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August 31, 2016

File No. 119947

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 the parties listed in Schedule "A" to this letter.

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.

On June 13, 2016 we wrote to you on behalf of a number of our clients 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 are established developers with many successful completed projects in the Downtown and have an interest in the redevelopment and intensification of lands in the Downtown generally. Our clients' sites have either obtained or are in the process of obtaining final approvals in respect of applications for official plan amendments, zoning by-law amendments, site plan approval, committee of adjustment approval, draft plan of condominium approval and/or building permit approval. Our clients purchased properties

within the Downtown after undertaking their due diligence and upon reliance of permissions contained in the in-force policies and regulations prior to making an investment in their respective properties. A failure to recognize pre-existing approvals and/or applications which are currently being processed by the City would be extremely prejudicial to our clients, in particular in circumstances where our clients would be prevented from obtaining a building permit for its development as a result of new official plan policies and zoning standards enacted after a development was approved.

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. 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.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.
7. Both the lack of any transition provisions in OPA 352, and the proposed transition provisions in the ZBAs are unacceptable. As drafted, a list of identified site specific By-laws would prevail over the provisions of the ZBAs. In addition, the ZBAs would not apply to towers constructed pursuant to a building permit issued prior to July 11, 2016. 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. Furthermore, 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. Appropriate transition provisions should be incorporated to ensure that landowners may continue to rely on the policies and regulations in force at the time of commencing any application.
8. As noted above, the ZBAs contain provisions stating that certain identified site specific by-laws will prevail over the ZBAs. Based on our review, even after applying staff's methodology for determining the site specific by-laws which ought to prevail, this list is incomplete. We request the ZBAs be revised to include those site specific By-laws listed in Schedule "B" to this letter.

We also formally request that our clients listed in Schedule "A" to this correspondence 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 clients listed in Schedule "A" and the undersigned be notified of any decision of City Council respecting OPA 352 and the ZBAs.

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 "Loiacono".

per N. Jane Pepino, C.M., Q.C., LL.D.
NJP/SJL

Encl.

cc Clients

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Schedule "A"

Site Address	Owner/Client Name and Address
General interest in sites within the Downtown Beneficial owner of 480-494 Yonge Street	Cresford (Rosedale) Developments Inc. Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1
984, 990 and 1000 Bay Street	1000 Bay Street Limited Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1
40 Wellesley Street East	VOX (Yonge Wellesley)Ltd. Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1
39 Hayden Street and 42 Charles Street East	42 Charles Street Limited Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1
50-60 Charles Street East, 62-64 Charles Street East and 47and 61 Hayden Street	50 Charles Street Limited Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1
587 – 599 Yonge Street, 2-4 Dundonald Street and 7 – 9 Gloucester Street	The Clover On Yonge Inc. Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1
363-391 Yonge Street and 3 Gerrard Street East	Y&G Limited Partnership Attn: Dan Casey 170 Merton Street Toronto ON M4S 1A1

Schedule "B"

List of By-laws omitted from list of Prevailing By-laws

Municipal Address	Client	By-law Nos.	Notes
480-494 Yonge Street	Cresford (Rosedale) Developments Inc. (Subject to an Agreement of Purchase and Sale with KingSett Capital Inc.)		Minutes of Settlement executed as between KingSett Capital Inc. and the City of Toronto in the context of OPA 183 Appeals which secures a built form for this site.
984, 990 and 1000 Bay Street	1000 Bay Street Limited	By-law 838-2015	Approved by the OMB – Order Issued May 23, 2013, August 16, 2013 and July 23, 2014 (PL121000)
40 Wellesley Street East	VOX (Yonge Wellesley)Ltd.	By-law 524-2016	Approved by the OMB - Decision/Order issued July 17, 2015 (PL0603339)
39 Hayden Street and 42 Charles Street East	42 Charles Street Limited	By-law 7-2013	Approved by the OMB – Order Issued September 21, 2012 (PL120212)
50-60 Charles Street East, 62-64 Charles Street East and 47and 61 Hayden Street	50 Charles Street Limited	By-law 1039-2014 and By-law 1040-2014	Approved by Council August, 2014 Full above-grade permits not issued to date

Municipal Address	Client	By-law Nos.	Notes
587 – 599 Yonge Street, 2-4 Dundonald Street and 7 – 9 Gloucester Street	The Clover On Yonge Inc.	By-law 778-2016	<p>Approved by the OMB – Decision issued August 5, 2014 and Order issued May 18, 2016 (PL130332)</p> <p>By-law number just assigned in August 2016</p> <p>No above-grade permits issued to date</p>

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