing to address certain issues raised at PGMC and in the staff report dated April 8, 2011:

1. Can a by-law repealing the New Zoning By-law be appealed to the Ontario Municipal Board?

2. Is a public meeting required to repeal the New Zoning By-law?

3. Is the New Zoning By-law a conformity exercise under the *Planning Act*?

Potential Appeal of a Repeal

It was suggested at PGMC that a repeal of the New Zoning By-law was a matter that could be appealed to the Ontario Municipal Board. However, in our view, a decision by City Council to repeal the New Zoning By-law cannot be appealed.

The case law on this issue is settled. As succinctly stated by the Ontario Municipal Board in *Re Hamilton (City) Official Plan Amendment 12 and Zoning By-laws 84-46 and 88-86* (1959) 23 O.M.B.R. 476, "No right of appeal from such action is given a statute. Therefore none exists and this Board is without jurisdiction to hear such "appeals"." This line of cases was recently affirmed by the Ontario Municipal Board in 2010.

Public Meeting Requirement

Contrary to the assertion in the staff report dated April 8, 2011, a repealing by-law is not a zoning by-law passed under Section 34 of the *Planning Act*. As such, the public process associated with the enactment of zoning by-laws, including the requirement to hold a public meeting, is not required. Further, personalized notice to every appellant of the New Zoning By-law is not required.

"Conformity" Exercise

We also understand that it has been suggested that the repeal of the New Zoning By-law would violate Section 26(9) of the *Planning Act*. Not only is this incorrect, but also it is a fundamental misstatement of the purpose of the harmonization exercise that led to the enactment of the New Zoning By-law.

A zoning by-law conformity exercise is only required pursuant to Section 26(9) after the City has revised its official plan to conform with provincial plans in effect. Our understanding is that the City's growth planning conformity exercise remains incomplete and the City's Five-Year Official Plan Review has not commenced. Therefore, the three-year time period referred to in Section 26(9) of the *Planning Act* has not yet started to run.

In any event, the New Zoning By-law was never intended to be a conformity by-law. Indeed, there are many "holes" in the New Zoning By-law that were created because of concerns regarding lack of conformity with the City's official plan. The stated purpose of the enactment of the New Zoning By-law was harmonization, not conformity. It is not accurate to suggest that the enactment of the New Zoning By-law was part of a conformity exercise when the representations in public notices and to PGMC did not focus on conformity.

Conclusion

Contrary to the position in the City staff report, the Ontario Municipal Board is not the most efficient forum for resolution of outstanding issues and concerns. Indeed, our understanding is that **four appeals** have been resolved in the **approximately 6 months** since enactment of the New Zoning By-law by City Council. Further, the 10 amending by-laws recommended by City staff would not resolve many existing appeals but, instead, would likely trigger more appeals as evidenced by the correspondence on the record with PGMC and City Council. These appeals could number in the hundreds, especially when many of the existing 694 appellants to the New Zoning By-law determine that they must appeal the 10 amending by-laws.

We hope this information is of assistance to you regarding the above-noted matter. BILD remains strongly of the view that a repeal is the only way to address the numerous issues associated with the New Zoning By-law. The most appropriate and efficient course of action remains to repeal the New Zoning By-law and it is well within the jurisdiction and authority of City Council to do so at its meeting on April 12-13, 2010.

BILD also remains committed to work City staff to address the numerous identified issues. Throughout this process, BILD has indicated its appreciation for the hard work of City staff on a difficult project. Similarly, City staff have also undertaken constructive dialogue with BILD and its representatives and we have no doubt that such dialogue will continue.

Yours very truly,

Goodmans LLP

David Bronskill
DJB/mr
cc: Client

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