

MEMORANDUM

To: Planning and Growth Management Committee

From: William Moore and Glenn McMichael, Directors
Clarity Outdoor Media Inc. (Clarity)

Subject: P&GM Meeting, June 20, 2013; Agenda Item PG25.3
Site-Specific Sign By-law Amendment - 2 Strachan Avenue - Phase 2

THE ISSUES

Clarity wishes to reconfigure a sign which has been in operation since 2000. The Staff report to P&GM supports Clarity's proposed reconfiguration, subject to the following restrictions under 694-18 C and E:

1. No up-lighting;
2. No light projection onto adjacent premises located in an R, RA, CR, I, or OS sign district;
3. Illumination not to increase the light levels within 10.0 metres of all points of the sign face by more than 6.5 lux above the ambient lighting level;
4. Illumination not to exceed 5,000 nits during the period between sunrise and sunset;
5. Illumination shall not exceed 500 nits during the period between sunset and sunrise;
6. No illumination between the hours of 11:00 p.m. and 7:00 a.m.

Clarity's proposal fully addresses some of these restrictions and significantly addresses others. The primary items in issue are up-lighting and hours of operation (items 1 and 6 above).

BACKGROUND:

Clarity operates two signs erected on a pillar at the ExPlace grounds, adjacent to the Gardiner Expressway. One sign faces east and the other west. These signs have been operating at this location since 2000.

Clarity operates these signs pursuant to a July 2010 contract with ExPlace, approved by City Council in 2009 and 2010. Clarity has, since 2010, paid ExPlace \$2,737,361 for this right. The subject sign (the "West Sign") is the west facing sign, of the two.

The West Sign contains sixteen (16) up-lighting fixtures, each generating 400 watts of lighting power, 24 hours a day, 365 days a year. It has been lawfully illuminated in this manner for some 13 years. It may lawfully remain in its current configuration forever.

The West Sign faces ExPlace and the Gardiner. There are no residential buildings in close proximity to the West Sign.

As measured by Google Earth, the closest residential building is 228.7 metres (750.3 ft). Every existing or potential residential building is separated from the West Sign by a wide transportation corridor including, among other things, six lanes of the elevated Gardiner Expressway as well as the railway corridor. The Gardiner and railway corridor are brightly lit from dusk until dawn, 365 days a year.

Accordingly, the existing ambient lighting level adjacent to the nearest residential building is considerable, with or without this Sign.

The City has approved multiple *new* signs for *other* advertisers on the Gardiner, proximate to Clarity's, in the past two years. The *other* advertisers' new signs, approved by the City:

- have added new light projection visible to proximate residential buildings;
- are much closer to residential buildings than Clarity's sign;
- are, in many cases, not separated from the residential buildings by the Gardiner/railway corridor;
- are illuminated all night;
- in most cases, are not profiting the City or one of its boards in the same manner as Clarity's contract with ExPlace.

Clarity's proposal is to do what it proposed to do in its response to ExPlace's RFP, pursuant to which it entered into its contract.

Clarity's proposal adds no light, reduces up-lighting and protects ExPlace's significant monetary benefits under its contract with Clarity. Imposing more stringent standards on Clarity – in contrast the proximate signs recently approved by the City – is unreasonable, unfairly puts Clarity to a profound competitive disadvantage, and is contrary to the public interest.

UP-LIGHTING

Policy Context

We understand that there is a policy issue with up-lighting stemming from the fact that it can cause a "halo" or "skyglow" effect at the top of a sign, where light reflected from the up-lighting onto the face of the sign effectively "spills over" the top of the sign. A particular concern that has been raised is that it may have an adverse effect on the bird population.

Practical Context

1. Notwithstanding that there are legitimate concerns about the potential impact on the bird population, we have enquired of ExPlace staff who are responsible for the management of the grounds, including the grounds under and adjacent to the Sign. They advise that, to the best of their knowledge, there has been no incidence of bird death under or around the Sign. So, to the best of our knowledge, this is not a factor with this Sign.

2. Clarity's proposal materially reduces up-lighting. Currently, the West Sign is up-lit from bottom to top. Under our proposal, 50% of the current up-lighting on the West Sign will be removed. Significantly, the remaining 50% would be located at the bottom of the sign face (trivision), and directed to its lower half. The result would be almost no light spillage above the sign, and no "halo" or "skyglow" effect. The upper trivision panel will be illuminated by two new fixtures, to be installed on the top right-hand portion of the West Sign, directed downward.

LIGHT PROJECTION

Policy Context

Typically, the concern with light projection onto adjacent premises is to avoid disturbing adjacent neighbours, usually residential, with undue light.

Practical Context

The policy has no application here. While there may be light projection on to adjacent premises, there is no negative impact:

- The adjacent land facing the West Sign is the ExPlace grounds and the Gardiner Expressway;
- ExPlace is not an issue. ExPlace has agreed to these changes;
- The Gardiner Expressway is not an issue. It is a brightly lit highway and, among other things, there are no "premises" on it to be affected by any light projection.

INCREASE OF LIGHT LEVELS WITHIN 10.0 METRES

The considerations here are similar to the light projection issue. While there may be an "increase the light levels within 10.0 metres" within some points of the sign face "by more than 6.5 lux above the ambient lighting level", there is no negative impact:

- The illumination faces the ExPlace lands and the Gardiner. The only points within 10 meters that might possibly be affected are on the ExPlace grounds;
- ExPlace has agreed to these changes.

ILLUMINATION NOT TO EXCEED 5,000 NITS IN DAYLIGHT HOURS

Clarity's proposal fully meets this standard.

ILLUMINATION NOT TO EXCEED 500 NITS IN DAYLIGHT HOURS

Clarity's proposal fully meets this standard.

HOURS OF OPERATION

Policy Context

The West Sign sits on the north-east corner of the ExPlace grounds. This corner has an Open Space (OS) designation. Almost all the rest of the ExPlace grounds, however, are classified within the Gardiner Gateway Special Sign District (GGSSD). The border between the OS and GGSSD land is some 95 metres west of the sign, measured at its closest point.

We understand that the reason that this small corner of the ExPlace lands is classified OS, rather than GGSSD, is because of its proximity to Fort York, located to the *east* of the sign.

694-18A provides that a sign in an OS area may not be illuminated between 11 pm and 7 am. However, if the sign were in the GGSSD – a mere 95 metres away – there would be no restriction in the hours of operation.

The following is from the staff report dated October 20, 2009, entitled “New Sign Regulation and Revenue Strategy for the City of Toronto” respecting Chapter 694:

“The area surrounding the F.G. Gardiner Expressway at Exhibition Place is an area where large, illuminated, spectacular-type billboards have been installed.

By virtue of the amount, size, purpose, and type of signs that have evolved in this area, signage has become a defining element of its character.

...

The new Sign By-law proposes to establish a Special Sign District that is limited by Strachan Ave to the east; Dufferin Street to the west; King Street to the north; and Lake Ontario to the south.” (emphasis added)

Notably, the Clarity sign is within the area described in the staff report. Although the GGSSD now appears to be limited by Manitoba Avenue on the east, rather than Strachan (the boundary indicated in the staff report), it is certainly in the “area surrounding the F.G. Gardiner Expressway at Exhibition Place”, within an area “where large, illuminated, spectacular-type billboards have been installed”. In fact, the subject billboard was one of the first of these billboards that gave the area this character.

Practical Context

The West Sign faces west, *away from Fort York*. Its illumination does not affect Fort York. Further, the Fort grounds, nearly 600 metres (1,968 ft) away. As such, there is no policy reason to treat it differently from the rest of the “area surrounding the F.G. Gardiner Expressway at Exhibition Place... where large, illuminated, spectacular-type billboards have been installed”. This addresses the actual policy issue addressed in the bylaw.

There is no policy issue reflected in the existing bylaw to restrict overnight lighting on signs in the GGSSD – an area that contains the bright lights and noise of both a heavily-travelled

highway, and railway corridor, where “large, illuminated, spectacular-type billboards” are part of the location’s character. Despite the foregoing, Clarity’s proposal has several benefits:

This is an existing sign that, as currently configured, operates all night, is fully up-lit, and can lawfully continue to so operate indefinitely. On the other hand, if Clarity’s proposal is granted:

1. The up-lighting would be materially reduced and any “halo” or “skyglow” effect at the top of a sign would be largely, if not fully, eliminated;
2. The overnight illumination would be limited to the standards of the new bylaw;
3. The reduced up-lighting and limited overnight illumination would, compared to the current configuration, reduce the night-time illumination of the sign.

Without agreement, the West Sign will continue to operate without reduction of up-lighting or overnight illumination.

As a final comment in this regard, the City has recently approved six new large-format LED displays on the North side of the Gardiner Expressway, across from the ExPlace grounds, despite the fact that they exceeded specified height and area parameters. We understand that there are no restrictions in hours of operation for these large signs. More important, several of these sign faces are right in front of new residential buildings currently under construction - see pictures enclosed. We cannot rationalize these recent approvals, in light of the challenges being raised with the ExPlace sign, which has been in operation for many years, and is not proximate to any residential property.

OTHER PRACTICAL CONSIDERATIONS

Impact on ExPlace

Notwithstanding all of the challenges that Clarity has faced with the City over the past two years, Clarity has made all of the payments to ExPlace as required under their 15-year Agreement. However, Clarity has various contractual rights that would result in significant lost revenues to ExPlace.

Among other things, Clarity is entitled to an adjustment if “the City of Toronto, or any other authority having jurisdiction, enacts legislation, bylaws, rules or regulations that reduce or restrict the use of the Sign in comparison to the use allowed on the Commencement Date”. Reduction in hours of operation would trigger this right.

Indeed, restriction of hours of operation is such a serious issue under the contract, the contract specifically provides that Clarity has the right to terminate, and recover significant prepayments from ExPlace, if the City of Toronto enacts a bylaw that would substantially “restrict the hours or days on which the Display Systems on the Sign may be active”.

Notice of Violation

The City has issued a Notice of Violation regarding Clarity's placement of vinyl copy over the inoperable readerboard on the West Sign. This is something that has been done to the readerboard on several occasions in the past, without complaint or challenge. For some reason, it has now been challenged contemporaneous with Clarity's sign by-law amendment application.

Each of Clarity and the City has received expert legal advice on this matter. It is our view that applying vinyl in this manner was lawful under the former bylaw, and that the former bylaw continues to apply to the West Sign. As is sometimes the case in such situations, lawyers do not always agree. It has been our experience, however, that the City has taken aggressive positions in its interpretation of the bylaw. Clarity and its advisor feel very strongly about their position - especially given the coincidental timing of the issue of the Notice - and are prepared to litigate this matter if need be.

A PRACTICAL SOLUTION WITH POLICY CONSIDERATIONS

In our view, a bylaw amendment, as modified in accordance with the foregoing, would provide significant benefits to both the City and Clarity.

MOTION # 1 – 2 Strachan – West side (but without hours of operation restriction and without most of illumination restrictions to reflect the existing contractual arrangements and in keeping with the direction taken with respect to the East side in October 2012)

1. City Council amend Chapter 694, Signs, General, of the City of Toronto Municipal Code, Schedule B, Signage Master Plans and Area Specific Amendments, subsection K, 2 Strachan Avenue, as follows:

(1) subsection 1.K.(c) is amended by substituting the word "six" for the word "five" in subsection 1.K.(c)[1]; and

(2) by deleting subsection 2.K.(c)[2] and substituting the following:

[2] Three sign faces shall be oriented to be displayed in a westerly direction and shall comply with the following requirements:

[a] One sign face shall display static or mechanical copy only; and,

[i] The vertical distance between grade and the highest point of the sign face shall not exceed 35.0 metres;

[ii] The sign face area shall not exceed 71.8 metres;

[iii] No horizontal measurement of the sign face shall exceed 11.0 metres;

[iv] No vertical measurement of the sign face shall exceed 7.0 metres;

[v] The sign face may be illuminated, provided:

[A] the illumination shall not exceed 5,000 nits during the period between sunrise and sunset;

[B] the illumination shall not exceed 500 nits during the period between sunset and sunrise.

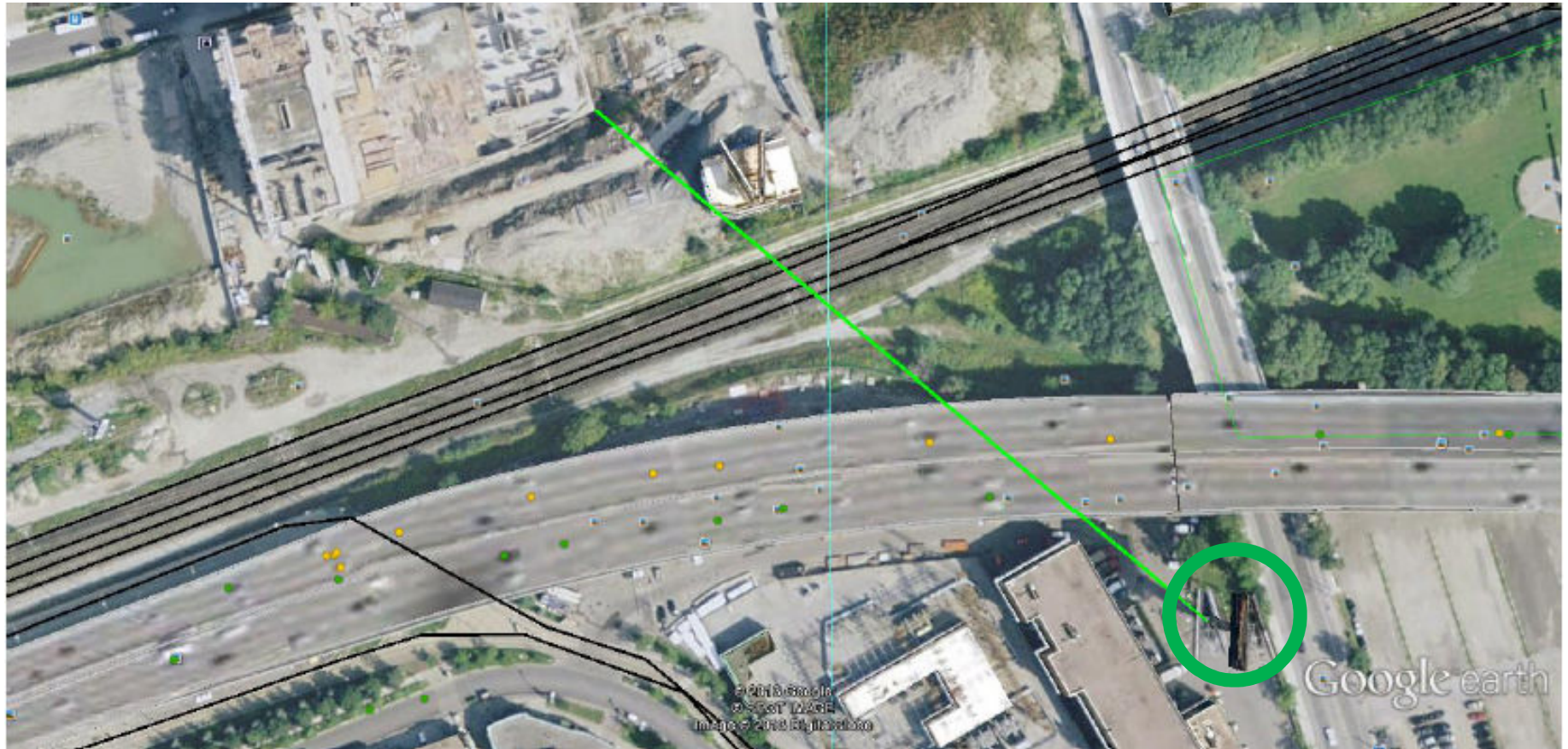
[b] One sign face shall display static or mechanical copy only; and,

[i] The vertical distance between grade and the highest point of the sign face shall not exceed 28.5 metres;

[ii] The sign face area shall not exceed 115.0 metres;

- [iii] No horizontal measurement of the sign face shall exceed 10.0 metres;
- [iv] No vertical measurement of the sign face shall exceed 5.5 metres;
- [v] The sign face may be illuminated, provided;
 - [A] the illumination shall not exceed 5,000 nits during the period between sunrise and sunset;
 - [B] the illumination shall not exceed 500 nits during the period between sunset and sunrise; and
- [c] One sign face shall display static, mechanical or electronic static copy only; and,
 - [i] The vertical distance between grade and the highest point of the sign face shall not be less than 28.5 metres and shall not exceed 35.0 metres;
 - [ii] the sign face area shall not exceed 64.0 square metres;
 - [iii] No horizontal measurement of the sign face shall exceed 20.0 metres;
 - [iv] No vertical measurement of the sign face shall exceed 7.0 metres;
 - [v] The sign face may be illuminated, provided;
 - [A] the illumination shall not exceed 5,000 nits during the period between sunrise and sunset;
 - [B] the illumination shall not exceed 500 nits during the period between sunset and sunrise.

CNE Sign – Distance to Nearest Residential Building



228.7 metres; 750.3 ft

CNE Sign – Direct Line of Sight



Schedule D-2

METRIC: MEASUREMENTS SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

SKETCH SHOWING LOCATION OF THIRD PARTY SIGN
SOUTHWEST CORNER OF
STRACHAN AVENUE
CITY OF TORONTO
SCALE 1 : 500



THIRD PARTY
ROOF SIGN

NO R, RA OR OS SIGN DISTRICT
WITHIN 30m RADIUS OTHER THAN SHOWN

OPEN SPACE (OS)
SIGN DISTRICT

NO 3rd PARTY SIGNS WITHIN
100.0m RADIUS

EMPLOYMENT (E)
SIGN DISTRICT

OPEN SPACE (OS)
SIGN DISTRICT

FREDERICK G. GARDINER EXPRESSWAY

FREDERICK G. GARDINER EXPRESSWAY

BRIDGE ABUTMENT

BRIDGE ABUTMENT

21.1m

LOCATION OF
THIRD PARTY
SIGN

10.6m

STRACHAN AVENUE

OPEN SPACE (OS)
SIGN DISTRICT

OPEN SPACE (OS)
SIGN DISTRICT

QUEEN'S YORK
RANGERS MUSEUM

OPEN SPACE (OS)
SIGN DISTRICT

MANITOBA DRIVE

BRICK BUILDING

BUILDING

GARDINER GATEWAY - OPEN SPACE
(GG-SSD-OS)
SIGN DISTRICT

FLEET STREET

OPEN SPACE (OS)
SIGN DISTRICT

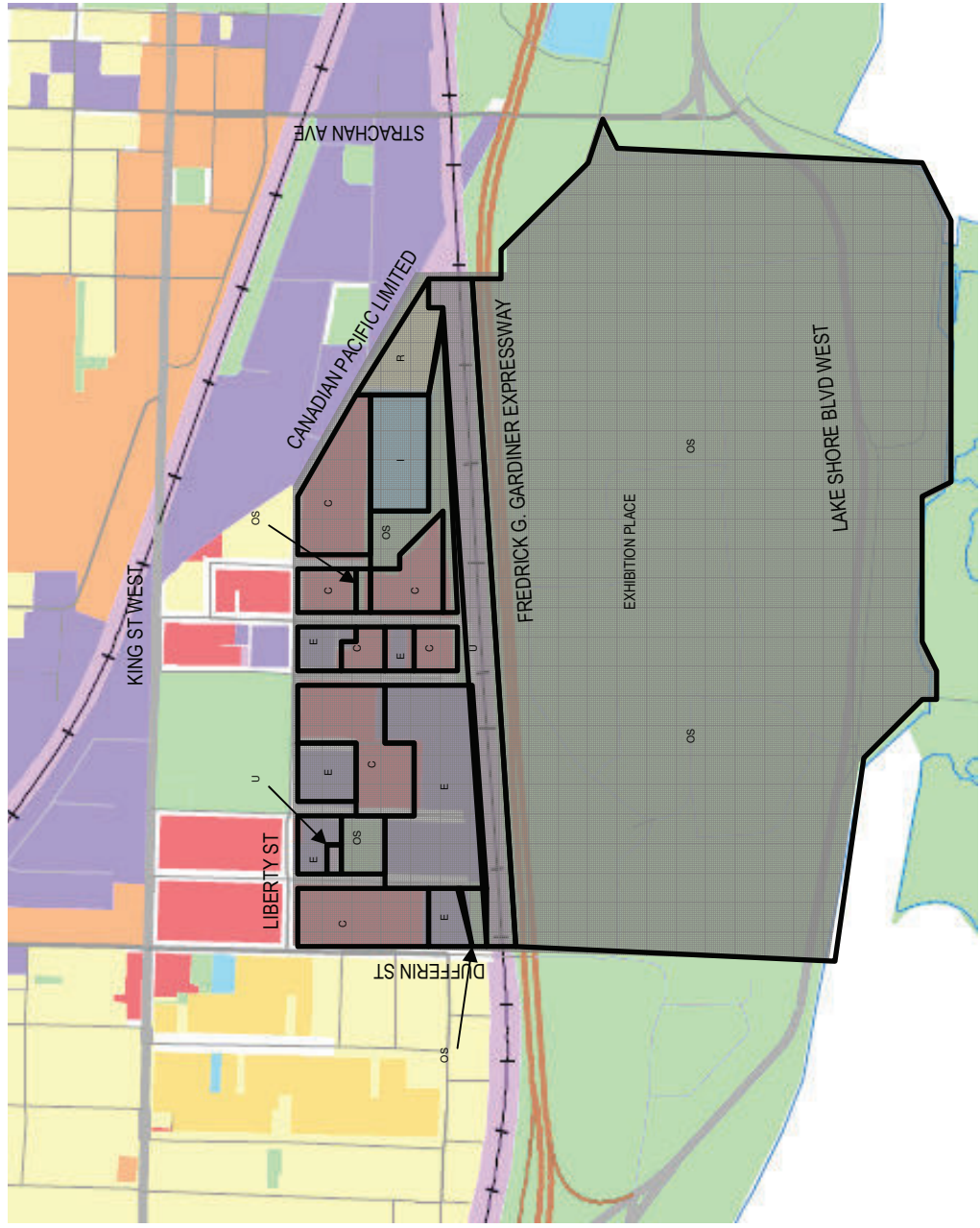
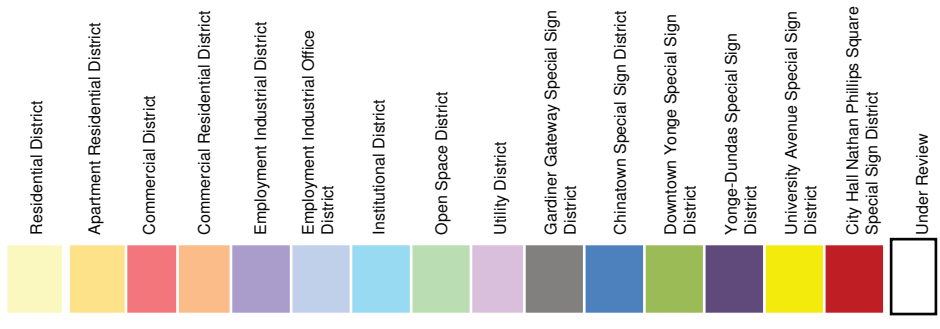
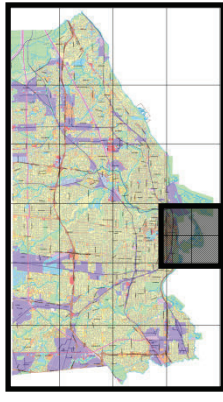
SURVEYOR'S CERTIFICATE
THIS SKETCH IS NOT A PLAN OF SURVEY AND SHALL ONLY
BE USED FOR THE PURPOSE INDICATED IN THE TITLE BLOCK.

DATE: APRIL 25, 2012.

[Signature]
DAY DZALOV
ONTARIO LAND SURVEYOR

SCHAEFFER DZALDOV BENNETT LTD.
ONTARIO LAND SURVEYORS
64 JARDIN DRIVE CONCORD, ONTARIO L4K 3P3 TEL: (416) 887-0101
DZALOV/ACAD/LW CHECKED SCALE 1:500 JOB NO. 12-132-00

Gardiner Gateway Special Sign District





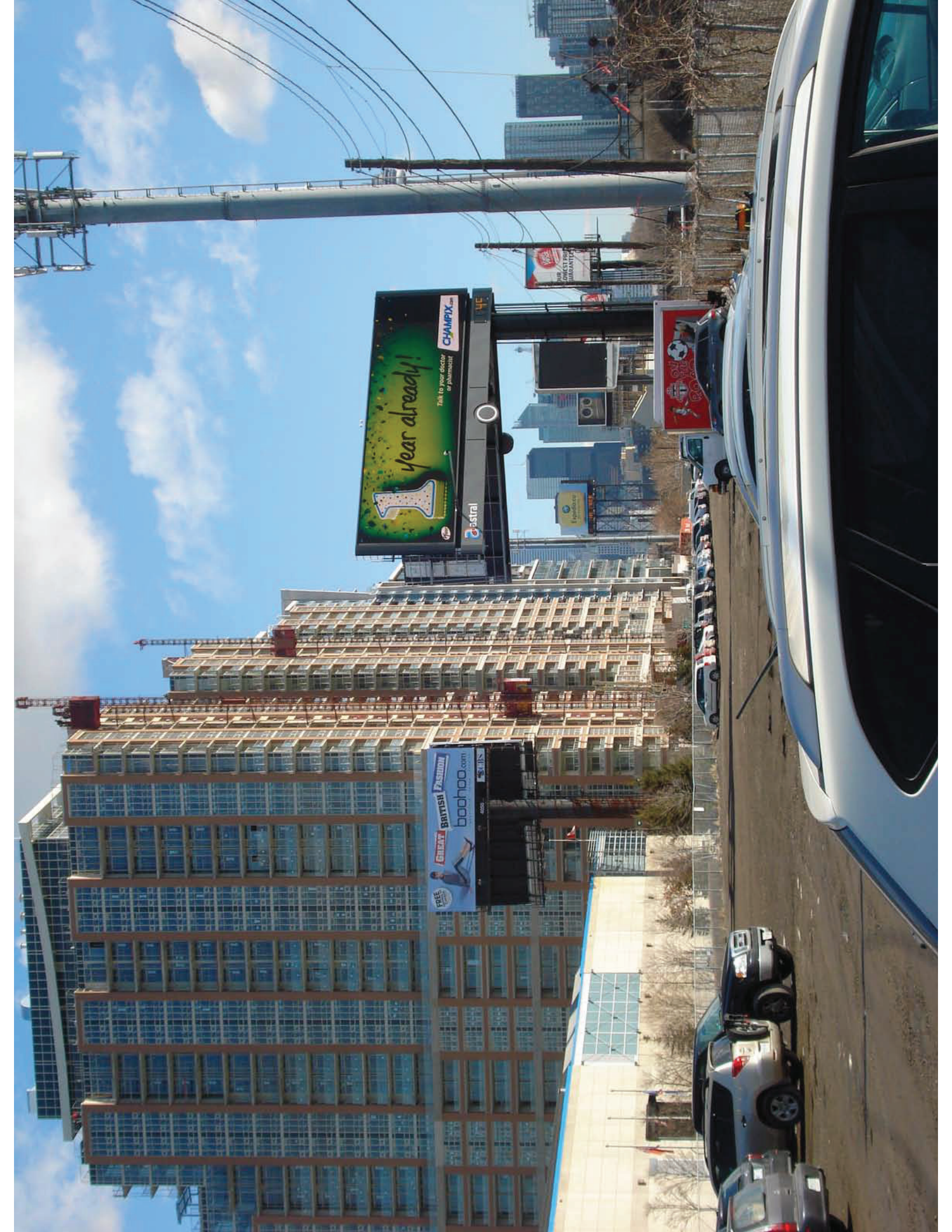
TOYOTA
RED TAG DAYS
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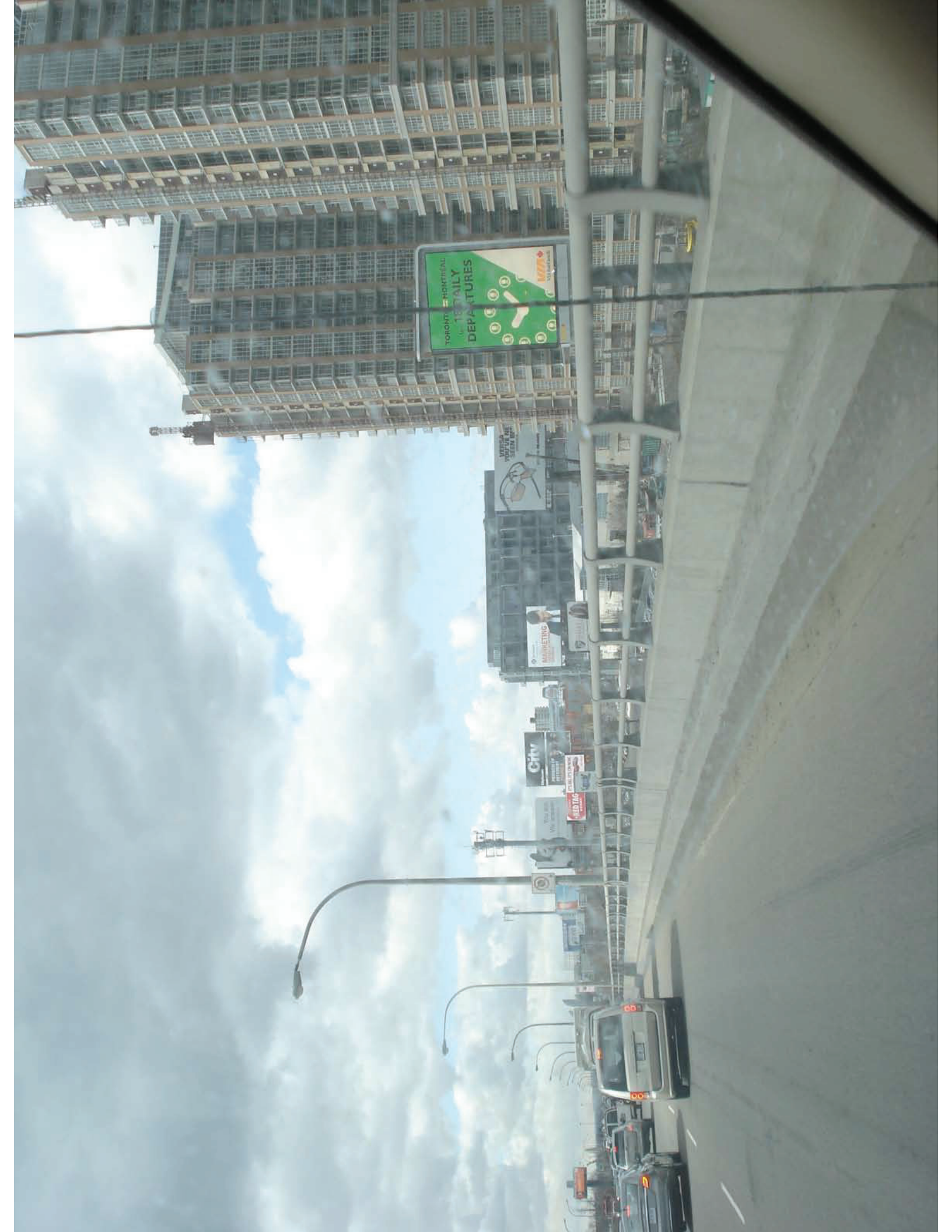
[Dark billboard]

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