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April 10, 2015

File No. 529492-9

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

Attention: Secretary

Dear Sirs:

**RE: April 13, 2015 Agenda Item PG 3.2
Enforcement Strategy for Chapter 694 of the Municipal Code**

We are the solicitors for 863880 Ontario Limited, the long term Lessees of two signs located at 9 Hanna Avenue in the City of Toronto. We have reviewed the Reports issued by Staff and before your Committee at this meeting and have been asked by our client to provide our comments respecting them.

Statutory Authority

Before addressing the specific Recommendations, I believe it is necessary to correct the background discussion of the structure of the *City of Toronto Act* and the City's powers with regards to signs. Contrary to the statement in the Report, Section 110(1) does not create a "unique limitation on the authority under subsection 8(2)". This is to misunderstand the general nature of Section 8(2). In fact, the City's broad powers under Sections 7 and 8 of the *City of Toronto Act* are subject to the General Restrictions imposed by Section 12 of the *City of Toronto Act*. Section 12(1) provides "If the City has the power to pass a by-law under section 7 or 8 and also under a specific provision of this or any other Act, the power conferred by section 7 or 8 is subject to any procedural requirements, including conditions, approvals and appeals, that apply to the power and any limits on the power contained in the specific provision".

As a result, the City's power to pass by-laws under Section 8(2)(10) with respect to "structures, including fences and signs" is subject to the City's specific power under Section 34(1)2 of the *Planning Act* to pass zoning by-laws "For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas..." and Section 34(1)4 of the *Planning Act* "for regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality...". As a result, Section 12 acts to limit the powers under Subsection 8(2)(10) by making them subject to the *Planning Act* provisions with respect to zoning by-laws regulating structures. This would provide for legal non-conforming use protection as provided for under Section

34(9) of the *Planning Act* and appeals of the by-laws regulating such structures pursuant to Section 34(19) of the *Planning Act*.

The drafters of the legislation, however, then provided that the general restriction under Section 12(1) of the *City of Toronto Act* would not, pursuant to Section 12(5)(a), apply to by-laws under Sections 7 or 8 "respecting fences and signs". I suggest that this exemption from the general restriction in Section 12 was put in place because Section 110(1) provides for the equivalent type of protections contained in the *Planning Act* which were to apply to signs. Those protections contain the legal non-conforming use protection which Staff is now proposing to remove. In short, I do not believe Staff correctly characterized the existing statutory regime and it is our submission that if there is to be a removal of the protections in Section 110(1), that the exemption contained in Section 12(5)(a) respecting signs should also be deleted from the *City of Toronto Act*. This would have the effect of making signs and sign by-laws subject to the legal non-conforming provisions under the *Planning Act*, as well as the appeals process under that Act.

We note that the latest Report dated March 25th proposes to step back from the deletion of the Section 110(1) protections in their entirety as proposed in the original Staff Report. While somewhat confusing, the Report now appears to want to limit the removal of the Section 110(1) protections insofar as the by-law provisions relate to the "requirements of the harmonized signed by-law for illuminated and electronic signs". It is unclear how this would occur or be drafted.

Recommendations of the March 25, 2015 Report

Based upon the foregoing, we submit that your Committee should take the following actions respecting the Recommendations before it:

1. Recommendation One does not specify the nature of the changes to Section 110(1) of the *City of Toronto Act* which are to be requested. Given the confusion in the body of the Report as to the exact nature of these, we believe the Recommendation is an inappropriate request for authority. As drafted, this would provide, effectively, extensive delegated authority by Staff to request the Province for whatever amendments they believe were adequate. This circumvents the ability of affected land owners and indeed City Council to understand the nature of the proposed changes and to make proper representations respecting them. Accordingly, we submit that Recommendation One not be adopted.
2. Recommendation Two recommends a further consultation with stakeholders. However, it recommends that this occur "following amendments to Section 110(1) of the *City of Toronto Act*". This is very much putting the "cart before the horse". We agree that further consultations would be very useful, especially in crystalizing the exact language of the amendment which the City proposes to request from the Province. However, this must precede the amendments to Section 110(1) not follow it. I suggest that Recommendation Two be amended by deleting the words "that, following" and replacing them by the words "that prior to City Council respecting detailed".

As a result, the new Recommendation Two would read "City Council request that prior to requesting detailed amendments to Section 110(1) of the *City of Toronto Act*, 2006, the Chief Building Official and Executive Director Toronto Building engage in further consultation with stakeholders and members of the public concerning what regulation should be applied to existing non-conforming signs".

We would be happy to address the Committee respecting these matters.

Yours truly,

DENTONS CANADA LLP

A handwritten signature in black ink, appearing to read 'Doug Quick', with a stylized flourish at the end.

Doug Quick
DBQ/mr

cc: P. Beinhaker
S. McGregor
T. Van Vliet
J. Heggie
A. Borooah