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August 31, 2016

File No. 116993

EMAIL

Toronto and East York Community Council
City Clerk's Office
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ellen Devlin, Committee Administrator (teycc@toronto.ca)

Dear Community Council Members:

**Re: Item TE 18.7 - Toronto and East York Community Council Meeting:
September 7, 2016
TOcore: Updating Tall Building Setbacks in the Downtown - City-Initiated
Official Plan Amendment No 352 ("OPA 352") and draft Zoning By-law
Amendments**

We act on behalf of CP REIT Ontario Properties Limited and Loblaw Properties Limited, owners and tenant, respectively, of the lands known municipally as 10 Lower Jarvis Street in the City of Toronto, which are developed for a Loblaws supermarket and other retail and service uses. Our clients' site is within the boundaries of the Lower Yonge Precinct within the Central Waterfront.

We are writing with respect to the City initiated Official Plan Amendment No. 352 ("OPA 352") and proposed amendments to former City of Toronto By-law No. 438-86 and City of Toronto By-law No. 569-2013 (collectively the "ZBAs") regarding policies and regulations for "tall buildings" in the Downtown.

Our client and its consultant team have been participating in the ongoing Lower Yonge Precinct Plan process. At its meeting on June 7, 8 and 9, 2016, City Council instructed the City solicitor to request the Ontario Municipal Board to authorize the Central Waterfront Secondary Plan, as adopted by City Council in 2003, to be brought into force and effect for those lands within the Lower Yonge Precinct, and that the Board amend the former City of Toronto Official Plan and Central Waterfront Secondary Plan in accordance with the draft Official Plan Amendment as before City Council at this meeting. An Ontario Municipal Board hearing in respect of this matter has not been scheduled but our clients intend on participating in this proceeding. Our client also formally provided comments to City Council with respect to the draft OPA.

On June 13, 2016 we wrote to you on behalf of our client and expressed concerns regarding OPA 352 and the ZBAs available at that time. On behalf of our clients, we

attended the public consultation meeting held on July 19th, 2016 and received a copy of revised versions of the ZBAs presented by City Planning at that meeting.

We had understood that a Supplementary Staff Report with final versions of the ZBAs and possibly OPA 352 would be made available for comment in advance of the Community Council meeting scheduled for September 7th. No such report has been released to the public and it's not clear what versions of these instruments are intended to be the subject of this statutory public meeting.

Our clients and their consultant teams have reviewed the latest available version of OPA 352 and the ZBAs and we are writing to advise of the following concerns:

1. OPA 352 contains transition provisions which provide that any Area Specific Official Plan Amendment within the Central Waterfront Secondary Plan shall prevail over the proposed OPA. A similar transition provisions was not included in the proposed ZBAs for by-laws which apply to lands within the Central Waterfront Secondary Plan area. In addition, these transition provisions do not account for sites, for example, with development applications which are the subject of appeals before the Ontario Municipal Board or properties for which current applications are at various stages of the planning approval or building permit process. We also note that, sites where official plan and zoning by-law amendment applications have been approved (and are in full force) but where minor variance applications, site plan approval and/or building permit applications are being processed, would (as currently drafted) be subject to the provisions of OPA 352 and the draft ZBAs.

In light of the status of the Lower Yonge Precinct, we request that the Lower Yonge Precinct be exempted from the City's proposed ZBAs and OPA 352 and that appropriate transition provisions be incorporated to ensure that landowners may continue to rely on the policies and regulations in force at the time of commencing any application.

2. The Official Plan is a policy document and should not include matters which are better suited as zoning regulations and/or urban design guidelines. For example, OPA 352 as drafted, is focussed on achieving certain defined tower setbacks as opposed to introducing policies which seek to achieve adequate light, view and privacy between residents within facing buildings.
3. OPA 352 lacks clarity as to the application and implementation of the proposed policies. For example, it is unclear, based on the current policy language, what is meant by a "tall building" as opposed to a mid-rise building or building element. We recognize that an Official Plan is a broad policy document but it needs, nevertheless, to be capable of clear interpretation.
4. In terms of development within the Downtown, tower setbacks and separation distances are often site-specific by nature, and do not lend themselves to a single one-size-fits-all numerical standard. The Staff Report recognizes that exceptions have been made in the past to reflect site specific characteristics and acknowledges that "exceptions will continue to be considered where it is justifiable". However, the ZBAs as currently drafted do not recognize or permit site specific considerations or the circumstances under which such considerations

may be justified. For example, the standardized setback and separation distances mandated by the ZBAs, do not take into consideration whether the towers are offset from each other, angled away from one another, the existence of blank/end walls, adjacency to uses other than residential or potential development in the balance of the block. In our submission, this will unnecessarily restrict appropriate development in the Downtown.

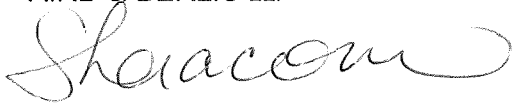
5. The ZBAs recognize the base and point tower building typology and do not take into account tall mid-rise buildings, such as buildings between the 24.0 metre threshold and 14 storeys. Buildings which are taller than 24.0 metres, but take on a mid-rise typology, should not be subject to the proposed regulations as this could impose structural challenges and yield an undesirable building massing. It is also unclear how the height of 24.0 metres was determined to be an appropriate threshold for a building to be considered a tower. This approach contradicts both the City's Mid-Rise Guidelines and the Tall Building Design Guidelines.
6. The application of tall building setbacks to any portion of a building over 24 metres is also contrary to the Mid-Rise Guidelines which specify a 5.5 metre setback for the upper portions of a mid-rise building (above the street wall) up to 36 metres. Furthermore, the setbacks proposed in the ZBAs are contrary to the City's Downtown Tall Building Design Guidelines which permit Canyon Form buildings with high street walls on certain High Streets and Secondary High Street that are characterized by such built form.
7. The ZBAs are also unclear and/or lack certain details. For example, while the Staff Report indicates that certain projections (such as balconies) are permitted within the setback area, the draft instruments do not appear to permit such encroachments. If balconies are not intended to be permitted encroachments, then this would be a departure from the City's Tall Building Design Guidelines.

We also formally request that our client and the undersigned be provided with notice of any meetings of Council, Community Council or any Community Consultation Meetings where reports related to OPA 352 and the ZBAs are to be considered. Finally, we request that our client and the undersigned be notified of any decision of City Council respecting OPA 352 and the ZBAs. Contact details for our client is attached as Schedule "A" to this correspondence.

Should you have any questions or require any further information, please do not hesitate to contact the undersigned or Sidonia Loiacono at sloiacono@airdberlis.com.

Yours very truly,

AIRD & BERLIS LLP

A handwritten signature in cursive script, appearing to read "Shoacom".

per Steven A. Zakem
SAZ/SJL
cc Clients
26403608.1

Schedule "A"

CP REIT Ontario Properties Limited

-and-

Loblaw Properties Limited

Attn: Kathy Kakish

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