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April 2, 2013

Our File No.: 13.1758

By Email

City Council
100 Queen Street West
City Hall, 12th Floor W
Toronto, Ontario
M5H 2N2

Attention: Ms. Marilyn Toft, Secretariat

Dear Sirs/Mesdames:

Re: PG21.1 - Final Report on the City-Wide Zoning By-Law - Brookfield Place

We are solicitors for 1225209 Ontario Limited and Brookfield Place (Properties) Limited (collectively, the "Brookfield owners"). The Brookfield owners are the freehold owners of portions of the Brookfield Place complex, which is governed by site-specific Zoning By-law No. 44-88. The other portions of the Brookfield Place complex are owned by Oxford entities (the "Oxford owners").

On behalf of the Brookfield owners and the Oxford owners, we filed an appeal of Zoning By-law No. 1156-2010 (the original, new City-wide Zoning By-law) on September 30, 2010. Zoning By-law No. 1156-2010 was subsequently repealed.

On February 19, 2013, Borden Ladner Gervais ("BLG"), on behalf of Oxford, provided comments on the proposed new City-wide Zoning By-law. A copy of this correspondence is attached for your reference. Some of the comments set forth in that letter applied to the Brookfield Place complex.

The purpose of this letter is to confirm that the Brookfield owners have continuing concerns with the new City-wide Zoning By-law, and specifically wish to confirm that they support the general concerns set forth in the BLG letter of February 19, 2013, as well as the specific concerns set out in respect of 161 Bay Street, some or all of which also apply to other portions of Brookfield Place.

Please provide us with notice of any further public meetings held in respect of the new City-wide Zoning By-law, and please also provide us with notice of passing of the by-law.

Yours very truly,

Goodmans LLP



Mark Noskiewicz
MRN/mlg

cc. Deborah Rogers
Catherine Bray

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February 19, 2013

Delivered via E-mail pgmc@toronto.ca

Planning and Growth Management Committee
West Tower, Toronto City Hall
10th Floor, 100 Queen Street West
Toronto, ON M5H 2N2

Attention: Frances Pritchard

Re: New Draft City-Wide Zoning By-law

Dear Ms. Pritchard:

We act on behalf of Oxford who owns and manages various properties within the City of Toronto. We have undertaken a review of the draft New Draft City-wide Zoning By-law as revised November 8, 2012 ("City-wide Zoning By-law") and write to provide our client's comments regarding the proposed provisions of the City-wide Zoning By-law as they apply to some of Oxford's properties in the City of Toronto.

The properties that are the subject of this letter include:

- 1 Adelaide Street East, 20 Victoria Street and 85 Yonge Street;
- 161 Bay Street, 10 Front Street West and 30 Yonge Street (TD Canada Trust/Brookfield Place);
- 200 Bay Street (Royal Bank Plaza);
- 1 University Avenue;
- 123 Front Street (Citigroup Place);
- 200 Wellington; and
- 225 King Street.

A. General Concerns with the Draft Zoning By-law

The following general concerns apply to all of the above sites.

A.1 Minor Variances

While the Minor Variance Clause has been improved in the November 8, 2012 version of the draft City-wide Zoning By-law, the status of approved, unused minor variances remains unclear. We request that the City explicitly state that approved minor variances that are unused or those that are not used to their full extent, can continue to be relied on in the same manner as approved minor variances that have been fully realized.

A.2 Setbacks in Commercial Residential Zones

All of the subject properties are presently zoned as Commercial Residential (CR) in both the current and the draft City-wide Zoning By-law. At present there are no set back requirements for CR zones applicable to the subject properties. However, the draft City-wide Zoning By-law imposes new setbacks ranging from 0 to 5.5 metres, which affect any new development, expansion or redevelopment.

We request that the new setback requirements of the CR zone be removed from the City-wide Zoning By-law.

A.3 Gross Floor Area

While the Gross Floor Area (GFA) definition in the draft City-wide Zoning By-law is an improvement over the definition of GFA in repealed By-law 1186-2010, concerns remain as to whether atria and similar voids count towards GFA in the draft City-wide Zoning By-law.

The term atrium is not defined in Zoning By-law 438-86 or the draft City-wide Zoning By-law. While atria and other similar voids are not expressly excluded from the GFA calculation, in practice, atrium voids were not counted in GFA calculations under By-law 438-86. The draft City-wide Zoning By-law uses the language from North York where the practice was to include atrium voids in calculating GFA. As a result there is a concern with the draft City-wide Zoning By-law regarding whether atria are included in GFA calculations.

We request that the City explicitly exclude atria and similar voids from the GFA calculation.

A.4 Retail Service and Service Shops

The New Draft Zoning By-law limits “Retail Service” and “Service Shops” to an aggregate of 400 square metres in the CR zone.

We request that this 400 square metre restriction be removed from the draft City-wide Zoning By-law.

A.5 Site Specific Concerns

- 1 Adelaide, 20 Victoria and 85 Yonge Street:

- (i) We note that the current Zoning By-law and site-specific exception do not require setback requirements, aside from window separations. However, the proposed by-law provides various setback requirements relating to the different Standard Use areas. As this property may be considered for future development, we ask that the property not be subject to the proposed setback requirements.
 - (ii) The existing buildings do not fully utilize minor variance permissions for this site. Consistent with our comment above regarding minor variances, our client requests that there be no time limit on building to the existing minor variance.
- 123 Front Street West (Citibank Place)
 - (i) The draft City-wide Zoning By-law proposes to prohibit nightclubs through Exception 1942. We object to this attenuation of permitted uses and request that the nightclub use remain as a permitted use through the removal of Exception 1942(a). We see no evident rationale justifying the prohibition of nightclubs. Throughout the CR zone nightclubs are permitted subject to restrictive provisions, such as a limit of one per building, being located on a ground floor only and not abutting a residential property. Despite these prescriptions there is by no means an outright prohibition as is the case with exception 1942(a).
 - (ii) The existing buildings do not fully utilize minor variance permissions for this site. Consistent with our comment above regarding minor variances, our client requests that there be no time limit on building to the existing minor variance.
- 200 Bay Street
 - (i) There are minor variances as to GFA that have not been fully utilized. Please ensure there is no time limit on building to the existing minor variances.
- 161 Bay Street (Brookfield Place)
 - (i) The existing buildings do not fully utilize minor variance permissions for this site. Consistent with our comment above regarding minor variances, our client requests that there be no time limit on building to the existing minor variance.
 - (ii) Our client is concerned that when further development in this block is undertaken, provisions not included in the site specific by-law (such as setbacks) will be imposed by virtue of the new standards in the City-wide Zoning By-law. The site specific by-law 44-88, affecting this property was prepared in the context of Zoning By-law 438-86, where no setbacks were specified for the CR zone. As no setbacks were specified in the site specific by-law, it is unlikely there was any intention to have setbacks for this site. Our client submits that imposition of new standards on a block already comprehensively planned and zoned is inappropriate. Given this concern, and the fact that this city block is already comprehensively zoned through a site specific by-law, our client requests that this property be excluded from the draft City-wide Zoning By-law i.e. be placed in a "hole".

If there are any questions about the above mentioned please contact the undersigned.

Sincerely,

BORDEN LADNER GERVAIS LLP

Catherine E. Bray
CEB
Enclosure

TOR01: 5107574: v4