

# Sherman♦Brown

—BARRISTERS & SOLICITORS—

June 10, 2016

Toronto and East York Community Council  
 Toronto City Hall, 2<sup>nd</sup> Floor  
 100 Queen Street West  
 Toronto, Ontario, M5H 2N2

**Attention: Ms. Ros Dyers, Committee Administrator**

Dear Chair and Members of the Community Council:

**Re: NOTICE OF CONCERN with the proposed City Initiated Official Plan Amendment No. 352 ("OPA 352") and draft Zoning By-law Amendments as they affect the properties identified in Schedule "A"**

**And Re: REQUEST FOR DEFERRAL in respect of the City Initiated Official Plan Amendment No. 352 and draft Zoning By-law Amendments**

**And Re: REQUEST FOR RECEIPT OF ANY AND ALL FUTURE REPORTS in respect of the City Initiated Official Plan Amendment No. 352 and draft Zoning By-law Amendments**

**And Re: REQUEST FOR NOTIFICATION of any meetings of Council, Committees of Council, Community Council and/or Public Meetings and/or Community Information Meetings where the City Initiated Official Plan Amendment No. 352 and draft Zoning By-law Amendments are to be considered**

**And Re: REQUEST FOR NOTIFICATION of the passage of the City Official Plan Amendment No. 352 and draft Zoning By-law Amendments**

**Toronto and East York Community Council Item No.: 17.14**

We are the solicitors for a number of property owners (attached as Schedule "A" to this letter) who have acquired sites which are located within the boundaries of the above-referenced official plan amendment and zoning by-law amendment. Many of the above noted property owners have either obtained or are in the process of obtaining final approvals in respect of applications for an Official Plan Amendment, Zoning By-law Amendment, Site Plan Approval, Committee of Adjustment approval and/or building permit approval, which properties were acquired in reliance upon the "in force" policies of the City of Toronto Official Plan and provisions in the "old" and "new" Zoning By-laws. While other property owners included in our list have purchased their property, after conducting their due diligence, reviewing the various

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 The individual lawyers named above practice in association with Adam J. Brown Professional Corporation



permissions contained in the “in force” policies and relied on these policies in purchasing their property.

All of the properties in question, without the inclusion of a “grandfathering clause” to recognize pre-existing approvals and/or applications which are currently being processed, will be significantly impacted by the passage of the proposed official plan amendment and zoning by-law amendment. Many of the property owners in question either had no idea that such guidelines were intended to be “codified” as part of the Official Plan and Zoning By-law given the significant time which has passed since the acquisition of such properties, with other property owners having conducted an exhaustive review of the “in force” policies, who again, relied upon those “in force” policies prior to making a significant investment into their respective properties.

We have attempted to provide an initial list of our clients’ concerns, with our clients’ sincere hope that such concerns can be fully addressed prior to Council proceeding to consider the passage of any implementing amendments. The following sets out our clients’ current concerns:

#### **Lack of consultation**

The City’s Official Plan, in its section on “Building a Successful City” states that “the City and the private sector should work together as partners in creating a great city and achieving Toronto’s architectural and urban design potential”. In the case of this proposed Official Plan Amendment and Zoning By-law Amendment there has been no meaningful consultation with the private sector. The Final Report has been brought forward on a rushed basis, without any opportunity to review the concerns of the development industry. The Final Report was released on June 6, 2016, one week prior to Community Council’s consideration of same, with no draft zoning by-laws attached for review. It is unreasonable to expect that our clients could review the impacts of any draft zoning by-law amendment on their sites in such a rushed manner. In our respectful submission, Community Council’s consideration of this Final Report should be deferred in order to give all stakeholders an opportunity to review the draft amendments and how they will impact them and in order to have an open and transparent consultation process with the private and public sector to determine if a reasonable resolution of concerns can be achieved.

#### **Attempt to pre-determine good design**

The draft OPA 352 attempts to define a tall building, as a building with a tower and a base component. In our respectful submission, the draft OPA 352 is getting into architecture in a subjective manner without any clear delineation of what could or could not be defined as a tall building, which is inappropriate for an Official Plan amendment. No consideration has been given to site or area specific contexts where setbacks of less than 12.5m may be appropriate, including, but not limited to, residential buildings abutting commercial buildings, buildings that can be offset so that windows do not directly face each other, adjacent to properties that would not be a tall building in the future and sites where the context of the city block may warrant a smaller separation distance. The “Final Report” recognizes that there are projects that have provided less than the recommended setbacks that have been approved by either City Council or the Ontario Municipal Board on the basis of “good planning” despite the fact



that they have not provided a 12.5m tower setback. In our respectful submission, the policies contained within the draft Official Plan Amendment, and the summary of the provisions which we understand will go into any draft zoning by-law amendment have the effect of stagnating creativity and predetermining what constitutes good design.

### **No transition clauses or prevailing clauses**

There are no transition policies whatsoever, which in essence, render current owners with applications at various stages of the planning, site plan and permit process, unable to properly proceed with their developments with any certainty that such rights will not be adversely affected. For instance, applications which may have been filed, relying upon the "Clergy" principle which requires the "in force" policies to be applied, seem to be ignored by the new proposed OPA 352. Furthermore, applications for rezoning, which are either in the process of being circulated and/or finally approved with appeals and/or site plan approval pending, are again, potentially retroactively affected by the proposed amendment. Even applications where the zoning is "final and binding", with site plan applications pending resolution and/or building permit applications being processed, are again, subject to an uncertain retroactive result which would have the effect of stopping those application "in their tracks".

Again, the draft ZBA has not yet been released however the final report does not reference any provision in the draft zoning by-law amendments to recognize "in force" site specific zoning by-laws to the extent that there is a conflict between a site specific zoning by-law and the draft zoning by-law amendments. The draft zoning by-law amendments should include a provision that states that "Any pre-existing site specific zoning by-law amendments will prevail over this zoning by-law amendment". Without such provision, a site specific by-law may be deemed to not comply with the parent zoning by-law on the basis that it does not comply with these proposed new tall building setback requirements.

In light of the significant efforts and resources invested by our clients in pursuing the approval of various development scenarios on the properties listed in Schedule "A", which proposed and/or approved developments have gone through an extensive due diligence period, we hereby formally request that Community Council defer consideration of the staff recommendations in order to allow for an informed discussion about the details of City Staff's recommendations which cannot be achieved based on the lack of detail provided to date.

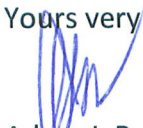
In the alternative, we respectfully request that at the very least, the draft City Initiated Tall Building Setbacks Official Plan Amendment and Zoning By-law Amendment be amended to address the above concerns before it is passed, so that our clients' current applications will not be prejudiced by the proposed new Official Plan policies and Zoning By-law provisions.

We also formally request that the writer, as well as every owner listed in Schedule "A", be provided with notice of any meetings of Council, Committees of Council, Community Council or Public Meetings/Community Consultation Meetings where reports related to the City Initiated Tall Building Setbacks Official Plan Amendment and Zoning By-law Amendment, are to be considered. We also respectfully request that both our clients and the writer be forwarded

copies of any future reports and/or proposed by-laws affecting our clients' lands. Finally, we would respectfully request that both the writer and our clients be notified of the City's passage of any by-law affecting the Sites.

Should you have any questions or require any additional information, please do not hesitate to contact the writer, or Jessica Smuskowitz, a lawyer in our office.

Yours very truly,



Adam J. Brown

cc: Property Owners Listed in Schedule 'A'



**Schedule "A"**

<b>Site Address</b>	<b>Contact Information</b>
120 Church Street	120 Church Holdings Limited Attention: Mr. Miguel Singer 369 Rimrock Road Toronto ON M3J 3G2
15-35 Mercer Street	33 Mercer Limited Attention Mr. Miguel Singer 369 Rimrock Road Toronto ON M3J 3G2
15 Toronto Street	15 Toronto Holdings Limited Attention: Mr. Miguel Singer 369 Rimrock Road Toronto ON M3J 3G2
59 Richmond Street E	Church Richmond Holdings Limited Attention: Mr. Miguel Singer 369 Rimrock Road Toronto ON M3J 3G2
114 Church Street	Lombard Church Holdings Limited Attention: Mr. Miguel Singer 369 Rimrock Road Toronto ON M3J 3G2
591 Sherbourne Street	Medallion Developments Inc. Attention: Mr. Howie Paskowitz 970 Lawrence Avenue West Suite 304 Toronto, ON M6A 3B6
21 Avenue Road	The Camrost Corporation Mr. David Feldman 95 St. Clair Avenue West Suite 1608 Toronto, ON M4V 1N6
81 to 87 Peter Street	Menkes Developments Ltd. Attention: Mr. Jude Tersigni 4711 Yonge Street, Suite 1400, Toronto ON M2N 7E4
53, 55, and 95 Lake Shore Boulevard East, 15, 33, and 43 Freeland Street, and 2 and 15 Cooper Street	Menkes Developments Ltd. Attention: Mr. Jude Tersigni 4711 Yonge Street, Suite 1400, Toronto ON M2N 7E4
60 Shuter Street and 189 Church Street	Menkes Developments Ltd. Attention: Mr. Jude Tersigni 4711 Yonge Street, Suite 1400, Toronto ON M2N 7E4
767-773 Yonge Street	Menkes Developments Ltd. Attention: Mr. Jude Tersigni 4711 Yonge Street, Suite 1400,

	Toronto ON M2N 7E4
219-231 Dundas Street East	Menkes Developments Ltd. Attention: Mr. Jude Tersigni 4711 Yonge Street, Suite 1400, Toronto ON M2N 7E4
316 Bloor Street West	State Building Group Attention: Mr. Ian Zagdanski 2700 Dufferin Street, Unit 34 Toronto, ON M6B 4J3
400 Front Street West	State Building Group Attention: Mr. Ian Zagdanski 2700 Dufferin Street, Unit 34 Toronto, ON M6B 4J3
171 East Liberty Street	Lifetime Developments Ltd. Attention: Mr. Brian Brown 49 Jackes Avenue, Unit 200 Toronto, ON M4T 1E2
20 Edward Street	Lifetime Developments Ltd. Attention: Mr. Brian Brown 49 Jackes Avenue, Unit 200 Toronto, ON M4T 1E2
10 St. Mary Street	Lifetime Developments Ltd. Attention: Mr. Brian Brown 49 Jackes Avenue, Unit 200 Toronto, ON M4T 1E2
27 & 37 Yorkville Avenue and 26, 28, 30 & 50 Cumberland Street	KS Yorkville / Cumberland Inc. Attention: Mr. Tom Giancos Toronto-Dominion Centre TD Bank Tower 66 Wellington Street West, Suite 4400, PO Box 163 Toronto, ON M5K 1H6
324-332 Richmond Street West	Petaluma Building Corp. Attention: Mr. Lino Pellicano 8700 Dufferin Street Vaughan, ON L4K 4S6
40 Widmer Street	Alimar Grove Estates Inc. Attention: Mr. Lino Pellicano c/o 8700 Dufferin Street Vaughan, ON L4K 4S6
348 Bloor Street West and 4 & 6A Spadina Road	Starbank Developments 350 Corp. Attention: Mr. Jay Brown 38 Berwick Avenue Toronto, ON M5P 1H1
424-460 Adelaide Street East	Foligno Building Group Attention: Mr. Lino Pellicano 8700 Dufferin Street Vaughan, ON L4K 4S6
250 Front Street East	Roverella Developments Ltd.



	Attention: Mr. Lino Pellicano 8700 Dufferin Street Vaughan, ON L4K 4S6
30/50 Hillsboro Avenue	Attention: Mr. David Tenenbaum 50 Hillsboro Avenue Suite 102 Toronto, ON M5R 1S8
254,256, 260, 266 King Street East, 427 and 435 Adelaide Street East, and 157 Princess Street	Northam Realty Limited Attention: Mr. Craig Walters 2 Carlton Street Suite 909 Toronto, ON M5B 1J3
483 Bay Street	Northam Realty Limited Attention: Mr. Craig Walters 2 Carlton Street Suite 909 Toronto, ON M5B 1J3
2 Carlton Street	Northam Realty Limited Attention: Mr. Craig Walters 2 Carlton Street Suite 909 Toronto, ON M5B 1J3
305-311 Queen Street	Berkeley Events Attention: Mr. Doug Wheler 315 Queen Street East Toronto, Ontario M5A 1S7
175 Dundas Street East and 235 Jarvis Street	Centrecourt Developments Attention: Mr. Shamez Virani 208 Adelaide Street West Toronto, ON M5H 1W7
411 Church Street	Centrecourt Developments Attention: Mr. Shamez Virani 208 Adelaide Street West Toronto, ON M5H 1W7
89 Avenue Road	89 Avenue Road LP Attention: Mr. Tony Cohen 552 Wellington Street West, Suite 1500 Toronto, ON M5V 2V5
307 Sherbourne Street	109 Vaughan Road Inc. Attention: Mr. Julian Batiston 1013 Wilson Avenue Suite 201 Toronto, ON M3K 1G1
586 Yonge Street, 6, 8, 10, 12, 14 & 16 Wellesley Street East 5 & 7 St. Nicholas Street	Bazis International Inc. Attention: Mr. Michael Gold 1700 Langstaff Road Concord, ON L4K 2X2

281-289 Avenue Road	Brandy Lane Homes Attention: Mr. David Hirsch 4580 Dufferin Street Suite 307 Toronto, Ontario M3H 5Y2
65 King Street East, 71-75 King Street East, 95 King Street East and 46 Colborne Street	Carttera Private Equities Attention: Mr. Jim Tadeson 20 Adelaide Street East Toronto, ON M5C 2T6
11-19 Yorkville Avenue	Capital Developments Attention: Mr. Jordan Dermer 45 St. Clair Avenue West Suite 1202 Toronto, Ontario, Canada M4V 1K9
330 Dupont Street	Freed Developments Attention: Mr. Peter Freed 552 Wellington Street West Suite 1500 Toronto, ON M5V 2V5
101 King Street East and 60-70 Colborne Street	Freed Developments Attention: Mr. Peter Freed 552 Wellington Street West Suite 1500 Toronto, ON M5V 2V5
500 Lake Shore Boulevard West	Wittington Properties Limited Attention: Mr. Tony Grossi 22 St. Clair Avenue East Suite 400 Toronto, ON M4T 2S3
8-10 Elm Street	Attention: Ms. Catherine Bertucci 50 Confederation Parkway Concord, ON L4K 4T8
94 Cumberland Street and 24 & 25 Bellair Street	Minto Urban Communities Attention: Mr. James Bujak 90 Sheppard Avenue East Suite 500 Toronto, ON M2N 3A1
1 Bloor Street West, 760-762 Yonge Street, 768-784 Yonge Street	Mizrahi Developments Attention: Mr. Sam Mizrahi 126 Hazelton Avenue Toronto, Ontario M5R 2E5
363-391 Yonge Street and 3 Gerrard Street East	Y&G Limited Partnership Attention: Mr. Ryan Miller 170 Merton Street Toronto, Ontario M4S 1A1
475 Yonge Street	CYM Toronto Holdings Inc. Attention: Mr. Tom Giancos



	Toronto-Dominion Centre Td Bank Tower 66 Wellington Street West, Suite 4400 PO Box 163 Toronto, Ontario, M5K 1H6
480-494 Yonge Street	Kingsett Capital Attention: Mr. Tom Giancos Toronto-Dominion Centre Td Bank Tower 66 Wellington Street West, Suite 4400 PO Box 163 Toronto, Ontario, M5K 1H6
231-235 College Street and 171-189 Huron Street	Shiupong (231 College) Limited Mr. Henry Hung 131 Baldwin Street Toronto, ON, M5T 1L7
342-344 Bloor Street West and 4 and 6A Spadina Road	Brown Group of Companies Mr. Jay Brown 38 Berwick Avenue Toronto, Ontario, M5P1H1
122-128 Peter Street and 357 Richmond Street West	Fortress Carlyle Peter Street Inc. Mr. Patrick Iaboni Berkley Developments 20 Rivermede Road. Suite 204