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File No. 703180

September 6, 2016

By E-Mail Only to teycc@toronto.ca

Ms. Ellen Devlin
Secretariat, Toronto and East York Community Council
City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Members of Toronto and East York Community Council

Dear Members of Community Council:

**Re: Item TE18.7: TOcore: Updating Tall Building Setbacks in the
Downtown - City-Initiated Official Plan Amendment and Zoning
By-law Amendments
Comments from Conservatory Group**

We are counsel to Conservatory Group and a number of associated companies and persons, including but not limited to, those set out in Attachment 1.

We have reviewed the supplementary staff report pertaining to the above-noted matter, dated August 31, 2016 (the "Supplementary Report"), alongside the initial staff report, dated May 26, 2016 (collectively, the "Staff Reports"). We are writing on behalf of our clients to reiterate and supplement the comments provided in our letter of June 13, 2016, which is attached hereto for ease of reference.

Our clients have an interest in several sites across the Downtown area on which a tall building is proposed. However, the concerns outlined in this and our earlier letter apply to the Downtown area as a whole.

The Supplementary Report does not adequately address the concerns outlined in our June 13, 2016 correspondence, and the recommendations contained therein should not be adopted as proposed.

The proposed official plan policies and zoning by-law standards (collectively, the "Proposed Amendments") do not appropriately address setback issues, and in fact, lead to a number of adverse consequences. They also do not appropriately



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address issues of transition arising in respect of existing and forthcoming official plan and zoning by-law amendment applications.

The Proposed Amendments continue to incorporate prescriptive and inflexible standards without sufficient justification. In particular, the proposed 12.5 metre setback to centre line of street and the proposed 25 metre setback between towers are unnecessary and unjustified in many instances. The proposed one size fits all approach will unduly curtail good planning at a significant number of potential redevelopment sites. We previously recommended that any amendments include policy - or location - specific criteria for alternative setbacks where appropriate, rather than applying the same policies and regulations across the entire Downtown; however, these revisions have not been made.

Further, it is unclear why the City has chosen to implement the proposed setbacks through a zoning by-law when they are currently used in the existing Tall Building Guidelines. We submit that this restrictive and rigid approach will negatively impact the good planning of many sites and blocks across the Downtown area.

Notwithstanding the recent inclusion of transition provisions, the Proposed Amendments still lack clarity on how applications currently proceeding through the planning process will be treated. These provisions also do not adequately account for situations where a comprehensive block planning exercise is underway, but development applications may not have been submitted for all sites on the block that could accommodate a tall building.

For example, one of our clients has an interest in the two properties municipally known as 154-158 Pearl Street and 166 Pearl Street/15 Duncan Street in the King-Spadina area of the Downtown. Our client is preparing to submit development applications in respect of these properties, and is involved as a party to an Ontario Municipal Board hearing and mediation process for other proposed developments within the same block. The Proposed Amendments should include transition provisions that appropriately consider the development context of a particular site, regardless of its precise application status.

Finally, there are certain sites in the Downtown area that should not be subject to the Proposed Amendments because of the specific, unique circumstances of those sites. For example, one of our clients has proposed a tall building development at 100 Edward Street, 70 Edward Street and 636 Bay Street, and has been in discussions with City staff regarding this proposal for several years. In 2014, staff determined that our client should apply to the Committee of Adjustment ("C of A")



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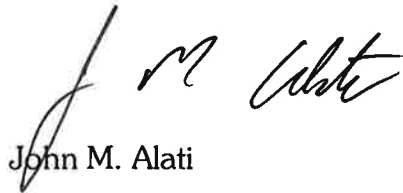
for variances from the applicable zoning by-law, as opposed to a zoning by-law amendment, to facilitate its proposed development. Staff then requested that a Site Plan Control application be filed, and the C of A application was set aside pending Site Plan Control review. Accordingly, the zoning of this site is in question; however, it appears that the proposed transition protocol may not recognize this site as no re-zoning application was filed.

Our client's consulting land use planner previously inquired with City staff as to the treatment of this site under the proposed new tower setbacks protocol, and requested that it be exempted from application of the new by-law. He did not receive a satisfactory response. We submit that this site should be identified as a property that will not be subject to the Proposed Amendments.

For the foregoing reasons, as well as those outlined in our previous correspondence, we encourage TEYCC not to adopt the recommendations for the Proposed Amendments and refer the matter back to staff to consider a sufficiently flexible approach to tall building setback policies and regulations.

Yours truly,

DAVIES HOWE PARTNERS LLP



John M. Alati

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copy: Clients
Peter Swinton, PMG Planning Consultants



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Appendix 1: Conservatory Group Related Companies and Persons

Rainbow Developments Inc.

Rosedale Developments Inc.

Hollybar High Rise Development Ltd.

Holly Downs Developments Inc.

Antelope Hills Construction Ltd.

Fancy Dell Developments Inc.

B-Major Homes (Ontario) Inc.

Top of the Tree Developments Inc.

GCD Trustee Ltd.

Figtree Construction Ltd.

Misty Manor #2 Developments Inc.

Bay-Elizabeth Construction Ltd.

Smye Homes Ltd.

Marklib Investments 2

Granite Heights Developments Inc.

Winding Road Developments Inc.

Suelea Development Inc.

Kingbird Developments Inc.

2242148 Ontario Ltd.

Yolanda Flanders Developments Inc.

The Gates of Scarborough Town Centre Inc.



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Fawn Haven Construction Ltd.

Ambercroft Construction Ltd.

2297485 Ontario Ltd.

Treble Clef Construction (Ontario) Inc.

Damaris Developments Inc.

Jasamax Holdings Inc.

Ringley Construction Ltd.

Corey Sean Libfeld

Sheila Margery Royce

Nancy Claire Libfeld

Marich Developments Inc.

Soprano Developments Inc.

CG Acquisition Inc.

CGIV Properties Inc.



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June 13, 2016

By E-Mail Only to teycc@toronto.ca

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Secretariat, Toronto and East York Community Council
City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
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Attention: Members of Toronto and East York Community Council

Dear Members of Community Council:

Re: Item TE17.14: Final Report – TOcore: Updating Tall Building Setbacks in the Downtown - City-Initiated Official Plan Amendment and Zoning By-law Amendments Comments from Conservatory Group

We are counsel to Conservatory Group and a number of associated companies and persons, including but not limited to, those set out in Attachment 1.

The recommendations for tall building setbacks set out in the above-captioned staff report (“Staff Report”) should not be adopted as proposed. The proposed official plan policies and zoning by-law standards (collectively, the “Proposed Amendments”) do not appropriately address setback issues, and in fact, lead to a number of adverse consequences.

The Staff Report does not provide sufficient justification for the proposed setback of 3 m to a lot line that abuts a street and 12.5 m to a centre line of street, lane or lot line, to be applied to all of the Downtown. In many cases, lower setbacks are appropriate. We agree with Staff at page 9 that projects have provided less than these setbacks where supported by Council or the Ontario Municipal Board (the “OMB”) on the basis of good planning reasons.

For example, the City has agreed to a 4.5 m setback (7.5 m lanes centre line setback) for a tall building proposed adjacent to row houses designated under the *Ontario Heritage Act* where development was not anticipated on those houses due to the heritage status. The City has also recently supported distance separations of 20 metres where tower floor plates have been reduced and block planning has



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been done in a comprehensive manner. The OMB has approved reduced tower setbacks next to a low-rise main street area secured through area-specific Official Plan policies and next to a mid-rise residential rental building, which was recognized would not be redeveloped.

The Proposed Amendments should have policies to address these situations and other similar situations where particular site circumstances would limit or prevent development on adjacent lands. Thus, the Proposed Amendments should include policy - or location - specific criteria for alternative setbacks where appropriate, rather than applying the same policies and regulations across the entire Downtown. A one size fits all approach will lead to unintended consequences and curtail the ability to achieve good planning at a significant number of potential redevelopment sites.

Many Downtown sites are not appropriate for tall buildings; however the Proposed Amendments will negatively impact many of them. Numerous properties in the King-Spadina area have as-of-right permissions for 30 m height and 5.5 m setbacks. The Staff Report sets out that the 5.5 m setback was deemed appropriate for mid-rise buildings since the early 1990s (at page 7) and the Proposed Amendments are not meant to change those standards. However, the Proposed Amendments will downzone properties suitable for mid-rise buildings since the 12.5 m setback in the Proposed Amendments will start at a height above 24 m, therefore, any portion of a mid-rise building above this height will require a 12.5 m – rather than a 5.5 m – setback. The height starting-point for setbacks must be revisited.

The majority of Downtown properties have a height limit below 24 m. The Downtown Tall Buildings Guidelines, in addition to identifying the setbacks now proposed as by-law requirements, also identify streets which could have higher heights, what those heights could be, and streets that are appropriate for reduced setbacks (Canyon Form) and increased height. Other areas within the boundaries of the Proposed Amendments are also experiencing tall building development outside the scope of the Downtown Tall Buildings Guidelines and even buildings within the scope of the Guidelines have been approved at heights which vary from the Guidelines. If new setback *restrictions* are proposed in the zoning by-laws, the correlate *permissive* elements – like height and built form – should also be included.

Since such few properties in the Downtown permit tall buildings as-of-right, a zoning by-law amendment will be required in virtually all cases where a tall



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building is proposed. The Proposed Amendments will not encourage as-of-right compliance; if anything the proposed setback changes indicate the need to update Downtown height standards concurrently.

The proposed amendments to By-laws 438-86 and 569-2013 were not included in the Staff Report and public agenda until two business days prior to the TEYCC public meeting where deputations can be made. We have serious concerns about TEYCC's consideration of a significant change to by-laws applicable to the whole of the Downtown where our clients have not been provided an opportunity to analyze and provide comment on the draft by-laws in advance of the TEYCC meeting.

For all these reasons, we encourage TEYCC not to adopt the recommendations for the Proposed Amendments and instead direct staff to undertake a study process to address unique conditions within the Downtown – including height and built form policies – and engage in a comprehensive consultation process with all affected parties. Our clients welcome an opportunity to continue its dialogue with the City and the industry to consider appropriate tall building setback policies and regulations.

Yours truly,

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