

October 11, 2012

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

**Attention: Ms. Merle MacDonald
Secretary**

**Re: June 2012 Draft of Proposed Zoning (Harmonization) By-law for the City of Toronto
AI Reisman Management Limited
Our File: PN 5120**

Dear Chair Milczyn and Members of Committee,

Our Client, AI Reisman Limited and the subsidiaries thereof, is the owner of several properties within the City of Toronto. Since August of 2009, we have appeared before this Committee on several occasions and made numerous written submissions to the City of Toronto wherein we have not only outlined in detail our Client's concerns relating to the effect of the proposed zoning by-law but also provided constructive comments for review and consideration by Staff. Despite those efforts, with the adoption of By-law No. 1156-2010 in August of 2010, our Client was left with no alternative other than to file several appeals against the approval of that document, namely:

- Appeal No. 67 in relation to 3241, 3251, 3261 Kennedy Road and 19, 23, 25 & 27 Passmore Avenue;
- Appeal No. 68 in relation to 4271 Sheppard Avenue East;
- Appeal No. 70 in relation to 29, 31, 31A Passmore Avenue;
- Appeal No. 71 in relation to 3500 - 3520 McNicoll Avenue and 83 - 85 Dynamic Drive;
- Appeal No. 72 in relation to 258 Attwell Drive;
- Appeal No. 73 in relation to 109 - 147 Eddystone Avenue; and,
- Appeal No. 74 in relation to 41 Passmore Avenue.

Following receipt of slightly less than 700 appeals against the approval of the Zoning By-law, the City repealed By-law No. 1156-2010. In so doing, Staff was directed to meet with each of the appellants. Accordingly, we attended two meetings with our Client and Staff on June 15 and 21, 2011 to review and discuss the appeals filed on behalf of AI Reisman Limited and the subsidiaries thereof. At the conclusion of those meetings, Staff indicated that our Client would be advised of the nature and scope of the revisions to the zoning by-law as specifically related to our Client's land holdings

In an effort to ensure that our Client's concerns would be addressed in an appropriate manner, we subsequently prepared a submission dated August 12, 2011, wherein we summarized each of the site specific concerns, as well as numerous general concerns relating to the by-law as a whole. This was done in the interests of providing for the resolution of our Client's concerns and avoiding the need to file further appeals upon re-enactment of the proposed Harmonization By-law. A copy of the submission, dated August 12, 2011, is attached hereto. To date, there has been no formal response to the August 12, 2011 submission nor, for that matter, any of the prior written submissions made since August of 2009 on behalf of our Client.

In June of 2012 we received notice that the City was releasing a revised draft of the Harmonization By-law for review and comment. Given our Client's on-going interest in this matter, on September 11, 2012, we attended a Public Open House convened by the City to provide ratepayers and interested stakeholders with information pertaining to the revised draft of the proposed By-law. We now understand that a further draft of the revised zoning by-law will be made available on November 18, 2012, which is to incorporate revisions arising from the comments received during the public consultation process which has occurred in recent weeks.

Based upon our preliminary review of the June 2012 draft of the proposed zoning by-law, many of the concerns outlined in the previous submissions made on behalf of our Client continue to exist despite the fact that those concerns have been well documented over the past three years. Accordingly, once the final draft of the proposed By-law is available for public review and comment in November, we will be making detailed submissions in the interests of protecting our Client's appellant rights.

To summarize, the process followed by the City in relation to the review, adoption and subsequent repeal of By-law No.1156-2012 resulted in unnecessary and extraordinary financial demands being placed upon our Client in order to protect existing property rights. It would appear that the process now being followed by the City of Toronto is simply a reflection of the past. Property owners and other stakeholders will be required to monitor numerous versions of a draft zoning by-law which incorporate ad hoc revisions in response to specific interests. It is further noted that this process is proceeding in the shadow of the Official Plan Review which, upon completion, will result in policy changes and the need to implement such policies through either revisions to the draft zoning by-law or the introduction of amendments thereto.

In conclusion, this is an expensive and time consuming process which is now proceeding concurrent with the Municipal Comprehensive - Five Year Official Plan Review, most notably as relates to Employment Lands. On behalf of our Client, we therefore reiterate our previously stated position that it is premature to proceed with the review and consideration of the proposed Zoning By-law in advance of completion of the Municipal Comprehensive - Five Year Review of the Official Plan in 2013. As previously noted on numerous prior occasions, there is considerable merit in providing for a co-ordinated approach which will ultimately result in significant costs savings for both the public and private sectors.

Should you have any questions in relation to the foregoing comments, please do not hesitate to contact the undersigned. By way of a copy of this letter which has been forwarded to the City Clerk, we hereby confirm our previous request for notice of any Public Meetings held to discuss the draft of the proposed zoning by-law pursuant to the provisions of Section 34 (13) of the Planning Act, R.S.O. 1990, c.P.13, as amended, and Ontario Regulation 545/06.

Sincerely yours,
McDermott & Associates Limited



J. D. McDermott, M.C.I.P., R.P.P.
Principal Planner

**The Chair and Members
Planning & Growth Management Committee
City of Toronto**

-3-

October 11, 2012

copy to: Mayor Rob Ford,
City of Toronto

Councillor Michael Del Grande
Ward 39, City of Toronto

Councillor Michael Thompson
Ward 37, City of Toronto

Mr. John Livey
Deputy City Manager, City of Toronto

Ms. Jennifer Keesmaat
Chief Planner & Executive Director

Mr. Joseph D'Abramo
Director, Zoning By-Law and Environmental Planning

Ms. Ulli S. Watkiss
City Clerk

Al Reisman Management Limited
Attention: Mr. Keith Lahey

Mr. David White, Q.C.

August 12, 2011

Corporation of the City of Toronto
Zoning By-law Project Office
Metro Hall, 22nd Floor
55 John Street
Toronto, Ontario
M5V 3C6

Attention: **Mr. Joseph D'Abramo**
Director, Zoning By-law and Environmental Planning

Re: **Resolution Of Appeals In Relation To By-law No. 1156-2010**
AI Reisman Limited / Appeals Nos. 67, 68, 70, 71, 72, 73 & 74
Our File: PN 5120

Dear Mr. D'Abramo:

Further to our meetings of June 15 and 21, 2011, we have undertaken to summarize the appeals filed on behalf of AI Reisman Limited and the subsidiaries thereof in relation to By-law No. 1156-2010. This submission has been prepared with a view to providing for the resolution of the issues and avoiding the need to file further appeals upon re-enactment of the proposed zoning by-law.

Through this submission, the issues have been summarized within one of two categories, namely as a *Site Specific Issue* relating to a specific property or area, or, as a *General Concern* which would affect all lands zoned within a specific zone classification or which may be affected by a general provision contained in By-law No. 1156-2010. The matters of concern to our Client, as set out in detail in our numerous prior written submissions, are summarized as follows, namely:

Part One - Site Specific Issues

1.1 3241, 3251 & 3261 Kennedy Road - and- 19, 23, 25 & 27 Passmore Avenue (Appeal No. 67)

This Appeal was heard by the Ontario Municipal Board on February 23, 2011. By way of the decision of the Ontario Municipal Board, dated March 8, 2011, the Board ordered that By-law No. 1156-2010 be amended to zone the lands in question within the Employment Industrial - Commercial Exception One (EC-1) Zone. The effect of the EC-1 Zone was to recognize By-law No. 24982, as amended by By-law No. 153-2011, as a Prevailing By-law under Chapter 900 of By-law No. 1156-2010. Copies of By-law No. 153-2011, being the amendment to By-law No. 24982 as approved by the Ontario Municipal Board on August 17, 2010, and By-law No. 465-2011, being the amendment to By-law No. 1156-2010 as approved by the Board on March 8, 2011, are attached hereto.

To avoid further appeals and possible litigation in relation to the zoning of the lands in question, our Client requests that the subject property be zoned within the Employment Industrial - Commercial Exception One (EC-1) Zone and that the effect of the Employment Industrial - Commercial Exception One (EC-1) Zone be retained in the manner approved by the Ontario Municipal Board in any subsequent iteration of the Harmonization By-law, that being to recognize By-law No.24982, as amended by By-law No. 153-2011, as a Prevailing By-law.

1.2 29, 31 and 31A Passmore Avenue (Appeal No. 70)

The zoning of the subject lands within the Employment Heavy Industrial (EH) Zone is considered inappropriate given the contextual setting of the property, the existing built form, the nature of the businesses which lease premises at this location, and, the stated purpose of the Employment Heavy Industrial (EH) Zone in Section 60.30.1.1 of By-law No. 1156-2010.

The lands should, more appropriately, be zoned with the Employment Light Industrial (EL) Zone with a view to providing for the maintenance of the area for light manufacturing and other employment land uses, inclusive of related ancillary retail and service commercial activities, as provided for in accordance with the approved Official Plan. The zoning of the lands in this manner will not only provide for the long term maintenance of this area for employment related land uses but also reinforce the function of the site as part of a transitional area between the sensitive land uses to the south and west and the heavy industrial areas to the east of the GO Transit rail corridor, a planning principle clearly enunciated in the approved Official Plan.

As discussed during the course of our meeting of June 15, 2011, it is suggested that the City should reconsider the zoning of at least three of the four properties located south of Passmore Avenue and to the west of the proposed extension of Redlea Avenue, namely 29, 31 and 31A Passmore Avenue, 33 Passmore Avenue and 41 Passmore Avenue (refer to Appeal 74 below). In this context, we understand that the City of Toronto has initiated or will be proceeding with the purchase, or in the alternative, the expropriation of 33 Passmore Avenue to facilitate the extension of Redlea Avenue south of Passmore Avenue. The two remaining properties noted above are under the ownership and/or control of our Client.

1.3 41 Passmore Avenue (Appeal 74)

The proposed zoning of the subject property within the Employment Heavy Industrial (EH) Zone is inappropriate given the contextual setting of the property and the nature of the businesses which have occupied this site for the past several years, specifically showrooms, wholesale distribution and warehouse operations, and, ancillary retail sales.

The property in question, together with the adjacent lands referred to above (i.e. Appeal No. 70), functions as a transitional area between the sensitive land uses to the south and west, the commercial and light industrial uses to the north and immediate east and the heavy industrial uses to the east of the GO Transit rail corridor south of Passmore Avenue.

As discussed during the course of our meeting of June 15, 2010, the lands in question should be zoned within either the Employment Industrial - Commercial (EC) Zone or the Employment Light Industrial (EL) Zone. Given the nature of the existing uses which occupy this structure, it is submitted that the zoning of the subject lands within the Employment Industrial - Commercial (EC) Zone is preferable to the zoning of the lands within the Employment Light Industrial (EL) Zone. It is further submitted that the range of retail and service commercial uses to be permitted in the Employment Zones should reflect the stated public interests and policies established under the approved Official Plan for the City of Toronto. The issue relating to the scope and nature of retail permissions within the Employment Zones is discussed in greater detail in Part Two of this submission.

1.4 3500 - 3520 McNicoll Avenue and 83 - 85 Dynamic Drive (Appeal No. 71)

The proposed zoning of the property within the Employment Industrial (E) Zone is considered acceptable. Various concerns have been identified however in relation to the conditions which apply to regulate the permitted uses.

Specific concerns relate to the scope and nature of ancillary retail and service commercial permissions inclusive of the restrictions proposed in terms of service commercial uses, the restrictions which apply to regulate offices as an ancillary use, and, the loss of permissions relating to education and training facilities. The exact nature of the concerns relating to the range of uses and activities permitted and the restrictions imposed upon service commercial operations are outlined in greater detail in Part Two of this submission.

In the event that the issues identified in Part Two of this submission are not resolved in a manner which recognizes existing permissions, a position reiterated on numerous occasions by the Planning & Growth Management Committee, it is submitted that the zoning of the lands in question within the Employment Industrial (E) Zone is not appropriate by reason of the loss of as-of-right permissions. It remains the position of our Client that unnecessary hardship will result should a zoning by-law be enacted which does not provide for the range of permissions identified under the approved Official Plan for lands designated within the Employment Area land use classification.

1.5 4271 Sheppard Avenue East (Appeal No. 68)

Under By-law No. 1156-2010, the lands were zoned within the Commercial Residential (CR) Zone subject to Development Standard SS3 and Exception CR-323. It is further noted that a portion of the lands are also delineated as being within the area affected by Parking Policy Area Four (i.e. PA4) which is effective to govern both the minimum and maximum number of off-street parking spaces to be provided.

While the zoning of the lands within the Commercial Residential (CR) Zone is considered appropriate, concern is expressed in the context of the range of permitted uses and the effect of the performance standards applied to the property by way of Exception CR-323 and Policy Area Four (i.e. PA4).

Exception CR-323

Exception CR-323 appears to have originated from the provisions of By-law No. 10076 of the former City of Scarborough. Originally the provisions applied to a significantly larger area located adjacent Sheppard Avenue extending from Midland Avenue on the west to McCowan Road on the east. In this context it is submitted that the references to Brimley Avenue and McCowan Road are not relevant as Exception CR-323 applies to only the lands located to the south of Sheppard Avenue, east of Midland Avenue and to the north-west of the Canadian Pacific Rail corridor. Accordingly all references to Brimley Avenue and McCowan Road should be deleted from Exception CR-323.

A further concern relates to the effect of Exception CR-323 and the restrictions upon retail store permissions. Reference is made to Subsection (a) of Exception CR-323 which states that...*"a retail store permission does not include a department store, discount store or supermarket on these lands if it deals in more than three branches of retail trade or business in the same premises or in separate departments of premises under one roof or in connected premises."* As in our previous submissions, we seek clarification as to the intent of this restriction as it does not appear to be appropriate in the

context of the existing use and development of the subject property or the provisions of Section 40.10.20.20 of By-law No. 1156-2010 which provide for retail uses subject to certain conditions. It is respectfully submitted that the provisions of the Commercial Residential Zone are more than adequate to regulate the future development and use of the lands in question, and, that there is no need to impose the additional restrictions set out under Exception CR-323.

Policy Area Four (PA4)

We understand that the effect of Policy Area Four is to establish both minimum and maximum off-street parking requirements. Furthermore, the by-law proposes that the lands situated at 4271 Sheppard Avenue East be partially zoned within the area affected by Policy Area Four.

For the reasons outlined during the course of our meeting of June 21, 2011, the partial zoning of the property located at 4271 Sheppard Avenue East within Policy Area Four (i.e. PA4) is inappropriate given the area and configuration of the site. It is submitted that the entire site should be placed within Policy Area Four if, in fact, Policy Area Four is to be brought forward in a subsequent iteration of the zoning by-law.

In addition, the establishment of a maximum parking space requirement results in significant issues for property owners, particularly in those situations where the building is leased to numerous tenants, typically for relatively short time periods, and, where more than the maximum number of parking spaces exists. This follows from the fact that the provisions of the by-law would not allow for the issuance of a building permit to a new tenant where more than the maximum number of parking spaces exists. Under such a situation, the effect of the by-law is to require the granting of a minor variance to resolve the problem, a time consuming public process which is expensive and uncertain.

In the case of 4271 Sheppard Avenue East, we advised that, in the Fall of 2010, our Client undertook the completion of a traffic operations and parking study in response to receiving notice from the City of Toronto that the TTC intended to expropriate a significant portion of the property adjacent the southerly limits of Sheppard Avenue. The results of the study suggest that the optimum minimum number of parking spaces required to sustain the businesses operating at this location was in the order of 108 spaces. In response, you indicated that the proposed by-law would be revised to recognize the provision of 108 spaces as the maximum number of parking spaces to be provided at this site.

Other Related Issues

As discussed during the course of our meeting of June 21, 2011, concern is also expressed in relation to the provisions which govern business and/or professional offices, medical and/or dental clinics and motor vehicle rental establishments within the Commercial Residential (CR) Zone. A further concern relates to the requirements of Chapter 230, entitled Bicycle Parking Regulations, and the associated standards for the provision of change rooms and showers.

The scope and nature of the general issues and concerns as relate to the use of the subject lands and the Commercial Residential (CR) Zone provisions are set out in detail in Part Two of this submission. Reference should also be made to the appeal filed in relation to By-law No. 1156-2010 as it applied to regulate the use of the lands located at 4271 Sheppard Avenue East.

1.6 109 -147 Eddystone Avenue (Appeal No. 73)

The property in question is presently developed for the purposes of a single storey, multi-unit structure having a gross floor area of approximately 3,860 square metres (i.e. 41,560 square feet). Existing tenants represent a cross section of quasi commercial - industrial uses which include custom workshops and light manufacturing, assembly, fabrication and processing uses, inclusive of the processing and packaging of food products, wholesale distribution and warehouse related activities, a showroom, the sale and service of electronic, computer and video products, facilities for the sale and custom installation of car audio and alarm systems, and, the offices of an overseas currency exchange.

Under By-law No. 1156-2010, the subject lands were zoned within the Employment Light Industrial (EL) Zone. The zoning of the subject property within the Employment Light Industrial (EL) Zone results in many of the uses, which have existed at this location for several years, becoming non-conforming uses. This is considered unreasonable given that the lands are designated within the Employment land use classification under the approved Official Plan which allows small scale retail and service commercial uses and activities.

It is submitted that the lands should either be zoned within the Employment Industrial - Commercial (EC) Zone or, in the alternative, denoted as an area which is not part of the zoning by-law. It is noted that the lands situated immediately to the east of the subject property, north and south of Eddystone Avenue and to the west of Jane Street, are denoted as an area which is not part of the zoning by-law. Given that the use of the subject property is similar to that of the properties situated to the east, it would appear reasonable to denote the site as being within an area which is not part of the by-law and that the area should be reviewed at a future date upon resolution of the Employment Area Policies and related designations.

Other Related Issues

Restrictions On Eating Establishments and Retail Uses

The provisions of the Employment Light Industrial (EL) Zone state that retail stores and eating establishments are only permitted as an Ancillary Use in association with a Principal Permitted Use. Given the location and nature of the subject property, such a restriction results in unnecessary hardship, particularly in view of the approved Official Plan policies pertaining to lands designated within the Employment Area land use classification. This issue is discussed in greater detail in Part Two of this submission.

Places Of Worship Existing Prior To Adoption Of By-law No. 1156-2010

Reference is made to Section 4.6.2 of the Official Plan which states that, within the Employment Area land use designation, all existing places of worship legally are permitted if established prior to the approval of the Plan. Since places of worship are not permitted in the Employment Light Industrial (EL) Zone, the effect of the By-law No. 1156-2011 was to render the existing place of worship and related facilities, located within the premises at 109-147 Eddystone Avenue, a legal non-conforming use. To avoid loss of as-of-right permissions relating to places of worship at this location, a site specific zoning is required to provide for recognition of the existence of such a use at this location.

1.7 258 Attwell Drive (Appeal No. 72)

Under By-law No. 1156-2010 the property situated at 258 Attwell Drive was zoned within the Employment Industrial (E) Zone. It is understood that the purpose of the Employment Industrial (E) Zone is to provide for ... "*general manufacturing, industrial and other employment land uses which may co-exist in close proximity to other manufacturing and industrial land uses without major impacts on one another.*"

The effect of zoning the subject lands within the Employment Industrial (E) Zone was to no longer permit many of the uses presently allowed within the IC2 Zone under By-law No. 11,737, as amended, of the former City of Etobicoke. Specific reference is made to such uses as education and training facilities, banquet halls, hotels and an undertaking establishment. For the reasons outlined during the course of our meeting of June 21, 2011, our Client requests that the existing permissions be restored by zoning the property within a site specific Employment Light Industrial (EL) Zone.

Other Related Issues

Restrictions on Food Service Uses

Under By-law No. 11,737, as amended, food service uses, which are noted to include restaurants, are permitted without restrictions at this location. In contrast, within the Employment Light Industrial (EL) Zone, the provisions of Section 60.10.20.30 of By-law No. 1156-2010 only provide for an eating establishment where the use is ancillary to a principal permitted use, subject to further limitations in terms of the floor area which may be devoted to such uses and activities. By way of reference to the approved Official Plan, which provides for restaurants and small scale retail and service commercial uses in areas designated within the Employment Area land use classification, our Client requests that existing food service permissions be recognized.

Restrictions on Retail and Service Commercial Uses

As noted above, the approved Official Plan provides for small scale retail and service commercial uses that serve area businesses and employees. In contrast, By-law No. 1156-2010 is effective to restrict retail permissions to premises in which photocopying, printing and postal or courier services are sold or provided. Such a narrow interpretation of the approved Official Plan is contrary to the intent of the policy framework. It is submitted that there is a need to provide for a broader range of retail and service commercial uses consistent with the intent of the approved Official Plan and the range of retail and service commercial uses presently permitted at this location.

The foregoing issues, which are not necessarily of a site specific nature, are discussed in greater detail in Part Two of this submission.

Part Two - General Concerns

2.1 Need to Differentiate Between Ancillary and Accessory Uses

It is submitted that there is a need to clearly differentiate between Accessory Uses, Buildings and Structures and Ancillary Uses. Based upon accepted land use planning principles, accessory buildings or structures and accessory uses are normally defined as follows, namely:

"Accessory Building or Structure

Shall mean a detached building or structure that is not used for human habitation, the use of which is customarily incidental and subordinate to a principal permitted use, building or structure located on the same lot therewith."

-and-

"Accessory Use

Shall mean a use customarily incidental, subordinate and exclusively devoted to the main use of the lot, building or structure located on the same lot therewith."

By comparison, an ancillary use is one which supplements the principal permitted use or is of a subsidiary nature and which may exist independent of the principal permitted use as is provided for in the various sections of By-law No. 1156-2010.

Through the introduction of definitions of accessory use and accessory building or structure, and, by way of reference to accessory buildings, structures and uses as a permitted use in each of the zone classifications subject to appropriate restrictions, the intent of By-law No. 1156-2010 will be clear and not open to differing interpretations. This is of particular significance in terms of those sections of the zoning by-law which provide for certain uses only where the use is ancillary to a principal permitted use, an approach which is considered to be of merit.

2.2 Business and Professional Offices / Medical and Dental Offices - Commercial Residential (CR) Zone

Reference is made to Section 1.20.2(22), entitled *Interpretation of Office*, which states that.."*unless otherwise stated, for the purpose of this By-law an office includes a business office, administrative office, government office and medical office.*" Reference is also made to Section 1.20.2(10), entitled *When Uses Not Listed*, which reads..."*in this by-law if a use is not listed as permitted then it is not allowed*", and, Section 1.20.2(11) entitled *Interpretation of Uses*, which reads ..."*Unless otherwise stated in this By-law, a use may not be interpreted as including any other use specifically set out as a permitted use in a zone, or defined in this by-law.*" It is further noted that neither the terms office or medical clinic are defined under By-law No. 1156-2010.

During the course of the meeting of June 21, 2011, Staff indicated that Section 1.20.2(22) should be interpreted to mean that, unless otherwise stated in the proposed zoning by-law, an office includes a medical and/or dental clinic. It is further noted that a *Holistic Centre* is a term specifically defined in the zoning by-law, and, that such a use, by reason of the provisions of Section 1.20.2 (11) of the by-law, cannot be interpreted as representing a business and/or professional office or a medical and/or dental clinic.

The provisions of By-law No. 1156-2010 which regulate the use of lands for business and/or professional offices, medical and/or dental clinics and holistic centres are somewhat entangled and

need to be clarified. For example, a measure of uncertainty exists from the perspective of whether a medical and/or dental clinic is within the meaning of the term office given that medical and dental offices are specifically referred to as a use which may or may not be permitted in certain zones. This issue is further underscored by the fact that specific reference is made to a *medical office* as opposed to an *office, excluding a medical office*, under Chapter 200, Parking Space Regulations of the draft by-law.

As stated in our previous submissions, the terms business and/or professional office and medical and/or dental clinic should be specifically defined in the proposed zoning by-law. Furthermore it is submitted that the By-law should be revised to specify in which zones a business and/or professional office, a medical and/or dental clinic and a holistic centre are permitted. To assist you in the review and consideration of the recommended approach, we offer the following definitions for your review and consideration, namely:

" Business and/or Professional Office

Shall mean a building or part of a building in which one or more persons are employed in the management, direction or conducting of a business or where professionally qualified persons and their staff serve clients or patients who seek advice, consultation or treatment and, for the purposes of this by-law, shall include the administrative offices of a non-profit or charitable organization."

"Medical or Dental Clinic

Shall mean a building or part of a building where members of the medical profession, dentists, chiropractors, osteopaths, optometrists, physicians or occupational therapists, either singularly or in union, provide diagnosis and treatment to the general public without overnight accommodation and shall include such uses as reception areas, offices for consultation, X-Ray, operating rooms for minor surgery and procedures, and, a pharmaceutical dispensary, provided that all such uses have access only from the interior of the building but shall not include any other use or activity otherwise defined or classified in this By-law.

This is a matter of considerable significance in the context of the leasing of premises at 4271 Sheppard Avenue East and presumably in other areas zoned within the Commercial Residential (CR) Zone. This follows, in part, from the fact that, under the approved zoning now in effect, a business and/or professional office, and, a medical and/or dental clinic are specifically noted as permitted uses. Through the approach noted above, the intent of the proposed zoning by-law to provide for such uses at this location would be clear and not open to differing interpretations as in the case of By-law No. 1156-2010.

2.3 Vehicle Rental Establishment Permissions Within The Commercial - Residential (CR) Zones

Based upon our review of By-law No.1156-2010, concern is expressed in relation to the proposed treatment of a vehicle rental establishment as a permitted use in the Commercial Residential (CR) Zone. From our discussions with City Staff during the course of the meeting of June 21, 2011, we understand that a vehicle rental establishment, which does not involve the on-site storage and/or maintenance of cars, sport utility vehicles or light trucks, is considered to represent a retail commercial establishment, that is a use permitted in the Commercial Residential (CR) Zone.

The City further takes the position that where a vehicle rental establishment provides for the storage of cars, sport utility vehicles and light trucks in association with its operations, the use is considered to represent a motor vehicle establishment, a use also permitted in the Commercial Residential (CR) Zone subject to the provisions of Section 150.90 of By-law No. 1156-2010. It is understood that this position follows from the definition of a Vehicle Dealership which reads ..."*premises used for the sale, rental or lease of vehicles displayed or stored on-site, excluding construction or agricultural vehicles*".

Based upon the provisions of Section 150.90, a motor vehicle rental establishment would be required to have a minimum interior floor area of 150 square metres (i.e. 1615 square feet), a factor which is typically in excess of the commercial unit sizes available at the Sheppard Avenue site, in order to provide for the storage / parking of rental vehicles on site. While such a provision may be appropriate for a motor vehicle dealership, it does not reflect the scale of business operations which are characteristic of local commercial facilities such as the site in question.

In other words, the interpretation that a motor vehicle rental establishment is a permitted use in the Commercial Residential (CR) Zone is not necessarily the case. Given the situation in this instance, where the actual area of the offices associated with the rental or leasing of vehicles is less than 150 square metres, the use would not be allowed to provide for the temporary parking of rental vehicles notwithstanding that a designated area may be available for such purposes.

It is further noted that a motor vehicle rental establishment is not a use defined under By-law No. 1156-2010. It follows that the provisions of the by-law relating to vehicle rental establishments are open to differing interpretations which result in uncertainty, particularly in terms of the provisions of Section 150.90. To this end it is submitted that a vehicle rental establishment should be defined in the by-law and noted as a permitted use in the various zones in which the use is to be permitted.

By way of example, within the Commercial Residential (CR) Zone a vehicle rental establishment could be recognized as a Conditional Permitted Use, the condition being that the on-site storage of rental vehicles is not permitted within the parking spaces otherwise required, and, that any area intended for the temporary parking of rental vehicles be clearly identified for such purposes. Through the inclusion of an appropriate definition and the identification of the use as a permitted use in the appropriate zones, subject to such conditions as may be necessary and appropriate, the zones and conditions under which a vehicle rental establishment are permitted will be clear and not open to differing interpretations.

2.4 Wholesale Distribution and Warehouse Operations - Employment Zones

Under By-law No. 1156-2010 a warehouse is defined to mean ..."*premises used for keeping or storing goods or commodities, to which the general public does not have access and which may also be used for the distribution of goods and commodities*." By comparison, a wholesale establishment is defined as ..."*the use of premises for the sale of goods or commodities to retailers and other businesses*." In other words, By-law No. 1156-2010 differentiated between warehouse type operations which, by definition would be limited to providing for storage and shipping of goods and commodities, versus a wholesale establishment which would, by definition, simply be allowed to facilitate the sale of goods and commodities but would not include the storage of goods and commodities.

A review of the uses permitted in each of the Employment Zones indicates that, while a warehouse is a principal permitted use in all of the Employment Zones, a wholesale establishment for the distribution of goods is only a permitted use in the Employment Light Industrial (EL) Zone, the Employment Industrial (E) Zone, the Employment Industrial - Office (EO) Zone and the Employment Industrial - Commercial (EC) Zone.

The significance of the distinction noted above is underscored by reference to Section 1.20.2(10) which states that ... *"In this by-law if a use is not listed as permitted, then it is not allowed"*, and Section 1.20.2(11) which states that ... *"Unless otherwise stated in this By-law, a use may not be interpreted as including any other use specifically set out as a permitted use in a zone, or defined in this by-law."* It follows that, in accordance with the provisions of Sections 1.20.2(10) and 1.20.2(11), a wholesale establishment is not recognized as a permitted use in the Employment Heavy Industrial (EH) Zone as it is not specifically set out as a principal permitted use, a conditional permitted use or as an ancillary permitted use in Section 60.30.20 of By-law No. 1156-2010.

As noted in the previous sections of this submission, a significant portion of our Client's land holdings, most notably in the vicinity of the intersection of Kennedy Road and Passmore Avenue (ie. Appeals No. 67, No. 70 & No. 74), were zoned within the Employment Heavy Industrial (EH) Zone under By-law No. 1156-2010. While our Client appealed the zoning of the lands in this manner on the basis that it was inappropriate, it remains that a significant number of the tenants who lease units from our Client at this location are engaged in wholesale businesses which may or may not include warehouse operations. Accordingly, the effect of By-law No. 1156-2010 was to render all such tenants as non-conforming uses. This results in unnecessary hardship for existing wholesale business ventures which have occupied the premises for many years. Similarly, the provisions of By-law No. 1156-2010 were effective to impair the ability of our Client to continue to lease premises to either new wholesale operations or to provide for expansion of existing wholesale businesses.

As stated in Section 60.30.1.1, the purpose of the Employment Heavy Industrial (EH) Zone is to provide an area for heavy manufacturing, industrial and other employment land uses that may have impacts on adjacent lands. Given that wholesale operations may include the warehousing of goods and commodities, and, that a wholesale establishment is a permitted use where lands are designated within the Employment Area land use classification under the approved Official Plan, there is no readily apparent rationale for prohibiting a wholesale establishment within the Employment Heavy Industrial (EH) Zone. It is further noted that wholesale operations represent a use that is presently permitted within the Industrial (M) Zone and the General Industrial (MG) Zone classifications under By-law No. 24982, as amended, the approved zone classifications which apply to our Clients land holdings in the vicinity of Kennedy Road and Passmore Avenue.

To resolve the issues identified above, it is submitted that two revisions are necessary to the by-law prior to re-enactment First, wholesale operations should be recognized as a Principal Permitted Use in the Employment Heavy Industrial (EH) Zone. Second, the definition of a wholesale establishment should be revised to include associated warehouse facilities for the storage of goods, materials and commodities. The proposed revisions are considered both reasonable and appropriate from a land use planning perspective given the inherent characteristics of a wholesale establishment, and, that the continued use and/or introduction of such uses within the Employment Heavy Industrial (EH) Zone will not undermine the ability of other heavy industrial uses to locate within such areas.

2.5 Retail and Service Commercial Permissions - Employment Zones

As adopted, By-law No. 1156-2010 differentiates retail sales through the inclusion of two defined terms, namely a *retail store*, which is defined to mean ... *"premises in which goods or commodities are sold, rented or leased"*, and a *retail service*, which is defined as ... *"premises in which photocopying, printing, postal or courier services are sold or provided."* Within the Employment Zones, retail stores and/or retail service uses may or may not be permitted, with or without conditions. The regulatory provisions applicable to retail stores and retail service uses are briefly summarized as follows, namely:

- i. within the Employment Light Industrial (EL) Zone, a *retail store* is *permitted as an ancillary use*, subject to conditions which restrict the gross floor area, inclusive of an eating establishment, to not more than 20 percent of the total existing gross floor area of the principal use to which it is ancillary and that the use be physically separated by partitions from the principal use;
- ii. within the Employment Industrial (E) Zone, a *retail service use* is a *principal permitted use subject to the condition* that the retail service use, inclusive of the floor area which may be devoted to an eating establishment, not exceed the greater of 200 square metres or 10 percent of the gross floor area to a maximum of 500 square metres, and, a *retail store* is *permitted as an ancillary use* only where it is ancillary to a manufacturing use, subject to the condition that the interior floor area associated therewith does not exceed 20 percent of the gross floor area and the retail store be physically separated by partitions from the principal permitted use;
- iii. within the Employment Heavy Industrial (EH) Zone, neither a *retail store* nor a *retail service use* are recognized as permitted uses;
- iv. within the Employment Industrial - Office (EO) Zone, a *retail store* and a *retail service use* are *permitted as an ancillary use* subject to the conditions that the interior floor area associated with such uses, inclusive of the floor area associated with personal service shops and eating establishments, not exceed the greater of 200 square metres or 10 percent of the gross floor area of the principal buildings to a maximum of 500 square metres, and, that the area associated with such uses is physically separated by partitions from the principal permitted use; and,
- v. within the Employment Industrial - Commercial (EC) Zone, a *retail store* and a *retail service use* are *principal permitted uses subject to the condition* that, where such uses are found in association with a manufacturing use, the retail store and/or retail service use be physically separated by partitions from the manufacturing use. (Note: Within an EC Zone, the gross floor area which may be devoted to a retail store and/or a retail service use is determined by reference to the letter "c" and an associated numerical value indicating the maximum floor space index for the commercial use.)

The foregoing summary demonstrates the unnecessarily complex approach to the issue of ancillary retail sales permissions in the Employment Zones when compared to the existing permissions under the approved zoning by-laws. It is further noted that the approved zoning by-laws now in effect do not differentiate retail sales from retail service uses, a feature of By-law No. 1156-2010 which is inconsistent with the approved Official Plan policy framework.

By way of example, reference is made to existing standards contained in the zoning by-laws which serve to regulate the use of lands in Employment Areas located in the former City of Scarborough, the former City of North York and the former City of Etobicoke.

- Bylaw No. 24982 - Employment Districts Zoning By-law, former City of Scarborough
Under By-law No. 24982, as amended, the Employment Districts Zoning By-law of the former City of Scarborough, ancillary retail sales are permitted in each of the Employment Zones provided that the area devoted to ancillary retail sales does not exceed 10 percent of the total gross floor area of an industrial unit to a maximum of 250 square metres and that the area is physically separated by partitions from the principal permitted use.
- By-law No. 7625, former City of North York
Under By-law No. 7625, as amended, of the former City of North York, retail sales are permitted as an accessory use in the M1 Zone provided that the gross floor area associated with such retail sales

does not exceed 100 square metres. Within the M2 Zone, retail stores and personal service shops, whether accessory or as a main use, are permitted provided that the combined floor area devoted to retail and personal service commercial uses does not exceed the lesser of a floor space index of 0.25 or a total gross floor area of 2500 square metres.

- By-law No. 11,737, as amended, former City of Etobicoke
Under By-law No. 117387, as amended, of the former City of Etobicoke, ancillary retail sales are permitted in association with a manufacturing use or warehouse provided the area devoted to ancillary retail sales does not exceed 25 percent of the gross floor area to a maximum of 700 square metres.

What is common in each of the examples cited is that retail sales are not differentiated in terms of retail store and retail service uses. Rather, retail sales are permitted within the various Industrial / Employment Zones as ancillary uses subject to restrictions in terms of the gross floor areas which may be devoted to such activities. From a land use planning perspective it is submitted that such an approach is preferable to that proffered under By-law No. 1156-2010.

To facilitate the resolution of this issue as it relates to the various Employment Zones to be brought forward upon re-enactment of By-law No. 1156-2011, the following revisions are recommended, namely:

- i. that the terms *retail store* and *retail service* be deleted from the zoning by-law and that a definition of a *retail sales establishment* be introduced which is in keeping with standard zoning nomenclature;
- ii. that retail sales be permitted as an Ancillary Permitted Use in each of the Employment Zones subject to the gross floor area devoted to ancillary retail sales not exceeding 20 percent of the gross floor area associated with the principal permitted use to a maximum of 250 square metres and subject to physical separation by means of floor to ceiling partitions;
- iii. that where retail sales establishments are to be permitted as a principal permitted use or as a permitted use subject to conditions, as in the case of the Employment Industrial - Commercial (EC) Zone, the use be so identified together with such conditions as may be appropriate to govern retail sales establishments; and,
- iv. that such uses as printing and photocopying establishments, postal and courier establishments, or other similar service commercial establishments, which are to be permitted in one or more of the Employment Zones, be specifically set out as permitted uses in the respective zones and defined accordingly in the by-law.

It is respectfully submitted that such an approach eliminates the uncertainty and confusion introduced by way of reference to retail service uses while providing for a desirable level of consistency with the approved zoning by-laws now in effect throughout the City of Toronto. It is further submitted that the approach outlined above is consistent with the Employment Area policies of the approved Official Plan, specifically Section 4.6.1 which provides for "*ancillary retail outlets, restaurants and small scale retail stores and services that serve area businesses and workers*".

2.6 Office Permissions - Employment Zones

Within the Employment Zones, offices are specifically permitted as either a Principal Permitted Use, a Conditional Permitted Use or as an Ancillary Permitted Use under By-law No. 1156-2010. The permissions relating to offices in each of the respective Employment Zones are briefly summarized as follows, namely:

- i. within the Employment Light Industrial (EL) Zone, an office is a *principal permitted use subject to the condition* that the office does not include a medical office and that the maximum interior floor area used for the purposes of an office does not exceed the lesser of 5,000 square metres or an area equal to a floor space index of 1.0;
- ii. within the Employment Industrial (E) Zone, an office is a *principal permitted use subject to the condition* that the office does not include a medical office and that the maximum interior floor area used for the purposes of an office does not exceed the lesser of 5,000 square metres or an area equal to a floor space index of 1.0, and, an office is also permitted as an *ancillary use* subject to the condition that ...*"an office ancillary to a manufacturing use cannot exceed the lesser of a floor space index of 0.5 or the maximum floor space index permitted on the lot"*; a provision which appears to contradict the intent of allowing an office as a principal permitted use subject to conditions as noted above;
- iii. within the Employment Heavy Industrial (EH) Zone, an office is permitted as an *ancillary use* to a principal permitted use, which would presumably be interpreted to exclude a medical office, subject to the condition that the maximum interior floor area on a lot used for an office that is ancillary to a manufacturing use is the lesser of 10 percent of the interior floor area of the building or a floor space index of 0.1;
- iv. within the Employment Industrial - Office (EO) Zone, an office is a *principal permitted use* in accordance with the letter "o" and the associated numerical value which identifies the maximum floor space index for office uses;
- v. within the Employment Industrial - Commercial (EC) Zone, an office is a *principal permitted use* in accordance with the letter "c" and the associated numerical value which indicates the maximum floor space index for office uses.

It follows from the foregoing summary that, if the By-law is revised to differentiate between business, professional and/or administrative offices and medical and/or dental clinics through inclusion of appropriate definitions, and, if such uses are specifically noted as permitted uses where appropriate, as previously suggested in Section 2.2 of this submission, the exclusions noted in the aforementioned conditions may be deleted thereby simplifying the by-law and providing for improved certainty.

Under By-law No. 24982, the Employment Districts Zoning By-law of the former City of Scarborough which applies to regulate our Client's land holdings as referred to in Appeals No. 67, No. 70, No. 71 and No. 74, offices, exclusive of medical and dental clinics, are permitted provided that the area devoted offices does not exceed 0.5 times the area of the lot to a maximum of 10,000 square metres. With respect to Appeal No. 73, By-law No. 7625 of the former City of North York provides for offices as a principal permitted use in both the Industrial One (M1) Zone or the Industrial Two (M2) Zone provided that the floor area devoted to such office uses does not exceed the lesser of a floor space index of 1.0 to a maximum of 5,000 square metres.

With a view to maintaining existing permissions, a direction clearly stated by the Planning and Growth Management Committee on numerous occasions, it is submitted that a business, professional and/or administrative office should be recognized as a principal permitted use in each of the Employment Light Industrial (EL) Zone, the Employment Industrial (E) Zone and the Employment Heavy Industrial Zone subject to a condition that the maximum interior floor area used for the purposes of offices does not exceed the lesser of 10,000 square metres or an area equal to a floor space index of 0.5.

As discussed during the course of our meetings, the reference to an office as an Ancillary Permitted Use when in association with a manufacturing use in the Employment (E) Zone, as provided for in accordance with Condition 27, results in uncertainty. This follows from the fact that an office is also a Principal Permitted Use in the Employment (E) Zone subject to Condition 2 which limits the maximum interior floor area which may be dedicated to offices. We question why it is necessary to restrict an office to an ancillary use or activity when found in association with a manufacturing use but to permit an office as a principal permitted use in the Employment (E) Zone under all other circumstances

It is understood from our discussions with Staff that Section 60.20.20.100(27), (i.e Condition 27) was not intended be interpreted to mean that an office was only permitted in the Employment (E) Zone where it was ancillary to a manufacturing use and/or that the provisions concerning the extent of the floor area devoted to office uses were to be read in a conjunctive manner. Rather, the provisions in question are to be read as mutually exclusive. In view of the differing opinions offered by Staff in relation to the interpretation of Condition 27 during the course of our meeting of June 15, 2011, it was the consensus of opinion that Section 60.20.20.100(27) was somewhat ambiguous, and, that Condition 27 would be reviewed by City Staff to clarify the intent relative to the intent of Section 60.20.20.100(2).

In this context it is respectfully submitted that if an office is to be recognized as a Permitted Conditional Use, and, that if it is intended that Condition 27 only apply in those situations where an office is associated with a manufacturing use as suggested during the course of our meeting of June 15, 2011, it would be more appropriate to simply delete Condition 27 and to expand Condition 2 to state that where an office is associated with a manufacturing use, the maximum interior floor area shall not exceed the lesser of a floor space index of 0.5 or the maximum floor space index permitted. Presumably this condition would only be relevant in those situations where a relatively large lot exists and the maximum floor space index permissible on the lot is less than 50 percent.

As in the previous situations cited in this submission, the need to resolve the office permissions in the context of the Employment Zones follows from the provisions of Section 1.20.2(10), entitled *When Uses Not Listed*, which reads *"in this by-law if a use is not listed as permitted, then it is not allowed"*,... and Section 1.20.2(11), entitled *Interpretation of Uses*, which reads *"unless otherwise stated in this By-law, a use may not be interpreted as including any other use specifically set out as a permitted use in a zone or defined in this by-law"*. While it was suggested by Staff that an office would be recognized as an ancillary use to any use permitted in the Employment Zones, the references to Section 1.20.2(10) and 1.20.2(11) may lead to the interpretation that an office would not be permitted as an ancillary use to any principal permitted use.

In summary, there is a need to refine the intent of By-law No. 1156-2010 as relates to office permissions in the Employment (E) Zone. It is suggested that if administrative offices are to be considered an accessory use normally incidental and subordinate to a principal permitted use, and, if business and /or professional offices are to be permitted as a principal permitted use in the Employment (E) Zone subject to conditions, that the provisions of the zoning by-law need to be revised to clearly state the intent. It is noted that this problem follows, in part, from the fact that the term ancillary is utilized in a different context throughout the by-law leading to unnecessary ambiguity and uncertainty.

2.7 Educational and Training Facilities - Employment Zones

Under By-law No. 1156-2010, an educational use is defined as...*"the use of premises for education or training, other than a post-secondary school, a school regulated under the Education Act, R.S.O. 1990, c.E.2, as amended or a religious education use."* Since elementary and secondary schools are schools which, by definition under the by-law, are public schools regulated and funded under the Education Act, the definition of an education use would exclude elementary, secondary and post-secondary schools.

A review of the provisions applicable to the Employment Zones indicates that an education use is not a permitted use in the Employment Light Industrial (EL) Zone, the Employment (E) Zone, the Employment Heavy Industrial (EH) Zone, the Employment Industrial - Office (EO) Zone or the Employment Industrial - Commercial (EC) Zone. Rather, an education use is permitted in the Commercial Local (CL) Zone, the Commercial - Residential (CR) Zone and the Commercial Residential Employment (CRE) Zone.

In accordance with Section 4.6.2 of the approved Official Plan for the City of Toronto, *business and trade schools* are permitted on those lands designated within the Employment Area land use classification where the property is located on a *Major Street*. It is further noted that the Official Plan states that business and trade schools established before the approval date of the Official Plan are permitted uses.

Business and trade schools are a function which support the needs of the business community and its workers. It is therefore submitted that consideration should be given to providing for business and trade schools as a permitted use on major streets, such as Kennedy Road, within the various Employment Zones under any future iteration of the Harmonization By-law.

A review of By-law No. 24982 of the former City of Scarborough, By-law No. 7625 of the former City of North York, and, By-law No. 11,737 of the former City of Etobicoke, as apply to regulate our Client's property holdings throughout the City, indicates that educational and training facilities are a permitted use in each instance. In accordance with the approved zoning by-laws, our Client has, from time to time, leased premises to what may be described as educational and training facilities or business and trade schools.

Accordingly, it is the position of our Client that the as-of-right permissions with respect to educational and training facilities or business and trade schools, as provided for in accordance with Section 4.6 of the Official Plan, should be recognized in any future iteration of the proposed zoning by-law. In this context, it is suggested that it may be necessary to recognize such permissions by way of site specific zoning for each of the parcels which do not front upon a Major Street, that being the properties located adjacent Passmore Avenue, McNicoll Boulevard, Eddystone Avenue and Attwell Drive, all of which are designated and zoned within an Employment Zone at the present time.

2.8 Recognition of Existing Places of Worship

In accordance with Section 4.6.2 of the approved Official Plan for the City of Toronto, places of worship among other uses, may locate on Major Streets where the lands are designated within the Employment Area land use classification. The policy further states that *"...all existing places of worship....legally established before the approval date of this Official Plan within Employment Areas are permitted."*

As discussed during the course of our meetings, our Client has and continues to lease several units for the purposes of places of worship in accordance with the approved zoning by-laws currently in force

and effect. Our Client wishes to maintain the right of use associated with each of those properties and the ability to lease premises as a place of worship. The properties in question are briefly noted as follows, namely:

- 3241, 3251 & 3261 Kennedy Road and 19, 23, 25 and 27 Passmore Avenue (Appeal No. 67);
- 3500 - 3520 McNicoll Avenue and 83 - 85 Dynamic Drive (Appeal No. 71); and,
- 109-147 Eddystone Avenue (Appeal No. 73).

It is further noted that such uses are permitted in accordance with By-law No. 24982, as amended, the Employment Districts Zoning By-law of the former City of Scarborough, and By-law No. 76725 of the former City of North York.

A possible means of resolution of the permissions relating to each of the above noted properties is set out as follows, namely:

- i. that, with respect to Appeal No. 67, By-law No. 24982, as amended by By-law No. 153-2011, be recognized as a Prevailing By-law in Section 900 of any subsequent iteration of By-law No. 1156-2010 in accordance with the March 8, 2011 Order of the Ontario Municipal Board approving By-law No. 456-2011, being an amendment to By-law No. 1156-2010 ;
- ii. that a site specific zoning be applied to the property located adjacent the intersection of McNicoll Avenue and Dynamic Drive which recognizes the existing permissions relating to places of worship (Appeal No. 71); and,
- iii. that either a site specific zoning be applied to the lands described as 109 -147 Eddystone Avenue or that the lands be denoted as ..."Not Part Of This By-law" for the reasons set forth in Section 1.6 of this submission (Appeal No. 73).

On behalf of our Client, we request clarification as to manner in which the City of Toronto proposes to implement Section 4.6.2 of the Official Plan, most notably where the buildings and/or premises front upon a major street, where a portion of the multi-tenant structure is utilized for a place of worship, and, where the tenants frequently move from one unit to another. In addition, clarification is also sought in relation to the proposed zoning of each of the above noted properties so as to recognize the existing permissions and established use of the lands for the purposes of a place of worship consistent with the approved policy framework of the Official Plan for the City of Toronto.

2.9 Small Scale Retail and Service Commercial Use Permissions - Employment Zones

In accordance with Section 4.6.1 of the approved Official Plan for the City of Toronto, restaurants and small scale retail and service commercial uses that serve area businesses and workers are permitted within the Employment Area land use classification. The Plan does not attempt to define what constitutes small scale operations nor the nature of retail and service commercial businesses permitted other than to state that the uses are to serve area businesses and workers. In the same context, the policy in question does not suggest or require that such uses be ancillary to a principal permitted use, but rather suggests that such uses may be permitted as a stand alone use or activity.

In response, By-law No. 1156-2010 provided for a narrow interpretation of Section 4.6.1 of the Official Plan in that the range of small scale retail and service commercial uses permitted is largely restricted to a personal service shop, which is defined to mean premises used to provide personal grooming

services or for the cleaning and care of apparel, together with a limited component of retail service uses and restaurants inclusive of financial institutions and automated banking machines. It is further noted that a Personal Service Shop is only a permitted use in the Employment Industrial - Office (EO) Zone and the Employment Industrial - Commercial (EC) Zone, and, that a personal service shop is subject to a condition which states that the total cumulative floor area on a lot which may be utilized for a retail service, retail store, personal service shop and/or eating establishment may not, individually or in combination, exceed the greater of 200 square metres or 10 percent of the gross floor area of the principal building on the lot to a maximum of 500 square metres.

It is submitted that the provisions By-law No. 1156-2010 pertaining to restaurants and small scale retail and service commercial uses are not in conformity with the stated intent of the approved Official Plan. In the absence of any planning rationale or study to the contrary, small scale retail and service commercial uses, inclusive of personal service shops, should be specifically listed as permitted in the Employment Light Industrial (EL) Zone, the Employment (E) Zone and, to a lesser degree, the Employment Heavy Industrial (EH) Zone.

In summary, consideration should be given to defining an expanded range of small scale retail and service commercial operations consistent with the philosophy of the approved Official Plan. Examples of such uses and activities include computer and electronic sales and service depots, wholesale electrical supply outlets, industrial parts sales and service establishments, industrial safety equipment sales and service, medical equipment supplies sales and service establishments, office equipment sales and supply establishments, plumbing and heating and air conditioning sales and service establishments, small appliance sales and service depots, small engine sales and service establishments, and, recreational equipment sales and service establishments. Such uses are typically representative of small scale retail and service commercial operations which serve the needs of Employment Areas and their workers.

The inclusion of uses such as those noted above is consistent with the intent of the approved Official Plan in that uses similar in nature to those noted above are well suited to peripheral locations in the employment areas and further promote the concept of transition between sensitive lands uses and heavy industries which exhibit lower performance standards in terms of generating heavy truck traffic, noise, dust and other nuisance vectors. In conclusion, it is submitted that appropriate performance standards could be introduced to limit the floor area devoted to such uses and activities thereby reinforcing the concept of small scale retail and service commercial operations.

2.10 Bicycle Parking Regulations - Specified Use Permitted In Employment Zones

During the course of our meeting of June 21, 2011, Staff indicated that the regulations contained in Chapter 230, entitled Bicycle Parking Regulations, were not intended to be applied to lands zoned within an Employment Zone. While this may have been the intent, reference is made to Section 230.5.10, entitled *Bicycle Parking Rates For All Zones*, and more specifically Subsection 2 thereof which requires that bicycle parking be provided at the appropriate rate for each of the specified uses where more than one use exists on a lot. There is no specific provision which exempts lands zoned within an Employment Zone from the Bicycle Parking Regulations contained in Chapter 230 of By-law No. 1156-2010.

It follows that within an Employment Zone, uses such as an eating establishment, a retail store, a personal service shop, an education use or offices would be subject to the provisions of Section 230.5.10. Where such uses exist in an Employment Zone, the owner would be required to provide bicycle parking spaces and possibly shower and change facilities for each gender as required under

Section 230.5.10.1 of the zoning by-law. During the course of the meeting of June 21, 2011, Staff gave an undertaking to our Client to review this Section of the zoning by-law with a view to clarifying the application of such provisions. Given the original intent, as expressed by Staff during the course of our meeting, it may simply be appropriate to incorporate a clause to the effect that"*notwithstanding any other provision of this by-law to the contrary, the provisions of Chapter 230, entitled Bicycle Parking Regulations, do not apply to lands zoned within an Employment Zone*".

A further concern relates to the effect of Chapter 230 in terms of existing developments which are multi-unit commercial buildings leased to different tenants and which typically experience modest to high turnover rates. By way of example, the lands situated at 4271 Sheppard Avenue East are developed for the purposes of a local retail commercial centre having a gross floor area of approximately 2,730 square metres. Application of the standards set forth in Chapter 230 of By-law No. 1156-2010 would result in a need for our Client to provide 17 short term and 3 long term bicycle parking spaces. This in turn would necessitate the provision of two showers and associated change rooms, one for each gender.

Given the nature and size of the facility, being a relatively small local commercial centre occupied by numerous tenants who are independent of one another, we do not consider the provision of shower and change room facilities to be appropriate or, for that matter, practical. Furthermore, in the absence of such facilities or the ability to realistically provide and maintain such facilities, it would be necessary for our Client to seek relief from Chapter 230 by way of an amendment to the zoning by-law, or, in the alternative, a variance from the provisions of the by-law to allow issuance of a building permit in order to renovate a portion or all of the premises to suit the needs of new tenants.

While the concept may have merit in some instances, there is a need for the City of Toronto to review the provisions of Chapter 230 with a view to addressing the concerns associated with multi-tenant commercial structures such as that noted above. It would seem that the requirement to provide bicycle parking spaces needs to be refined and other mechanisms, such as site plan approval, explored before the proposed standards are legislated through the zoning by-law.

Part Three - Concluding Remarks

In conclusion, we appreciated the opportunity to meet with you and your colleagues to discuss the scope and nature of the appeals filed on behalf of our Client in relation to By-law No. 1156-2010. Given the limited time available to discuss each of our Client's property holdings relative to the scope and nature of the appeals, this summary submission has been prepared to provide for a somewhat more detailed understanding of the concerns expressed on behalf of our Client, and, with a view to assisting you in providing for the resolution of the various concerns and issues.

Based upon recent discussions and communications with Staff, we understand that the City of Toronto is proceeding with the review of the Employment Area policies and land use designations as part of the Five Year Official Plan Review - Municipal Comprehensive Review of the Official Plan. It is further understood that the work to be completed will involve, among other matters, a comprehensive analysis of the location, nature and scope of businesses located within the Employment Areas, and, the function of peripheral lands as transitional areas between sensitive land uses and industrial - manufacturing type concerns. A further matter to be addressed is the nature and scope of small scale retail and service commercial uses to be permitted and the role of such uses within the Employment Areas.

Staff further advises that the review is expected to culminate in the introduction of an amendment to the Official Plan in late 2012 or early 2013. Given that one of the key areas of concern relates to the policies and designations applicable to Employment Area lands, it is reasonable to anticipate that the policy framework applicable to Employment lands will be amended which in turn will influence the manner in which the policies are implemented through the zoning by-law.

It is therefore submitted that future iterations of the Harmonization By-law, and in particular the zoning and regulatory provisions applicable to areas designated within the Employment Area land use classification, should occur concurrent with the advancement of the Official Plan Review process and related amendments. This will facilitate an improved understanding of the issues associated with the implementation of an amended policy framework and avoid the need to subsequently amend the Harmonization By-law to implement amendments to the Official Plan as a result of the Five Year - Municipal Comprehensive Review process. It is respectfully submitted that there is considerable merit in providing for a co-ordinated approach which will ultimately result in significant cost savings for both the public and private sectors.

As discussed at the conclusion of our meetings, we look forward to receiving a written response from you outlining the scope and nature of the revisions proposed to any subsequent iteration of the Harmonization By-law. Should you have any questions or should you consider a further meeting to discuss the matters set forth in this submission, please do not hesitate to contact the undersigned..

Sincerely yours,
McDermott & Associates Limited



J. D. McDermott, M.C.I.P., R.P.P.
Principal Planner

copy to: The Chair and Members,
Planning & Growth Management Committee
Attention: Ms. Merle Macdonald

Mr. Gary Wright
Director of Planning, City of Toronto

Al Reisman Management Limited
Attention: Mr. Keith Lahey

David White, Q.C.
Solicitor

CITY OF TORONTO

BY-LAW No. 153-2011(OMB)

To amend the former City of Scarborough Employment Districts Zoning By-law No. 24982 (Milliken Employment District), as amended, with respect to lands municipally known as 3241-3261 Kennedy Road and 19-27 Passmore Avenue.

WHEREAS Al Reisman Limited made application to the City of Toronto on August 21, 2009 for amendments to Zoning By-law of the City of Toronto with respect to certain lands located within the former Municipality of Scarborough; and

WHEREAS the Council of the Corporation of the City of Toronto has refused or neglected to make a decision with respect to the application within 120 days; and

WHEREAS Al Reisman Limited appealed to the Ontario Municipal Board under Section 34(11) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended; and

WHEREAS the Ontario Municipal Board, by way of its Order issued on August 17, 2010, upon hearing the appeal of the owner under Section 34(11) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, determined to amend By-law No. 24982, the Employment Districts Zoning By-law, as amended, of the former City of Scarborough with respect to the Milliken Employment District Zoning By-law;

THEREFORE the Ontario Municipal Board hereby amends By-law No. 24982 (Milliken Employment District), as amended, of the former City of Scarborough as follows:

1. **SCHEDULE 'A'** of the Employment District Zoning By-law No. 24982 (Milliken Employment District) is amended by deleting the current zoning for the lands at 3241-3261 Kennedy Road and 19-27 Passmore Avenue and replacing it with the following:

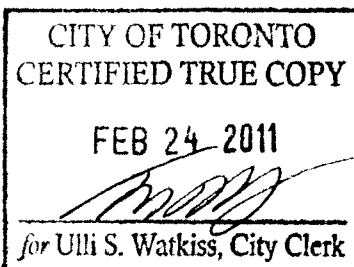
M-ME-414-913-1054-1644-2615-2616-2617-2618
Exceptions: 202 205 475 476 477

As shown on Schedule '1' to this By-law.

2. **SCHEDULE 'B' - PERFORMANCE STANDARD CHART**, of the Milliken Employment District Zoning By-law, as amended, is hereby further amended by adding the following Performance Standards:

PARKING

1644. Notwithstanding the provision of **CLAUSE V – GENERAL PROVISIONS Section 7.2, Table of Required Parking Rates**, a minimum of 366 parking spaces shall be provided.



INTENSITY OF USE

2615. Gross floor area of any individual small scale store or service, exclusive of a health and fitness establishment, furniture and/or major appliance sales and service establishment, an office equipment sales, supply and service establishment, and, a recreational vehicle sales and service establishment, shall not exceed 280 square metres.
2616. Gross floor area of all small scale stores, service and restaurants uses shall not exceed 5,240 square metres.
2617. Gross floor area of all restaurants, exclusive of a delicatessen, a bake shop, shall not exceed 1,466 square metres. The gross floor area of any one individual restaurant shall not exceed 475 square metres.
2618. A seating area for a maximum of 12 persons may be provided in association with a delicatessen and a bake shop, which seating area shall not be included in the calculation of the gross floor area of these uses.
- 3. SCHEDULE 'C', EXCEPTIONS LIST, is amended by adding Exceptions 475, 476 and 477 as follows:**

Exceptions:

475. On those lands situated within 58 metres of the front lot line adjacent the easterly limit of Kennedy Road, the uses permitted shall be in accordance with the provisions of the Mixed Employment (ME) Zone and such permission does not extend beyond the above area.
476. On those lands situated greater than 58 metres from the easterly limit of Kennedy Road, greater than 76 metres from the southerly limit of Passmore Avenue and greater than 72 metres north of the southerly property line, the uses permitted shall be restricted to those permitted within the Industrial (M) Zone.
477. In addition to those uses permitted in the Industrial (M) Zone, the following additional employment, small scale stores, service and restaurant uses are permitted on those lands situated within 76 metres of the lot line adjacent the southerly limit of Passmore Avenue and within 72 metres of the southerly property line.

A. Additional Employment Uses permitted without restrictions on gross floor area:

- i. a business and/or professional office inclusive of a medical and/or dental clinic and the offices of a holistic and/or naturopathic practitioner;
- ii. a financial institution;
- iii. a photographic and/or art studio and gallery;
- iv. a printing and/or publishing establishment;
- v. a travel agency;
- vi. a wine and/or beer making establishment; and,

- vii. such other accessory uses as are normally considered incidental and subordinate to the foregoing uses.

B. Only the following Additional Small Scale Retail, Service and Restaurant Uses are Permitted:

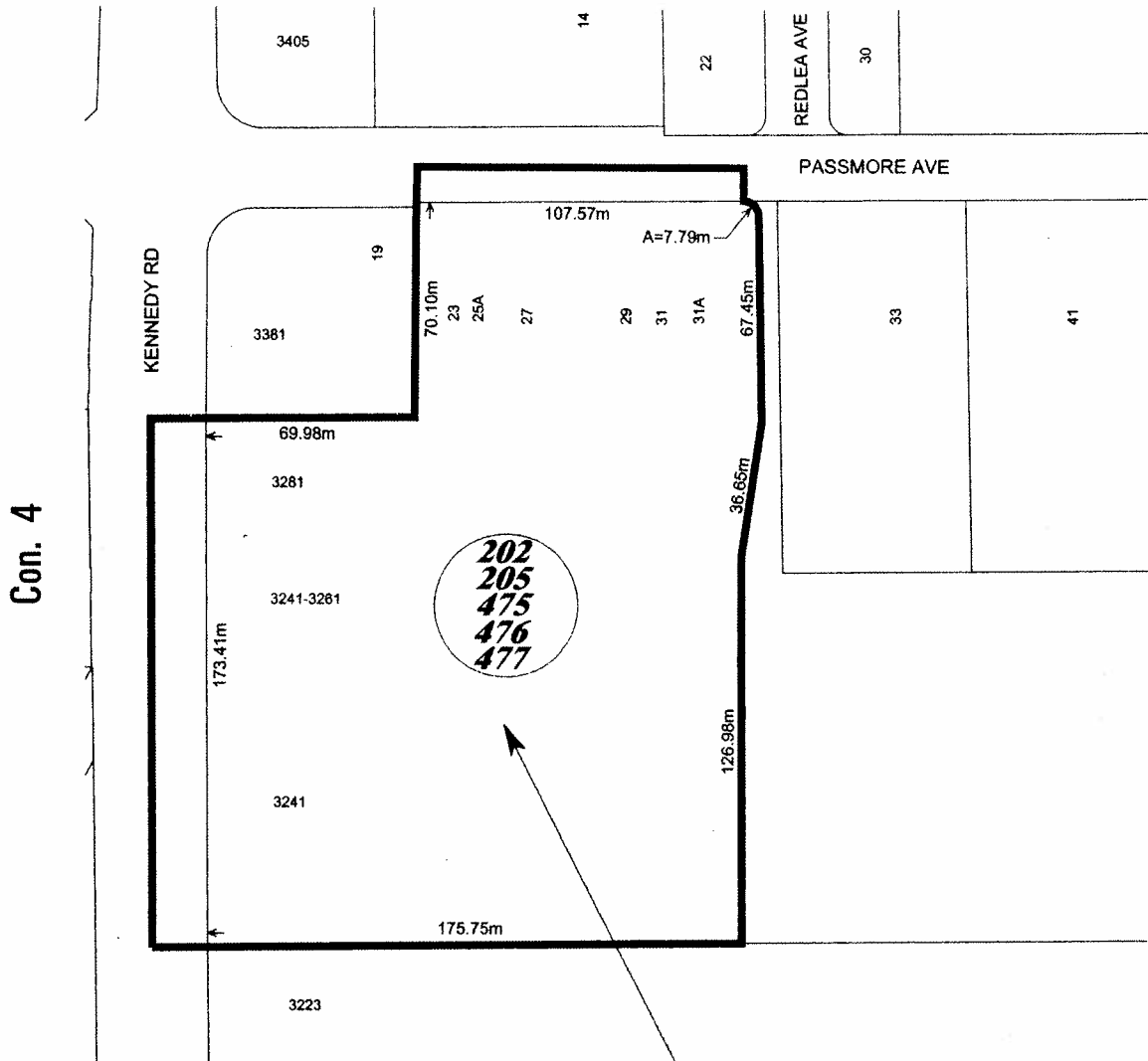
- i. an automotive, truck and trailer parts sales and service establishment;
- ii. an automotive service, detailing and/or glass and trim establishment exclusive of an auto body and facilities for the retail sale of gasoline and related petroleum products;
- iii. a bake shop and delicatessen;
- iv. a computer and/or electronics sales and service establishment;
- v. a convenience store;
- vi. a courier service establishment inclusive of mail box facilities, photocopying and other related business services;
- vii. a dry cleaning depot and/or dry cleaning establishment;
- viii. an electrical supply and service establishment inclusive of ancillary sales;
- ix. a florist;
- x. a health food and nutritional supplement sales outlet;
- xi. an industrial parts sales and service establishment;
- xii. an industrial safety equipment supply sales and service establishment;
- xiii. an industrial trade and tool supply sales and service establishment;
- xiv. an interior design, kitchen and bathroom design and sales establishment;
- xv. a medical equipment and supplies sales and service establishment;
- xvi. an office equipment sales, supply and service establishment;
- xvii. an optical dispensing and product related sales outlet;
- xviii. a personal service shop;
- xix. a pharmacy;
- xx. a plumbing, heating and air conditioning sales and service establishment;
- xxi. a pool and/or spa design and service establishment inclusive of ancillary sales;
- xxii. a restaurant and/or eating establishment;
- xxiii. a small appliance service establishment inclusive of ancillary sales;
- xxiv. a small engine sales and service establishment, inclusive of a lawn and garden equipment sales and service establishment;
- xxv. a snowmobile and/or recreational vehicle sales and service establishment; and,
- xxvi. such other accessory uses as are normally considered incidental and subordinate to the foregoing uses.

For the purposes of this By-law, the term "ancillary sales" shall mean that not greater than 45 percent of the gross floor area associated with the principal permitted use is dedicated to a showroom and/or sales area.

PURSUANT TO DECISION/ORDER ISSUED ON AUGUST 17, 2010 OF THE ONTARIO MUNICIPAL BOARD IN BOARD CASE NO. PL100131.

Schedule '1'

Lot 28



**M, ME-414-913-1054-1644-
2615-2616-2617-2618**



Zoning By-Law Amendment

3241-3261 Kennedy Rd. and 19-27 Passmore Ave.

File # 09-161120 OZ

 **Area Affected By This By-Law**

Milliken Employment District By-law
Not to Scale
6/14/10



CITY OF TORONTO

BY-LAW No. 465-2011(OMB)

To amend City of Toronto Zoning By-law No. 1156-2010, as amended, with respect to those lands municipally known as 3241, 3251 and 3261 Kennedy Road and 19, 23, 25 and 27 Passmore Avenue.

WHEREAS on August 27, 2010 the Council of the City of Toronto adopted By-law No. 1156-2010, a comprehensive zoning by-law, pursuant to the provisions of Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended; and

WHEREAS Al Reisman Limited appealed the provisions of By-law No. 1156-2010 as apply to regulate the use and development of those lands described as forming Parts 1 and 2 and Parts 6 to 21 inclusive of Plan 66R-21332, in the former City of Scarborough now in the City of Toronto, municipally known as 3241, 3251 and 3261 Kennedy Road and 19, 23, 25 and 27 Passmore Avenue; and

WHEREAS upon hearing the appeal of Al Reisman Limited, the Ontario Municipal Board, pursuant to Order issued March 8, 2011, hereby orders that By-law No. 1156-2010 be amended as follows, namely:

1. THAT Schedule "A", the Zone Map, and more specifically Map 56Q-32, attached to and forming part of By-law No. 1156-2010, be amended insofar as is necessary to zone those lands having an area of approximately 4.1 hectares and generally described as forming Parts 1 and 2 and 6 to 21 inclusive of Plan 66R-21332, from the *"Not Part Of This By-law"* Zone Category and the Employment Heavy Industrial (EH) Zone to the Employment Industrial/Commercial (EC) Zone subject to Exception No. 1, all in accordance with the Zone Map attached hereto as Schedule "A" and by this reference forming part of this By-law, such that the Zone Symbol applicable to the subject lands reads as follows, namely *"EC-1"*.
2. THAT Chapter 900, entitled Exceptions, be amended insofar as is necessary to create a new Section which reads as follows, namely:

"900.25 EC Zone"

900.25.1 General

(1) EC Zone Exceptions

The regulations located in Article 900.25.10 apply only to the exceptions subject to the EC Zone and identified with the corresponding exception number.

900.25.10 Exceptions for EC Zone

- (1) On these lands, the applicable Prevailing By-laws in Article 950.40.1, being former City of Scarborough By-law No. 24982, the Employment Districts Zoning By-law, as amended by By-law No. 153-2011, shall apply."***

3. THAT Chapter 950, entitled Prevailing By-laws, of By-law No. 1156-2010 is hereby amended by adding thereto a new subsection which shall read as follows, namely:

"950.40.1 Former City of Scarborough By-law No. 24982

- (1) 3241, 3251 and 3261 Kennedy Road and 19, 23, 25 and 27 Passmore Avenue***

On these lands the following By-laws prevail, namely By-law No. 24982, the Scarborough Employment Districts Zoning By-law, as amended by By-law No. 153-2011."

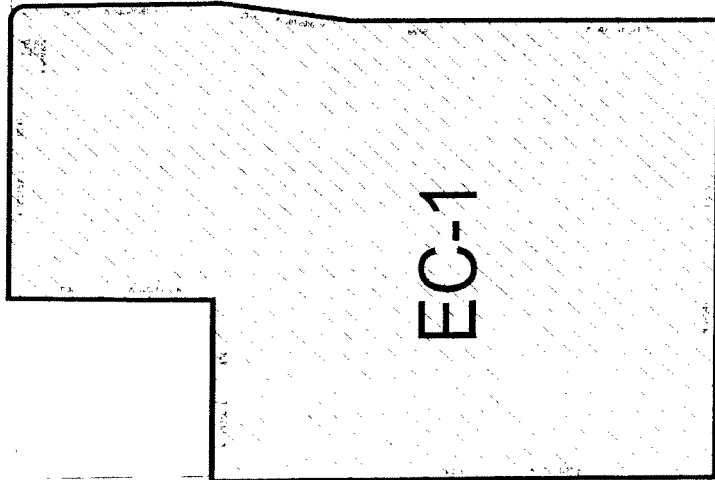
PURSUANT TO THE ORDER/DECISION OF THE ONTARIO MUNICIPAL BOARD
ISSUED ON MARCH 8, 2011 UNDER BOARD CASE FILE NO. PL100131.

SCHEDULE "A" ZONE MAP

Parts 1, 2 and 6 to 21, Plan 66R-21332,
Part Lot 26, Registrar's Compiled Plan No. 9829,
Part Lot 28, Concession 4,
Former City of Scarborough,
City of Toronto

PROPOSED EXTENSION
REDLEA AVENUE

PASSMORE AVENUE



CANADIAN NATIONAL RAILWAY (GO TRANSIT)



LANDS TO BE ZONED WITHIN THE
EMPLOYMENT COMMERCIAL
EXCEPTION ONE (EC-1) ZONE.

THIS IS SCHEDULE "A" TO BY-LAW No.
BEING AN AMENDMENT TO BY-LAW No. 1156-2010
OF THE CITY OF TORONTO AS APPROVED BY THE
ONTARIO MUNICIPAL BOARD BY WAY AN
ORDER ISSUED ON MARCH 8, 2011.

MCKENNETT & ASSOCIATES LIMITED
 ENGINEERS & ARCHITECTS
 1000 SHEPPARD AVENUE EAST, SUITE 100
 SCARBOROUGH, ONTARIO M1S 1T5
 TEL: (416) 291-1111
 FAX: (416) 291-1112
 WWW.MCKENNETT.COM

AL REISMAN LIMITED
 SCARBOROUGH

Date: _____
 City of Toronto: (03-11)