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TE32.43.1

June 9, 2014

VIA EMAIL

Our File No. 119143

Deputy Mayor and Members of Council
c/o Toronto City Clerk (Secretariat Contact: Marilyn Toft)
12th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs/Mesdames:

Re: Pattison Outdoor Advertising ("Pattison")
TE32.43 - Application by Pattison for Five Variances With Respect to a Sign Proposal for One Third Party Ground Sign at 7 Fraser Avenue

I am counsel to Pattison. I appeared before the Toronto and East York Community Council ("TEYCC") in respect of the above-noted matter on May 13, 2014. At that time, TEYCC resolved to recommend to City Council that the five sign by-law variances previously granted to Pattison by the Sign Variance Committee be refused, despite such variances having been unanimously approved by the Sign Variance Committee with full support from the City's Sign By-law Unit.

Before TEYCC, I outlined how the "appeal" process adopted by the City from decisions of the Sign Variance Committee does not meet the requirements of natural justice. I now write to assist members of City Council in understanding why the proposed "refusal" of Pattison's sign by-law variances violates basic principles of natural justice:

1. A hearing before the Sign Variance Committee is a public hearing on the merits. The Committee exercises delegated authority from Council in making a decision to approve a sign by-law variance. Under the current "appeal" process, the local councillor may, without any further consultation or permission from Council, remove the delegated authority from the Sign Variance Committee and place it back in the hands of Council. Please note that this can only happen when variances are approved by the Sign Variance Committee – decisions to refuse variances are deemed to be final.

2. Approved sign by-law variances may be appealed to City Council by the local councillor only. The appeal first comes before the relevant Community Council in which the sign is to be located (and on which the local councillor sits). The Community Council holds a hearing and makes a recommendation to City Council. When Community Council is hearing an appeal from the decision of the Sign Variance Committee, Community Council is sitting as a quasi-judicial body. The principles of natural justice accordingly apply to this proceeding.

3. There are three ways that the appeal hearing before Community Council currently does not accord with the principles of natural justice:

a. The local councillor's appeal is filed with the Chief Building Official. The applicant is not notified and does not receive a copy of the appeal until the Community Council agenda is released (assuming the appeal is included in the staff report).

b. The local councillor does not need to provide grounds for appealing the decision of the Sign Variance Committee. Even if there are grounds for the appeal, such grounds are not shared with the applicant and may not be publicly disclosed until after deputations are heard and the item is brought into committee. An applicant is not informed of the case they have to meet on the appeal and cannot respond to any submissions made once the appeal is brought into committee for discussion and motions.

c. The local councillor that filed the appeal not only sits on the relevant Community Council, but is free to move a motion in support of his/her own appeal and may vote on such motion. In short, the appellant acts as the judge of his/her own appeal.

The foregoing natural justice issues were on full display at TEYCC when the appeal related to 7 Fraser Avenue came forward. Sign By-law Staff supported each of Pattison's five requested sign by-law variances as being in full satisfaction of the nine criteria for granting a sign by-law variance prescribed by the City's Sign By-law. The Sign Variance Committee agreed with staff and unanimously approved all five variances.

Regardless, Councillor Gord Perks appealed the Sign Variance Committee's decision to TEYCC. Councillor Perks' appeal did not indicate which of the nine criteria he believed that Pattison's variances did not meet, nor was Pattison informed of what errors Councillor Perks was asserting were present in the Sign Variance Committee's decision. During the TEYCC meeting, minimal questions were put to Pattison during its deputation. It was only after the matter was brought into committee that Councillor Perks began to outline his grounds of objection. At that point, Pattison had no opportunity to respond.

Councillor Perks thereafter moved that TEYCC recommend to Council that all five variances be refused. Councillor Perks casted his vote to adopt this motion and it is anticipated he will similarly vote to adopt the refusal recommendation when TE32.43 comes before City Council on June 10, 2014. Meanwhile, this letter constitutes the only submission Pattison will be permitted to make in response. Pattison will have no further opportunity to respond to any submissions or grounds raised on this matter while it is before Council.

If the recommendation in TE32.43 is adopted by City Council, it is Pattison's intention to apply to the Ontario Courts to have the Council decision voided and the decision of the Sign Variance Committee re-instated. This letter is being submitted to bring these issues to the attention of Council with the hope that such a legal proceeding may be avoided. If the appeal filed by Councillor Perks will not be refused by Council, then at a minimum, the appeal should be re-heard in a manner that accords with the requirements of natural justice.

Yours truly,

AIRD & BERLIS LLP

Patrick J. Harrington
PJH/mk

cc. S. Catalano, Pattison Outdoor Advertising LP

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