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VIA E-MAIL

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

Attn: Ms. Merle MacDonald., Administrator

Dear Sirs and Madams:

**Re: Planning and Growth Management Committee
Meeting – May 10, 2011
Public Meeting to consider whether to recommend a repeal of Zoning By-law
1156-2010 (the “Bylaw”)**

We are the solicitors for A&W Food Services of Canada Inc., McDonald’s Restaurants of Canada Ltd., The TDL Group Corp. (operators and licensed owners of Tim Horton’s Restaurants) and Wendy’s Restaurants of Canada Inc., as well as their industry association, The Ontario Restaurant Hotel and Motel Association (ORHMA). You will recall that on behalf of the above noted restaurant brands including their representing restaurant association, we previously appealed the By-law (appeal numbers 513-517 inclusive, OMB case number PL101111).

We understand that your committee will be considering the Bylaw at a public meeting on May 10, 2011 and as set out in the notice of this meeting, we take this opportunity to submit our client’s comments for your consideration. We are also registered to speak, and will make similar, though expanded remarks at the public meeting.

Our clients support a repeal of the Bylaw.

In our view, and as reflected in our clients’ appeals filed with the Ontario Municipal Board, the Bylaw is, and continues to be deficient in that it does not meet the tests imposed by the *Planning Act* with respect to either public consultation, or an evaluation by staff and Council of whether the bylaw was consistent with the *Provincial Policy Statement* or conformity with the *Places to Grow Act*.

To begin with, we think it important to note that while staff have made repeated public statements about consulting with appellants and reduction of the number of appeals, our clients have not heard from staff once since the filing of our appeals in September of last year. This is important if for no other reason that our clients' appeals are of the entire Bylaw, as well as of a significant number of individual sections. One would have thought that such broad appeals would have a higher priority for the investigation of possible settlement.

This lack of public consultation is reflected in other weaknesses of the Bylaw, and indeed, form the basis for our clients' two Bylaw-wide appeals.

We have written previously to this Committee on the subject. In essence, the information distributed by staff in advance of the statutory public meetings held in advance of the passage of the Bylaw did not provide sufficient information and material to allow the public to understand generally the zoning proposal that was to be considered. Quite clearly, staff were recommending, and changes to the Bylaw were being made and voted on by Council, right up until the moment of final passing on August 27th.

A repeal of the Bylaw will allow proper consultation with the public on a suitable replacement that comprehensively implements the Official Plan rather than the piece-meal "some now, more later" approach that staff are pursuing. This would be consistent with statutory requirements, and would as well be consistent with the policy of the City in requiring such consultation when dealing with development applications by the public or by the private sector.

We have also reviewed the written record of reports to Committee and Council. Our review indicates that, as noted in our clients' appeals, that at no time was consideration given by staff, Committee or Council as to the questions of consistency of the Bylaw with the *Provincial Policy Statement* or conformity with the *Places to Grow Act*. The fact of non-fulfilment of these statutory obligations are fatal to the Bylaw, but moreover a major failing of the review of the document. A repeal of the Bylaw would allow these important considerations to take place.

The Bylaw was rushed to final approval and remains very flawed in a variety of ways. Large portions of the City are left "blacked out", indicating that staff themselves are at a loss as to how to properly harmonize substantial areas of the City under the new regime. There are a myriad of new performance standards that have been drafted into the Bylaw that have been inadequately discussed with the public, including our clients, which go well beyond the underlying concept of "harmonization".

From our clients' perspective, large portions of the Bylaw clearly rely on outdated, unsubstantiated information on which little, if any, consultation with industry has happened. The Bylaw contains no transition provisions, due to staff's unwillingness to consider how such provisions could be justified in law, resulting in significant injury to many landowners.

Interestingly, such transition provisions have been used successfully in major centres in Ontario such as Ottawa.

Based on the foregoing, our clients encourage Committee to recommend repeal of the Bylaw, so that we might “go back to the drawing board” and create a Bylaw that is truly “comprehensive”, one that removes the myriad of flaws that continue to exist and is capable of directing growth across the amalgamated City in accordance with the Official Plan.

We request the Clerk provide us with notice of the Committee and/or Council’s decision on a repeal of the Bylaw.

Thank you for your attention to our comments.

Yours very truly,



Michael S. Polowin

cc. Clients

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