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August 6, 2014

BY EMAIL

Our File No.: 120879

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

Attention: Ms. Nancy Martins, Administrator

Dear Ms. Martins:

**Re: Planning and Growth Management Agenda Item 35.6
Dupont Street Regeneration Area Study – Official Plan Amendment and
Zoning Amendment**

Aird & Berlis LLP represents CP REIT Ontario Properties Limited (“CP REIT”) and Loblaw Properties Limited, the owner and tenant respectively of lands municipally known as 650 Dupont Street in the City of Toronto.

Please be advised that we will be in attendance at the meeting of the Planning and Growth Management Committee and have requested an opportunity to make a deputation on this matter.

The purpose of this correspondence is to request that the Planning and Growth Management Committee make the following recommendation to Council:

1. That the lands at 650 Dupont Street, and the remainder of the lands within the study area, be designated in their entirety as Mixed Use Areas rather than the proposed split designation Employment Areas/Mixed Use Areas;
2. That the 8 storey maximum height restriction and 10.5 m height minimum as found in the draft Official Plan Amendment and Zoning By-law Amendment, respectively, be removed;
3. That the requirement for a combined 30 metre setback from the rail corridor and a 15m wide, 2.5m high earthen berm, along with the proposed restrictions on uses in the rail corridor, throughout the study area be removed. Instead, we would propose a policy requiring the submission and peer review of studies to ensure the appropriate type and extent of rail mitigation measures are secured on a site and development specific basis; and

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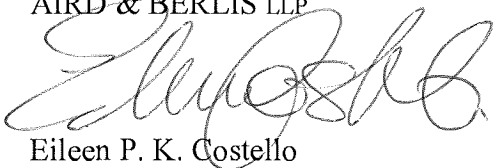
Page 2

4. That the proposed additional modifications to the draft Official Plan Amendment and Zoning By-law Amendment set out in the attached correspondence from Zelinka Priamo Ltd., our clients' planning consultant, be made prior to the documents being considered by Council.

We thank you in advance for your consideration of these comments and requests.

Yours truly,

AIRD & BERLIS LLP



Eileen P. K. Costello

EPKC/ab

Encl.

- c. Steve Thompson, Choice Properties REIT
Mario Fatica, Loblaw Properties Limited
Jonathan Rodger, Zelinka Priamo Ltd.
Sarah Phipps, City of Toronto
Steven Zakem, Aird & Berlis LLP

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ZELINKA PRIAMO LTD
A Professional Planning Practice

VIA EMAIL AND REGULAR MAIL

August 6, 2014

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

Attention: Ms. Nancy Martins, Administrator

Dear Ms. Martins:

**Re: Dupont Street Regeneration Study: Proposed OPA 271 and ZBA
City of Toronto File Number: 14-108871 STE 20 OZ
Agenda Item PG35.6
Loblaw Properties Limited and Choice Properties REIT
650 Dupont Street
Toronto, ON
Our File: CHO/TOR/14-01**

We are the planning consultants for CP REIT Ontario Properties Limited ("CP REIT") and Loblaw Properties Limited ("Loblaw"), owners and tenant, respectively, of lands known municipally as 650 Dupont Street in the City of Toronto.

The lands are presently designated Employment Area on Map 18 Land Use Plan under the current Official Plan. According to the current Site and Area Specific Policy No. 212, Section (e) permits a maximum gross floor area for retail and service uses of 5,000 sq. m and Section (f) permits residential uses in a mixed use building to a maximum of 3.0 times the lot area provided they are not located within 30 m of the railway right-of-way.

The subject lands were developed for a Loblaws supermarket of approximately 5,102 sq. m (54,921 sq. ft.) of gross floor area (including mezzanine) according to Zoning By-law 1994-0654. Under minor variance A0419/07TEY a non-residential gross floor area of 5,167.75 sq. m is permitted on the site.

As part of the City of Toronto Official Plan/Municipal Comprehensive Reviews, we submitted comments dated November 20, 2013 for Official Plan Amendment No. 231 ("OPA 231") as it pertains to 650 Dupont Street. The comments included a request that the proposed Urban Structure Map be revised to remove the Employment Areas shown for 650 Dupont Street and that Map 34 be revised to reflect a Mixed Use Areas designation for the entirety of the subject lands, along with associated revisions to the proposed Site and Area Specific Policy No. 212.

OPA 231 was adopted by City Council on December 16, 2013 and enacted as By-law no. 1714-2013 on December 18, 2013, and subsequent to the MMAH approval (with modifications and deferrals) on July 9, 2014, OPA 231 was appealed to the OMB by CP REIT and Loblaw.

On July 31, 2014, CP REIT and Loblaw were made aware of the July 8, 2014 Staff Final Report for the Dupont Street Regeneration Study: Proposed Official Plan Amendment No. 271 ("OPA 271") and Zoning By-law Amendment. It is our understanding that the Staff Report will go to a statutory Special Public Meeting of the Planning and Growth Management Committee on August 7, 2014.

On behalf of CP REIT and Loblaw, at this time our preliminary comments in respect of draft OPA 271 are as follows:

- The amendment to Land Use Map 18 proposes to maintain an Employment Areas designation for the first 30 m of the site immediately adjacent to the CP North Toronto rail corridor while re-designating the southern portion of the site to Mixed Use Areas. As outlined in our comments previously submitted to the City in respect of OPA 231 (November 20, 2014), we observe the following:
 - The boundary of the proposed split designation bisects the existing supermarket. The implementation of a split designation within an existing building is unreasonable given the different land use permissions and tests under the Official Plan. Additionally and as illustrated on the attached site plan, the resulting 30 m wide General Employment Areas development parcel and the Mixed Use Areas are likely too narrow to effectively be (re)developed or intensified; and
 - Accordingly, we reiterate our request that the Urban Structure Map be revised to remove the Employment Areas shown for 650 Dupont Street and that Map 18 be revised to reflect a Mixed Use Areas designation for the entirety of the lands at 650 Dupont Street.
- Proposed Site and Area Specific Policy (SASP) 212, Section 2.1: we request clarification as to how Staff will determine whether new residential, retail, service office and institutional uses will "impede" existing employment uses within the study area. We note that the existing Loblaw's store is an existing employment use;
- Proposed SASP 212, Section 3.1: we suggest that the word "New" be inserted prior to "Buildings will be setback from the Dupont Street property line to allow a minimum 4.8 metres from the curb to the front face of the building..."
- Proposed SASP 212, Section 3.3: as noted above, a non-residential gross floor area of 5,167.75 sq. m is permitted on the site. Accordingly, and as outlined below in respect of the draft zoning by-law, we request a site specific exception for 650 Dupont Street from the proposed limit of a 5,000 sq. m maximum gross floor area for any one retail or service use;
- Proposed SASP 212, Section 3.7: clarification is requested as to what is meant by "long frontages". In addition, we suggest that in order to maintain flexibility, the word "generally", should be inserted after the word "should" in the sentence "The length of new buildings along the north side of Dupont Street should not exceed the width of the blocks on the south side of the street between Christie and Manning Streets.";

- Proposed SASP 212, Section 4.1: this policy as worded lacks flexibility in that it requires a net increase of non-residential gross floor area to be provided in every redevelopment; in our submission a net increase may not be feasible or warranted in every redevelopment;
- Proposed SASP 212, Section 5.1: with regard to a requirement for sheltered and easily accessible visitor parking spaces for new developments, we request clarification as to whether the intention is for sheltering within the associated new building or whether sheltering outside of the building meets the intent of the policy;
- Proposed SASP 212, Section 5.4: we suggest that the requirement for a majority of parking spaces to be located below-grade or in a parking structure should be changed to “encouragement” language as placing the majority of spaces below grade may not be feasible in all instances nor in the interim as infill development proceeds;
- Proposed SASP 212, Section 6.3: we request clarification as to whether retail uses would be interpreted as “creating places for the public to linger”. In our submission, a policy whereby private land owners are required to provide places for the public to “linger” is unreasonable and will be difficult to administer;
- Proposed SASP 212, Section 8.2: as illustrated on the attached site plan, the requirement for a setback of a minimum of 30 m from the property line of the CP rail corridor, in combination with a 4.8 m setback required under Section 3.1, would render approximately half of the subject lands effectively non-developable. According to the *Guidelines for New Development in Proximity to Railway Operations* dated May 2013, the 30 m setback is intended for residential or other sensitive uses only. The policy as drafted extends this to other uses not traditionally considered “sensitive” and unduly restricts the development opportunities for the lands as a result.

Additionally, the requirement for a 2.5 m high and 15 m wide earthen berm (with a noise wall on top) for new uses within the Mixed Use Area designation to the south, effectively renders approximately a quarter of the subject lands as non-usable for parking or access and any infill development of the subject lands. It would also compromise customer parking as well as the existing access for customers and trucks to Dupont Street.

The *Guidelines for New Development in Proximity to Railway Operations* state:

“Residential development becomes significantly more challenging, however, when the context is a small infill site, such as those typically associated with the conversion of commercial or industrial properties. In addition to their small size, these sites are also often oddly shaped, and do not easily accommodate standard mitigation measures such as a setback and berm.” (p. 21)

The flexibility suggested in the Guidelines document is not reflected in the draft policy. We suggest the policy provide a mechanism whereby the nature and extent of appropriate setbacks and mitigation measures be determined on a site by site basis;

- Proposed SASP 212, Section 8.3: the proposed restriction on uses within the 30 m setback to the CP rail corridor (which is effectively the entirety of the Employment Areas designated lands under OPA 231) is overly restrictive and does not reflect the direction found in the *Guidelines for New Development in Proximity to Railway Operations*; and
- Proposed SASP 212, Section 8.4: provides for a proposed alternative to the requirements of Section 8.2 and 8.3 of a Zoning Amendment Application where the standards cannot be met due to topographical, geographical, or other physical constraints subject to meeting a number of conditions. With our suggested changes to Section 8.2 as noted above, the alternative under Section 8.4 would not be required. Alternatively, the section could be amended to permit other alternative mitigation measures to be considered in circumstances as discussed above.

On behalf of CP REIT and Loblaw, at this time, our preliminary comments for the draft Zoning By-law Amendment are as follows:

- In general, we reiterate our request noted above that the Urban Structure Map be revised to reflect a Mixed Use Areas designation for the entirety of the lands at 650 Dupont Street, which will impact upon the mapping and provisions of the draft Zoning By-law Amendment;
- Item 2, clarification is requested as to the existing provisions under Zoning By-law 1994-0654, as well as minor variances A0419/07TEY and A-960-95 in terms of the interrelationship with and application of the draft zoning provisions;
- Item 7, the permitted uses in the IC zone are overly restrictive;
- Item 8, in terms of the maximum gross floor area of any one retail or service use of 5,000 sq. m, under minor variance A0419/07TEY a non-residential gross floor area of 5,167.75 sq. m was approved for 650 Dupont Street. Accordingly, we request a site specific exception in the zoning permitting a maximum gross floor area of any one retail or service use of 5,167.75 sq. m for 650 Dupont Street;
- Item 9, the maximum of 1,500 sq. m for total residential gross floor area on any lot is overly restrictive for larger parcels such as 650 Dupont Street. As noted above, residential gross floor area is currently permitted at 3.0 times the lot area provided it is not located within 30 m of the railway right-of-way;
- Item 10, in the context of our comments above for Proposed SASP 212, the requirement for a berm for any principal building on the portion of a lot zoned MCR should be removed;
- Item 13, for the minimum height of any new building or structure in the study area of 10.5 m, in our submission, a gradual transition towards intensification should be encouraged not prohibited, with flexibility as to minimum building heights. Accordingly, we suggest that the minimum building height be removed;
- Item 16, for the net gain in non-residential uses provision, we request clarification that a new infill non-residential building less than the existing non-residential building in size (i.e., the Loblaws supermarket) at 650 Dupont Street would be permitted; and

- Item 18, the maximum width of any building or structure, above grade, facing Dupont Street of 90 m does not recognize the existing Loblaws Store at approximately 96 m and should be adjusted accordingly.

On behalf of CP REIT and Loblaw, at this time, our preliminary comments for the draft Urban Design Guidelines are as follows: Section 2.1, we suggest that the reference to a minimum height of 3 storeys or 10.5 m be changed to encouragement language. In our submission, flexibility as to the number of storeys is appropriate given that policies will be implemented and transitioned over the long term.

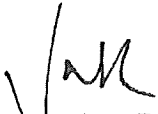
Lastly, we note that the Staff Report dated July 8, 2014 states on page 24 that "Parks Staff have indicated a willingness to acquire parkland on any site which is a minimum of 1 hectare in size, and two sites in the Study Area currently meet this criteria – the Loblaw site and the Sobeys site. A park dedication on these sites would be approximately ... 2,000 sq. m for the Loblaw site." In our submission, with or without the proposed CP rail corridor setbacks, berming and the increased minimum building setback along Dupont Street under the draft OPA and Zoning, a parkland dedication of 2,000 sq. m will limit the intensification and redevelopment of the subject lands.

We would welcome the opportunity to meet with Staff to discuss our preliminary comments. In addition, kindly add the undersigned for notification of any further meetings with regard to this matter as well as for notice of the adoption of the Official Plan Amendment and the passing of the Zoning By-law Amendment.

We trust that the enclosed information is satisfactory. Should you have any questions, or require further information, please do not hesitate to call.

Yours very truly,

ZELINKA PRIAMO LTD.



Jonathan Rodger, MScPI, MCIP, RPP
Senior Planner

- cc. Steve Thompson, Choice Properties REIT (via email)
Mario Fatica, Loblaw Properties Limited (via email)
Eileen Costello, Aird & Berlis LLP (via email)
Steven A. Zakem, Aird & Berlis LLP (via email)
Sarah Phipps, City of Toronto (via email)

ZPL SKETCH (JULY 2014)

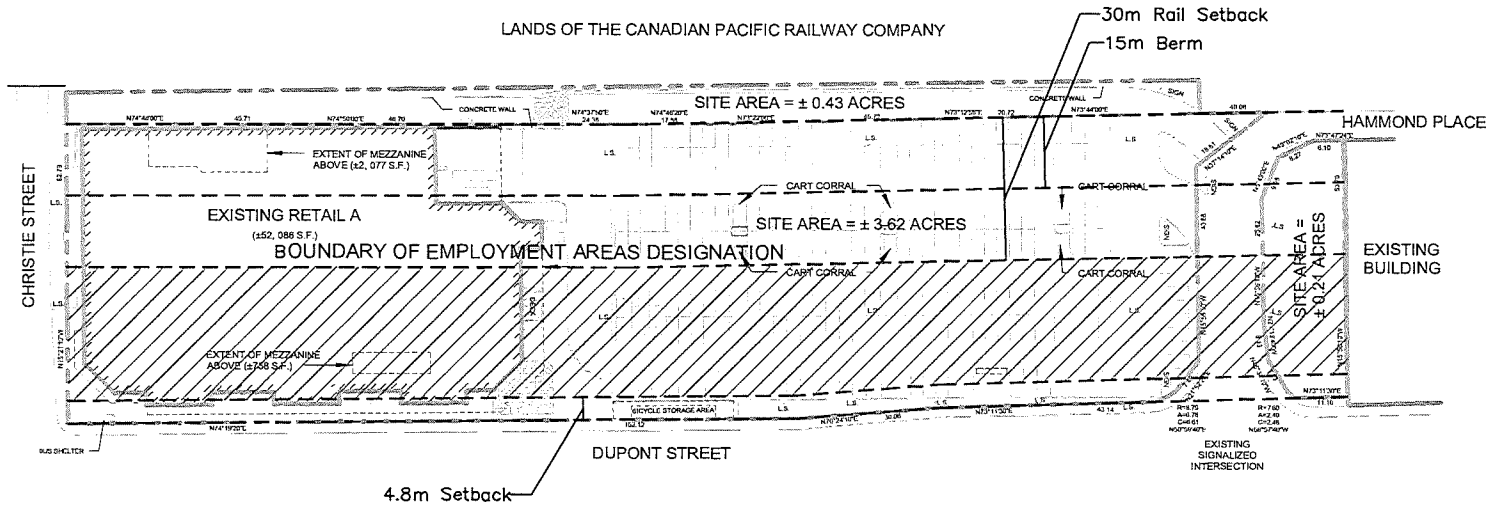
DRAFT OPA 271
 PROPOSED RAIL SETBACK, BERM
 AND 4.8m SETBACK FROM DUPONT.

PRELIMINARY

STATISTICS

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TOTAL SITE AREA	±4.26 ACRES	±1.72 HA
EXISTING RETAIL A AREA	±52,086 S.F.	±4,639 S.M.
EXISTING MEZZANINE AREA (N.I.C.)	±2,835 S.F.	±263 S.M.
TOTAL RETAIL AREA	±54,921 S.F.	±5,102 S.M.
PARKING PROVIDED	257 CARS	257 CARS
PARKING RATIO	4.68 / 1,000 S.F.	5.04 / 100 S.M.
COVERAGE		29.63 %



REMAINING DEVELOPMENT AREA

1 Site
 1 : 1000

DUPONT/CHRISTIE

TORONTO, ONTARIO

EXISTING SITE PLAN



SCALE = 1 : 1000

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