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Via Email: teycc@toronto.ca

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

Attention: Ellen Devlin, Committee Administrator

Dear Councillors:

**Re: Proposed Garden District Heritage Conservation District Plan
TEYCC Agenda Item No. TE21.12**

We are solicitors for Bhushan and Rekha Taneja, the owners of properties known municipally in the City of Toronto as 214, 218, 220, 222, 224, 226 and 230 Sherbourne Street (the "Subject Properties"). With the exception of a designated heritage building at 230 Sherbourne Street, the Subject Properties otherwise consist of vacant, unimproved lots. With an overall site area of approximately 2,780 m², the Subject Properties represent an excellent opportunity to provide residential intensification in an area which has been targeted by the City for revitalization.

On November 18, 2016, we wrote to Toronto Heritage Preservation Services to provide the below-noted comments on behalf of our clients with respect to the draft Garden District Heritage Conservation District Plan (the "Draft HCD Plan"). On December 6, 2016, we wrote to the Toronto Preservation Board ("TPB") to ensure that it had the benefit of our comments prior to considering the Draft HCD Plan during its meeting of December 7, 2016. We are disappointed that neither City staff nor the TPB are recommending any changes to the Draft HCD Plan in response to the significant issues we have raised.

Accordingly, we are resubmitting our letter in the hope that our comments will be received and seriously considered by the Toronto and East York Community Council ("TEYCC") as part of the statutory public meeting on the proposed Garden District HCD and the Draft HCD Plan. We are also reiterating our request for notice of any future revisions to the Draft HCD Plan and any decision made by TEYCC or City Council in respect of this matter.

Outstanding Appeals of OPA 82

Our clients have outstanding appeals before the Ontario Municipal Board (the “Board”) in respect of Garden District Site and Area Specific Policy No. 461, adopted by the City in April 2015 as Official Plan Amendment No. 82 (“OPA 82”), which applies to a broader geographic area than the Draft HCD Plan. Accordingly, the comments provided herein are informed by the reports, proceedings and discussions that have taken place to date in relation to OPA 82.

As an overall observation, we note that the Draft HCD Plan includes many objectives and policies which are overly restrictive and difficult to reconcile with the policy direction set forth in OPA 82. For those properties identified as having no heritage value, the Draft HCD Plan goes too far in attempting to regulate the built form that may be appropriate for such lands.

Character of Sherbourne Street and Broader District

The Subject Properties are located on the west side of Sherbourne Street, south of Dundas Street East, and are included in the “Sherbourne Street Character Sub-Area” in the Draft HCD Plan, along with several other properties fronting on Sherbourne north and south of Dundas with which they have very little in common. The Sherbourne Street Character Sub-Area is one of eight such Character Sub-Areas which collectively account for every property in the district.

Sections 5.1 and 5.4.8 of the Draft HCD Plan provide that the residential character of the Sherbourne Street Character Sub-Area is established by the existing house-form buildings and soft-landscaped front-yards. Objective #2 in section 3.0 of the Draft HCD Plan contains a similar statement regarding the broader Garden District area, which provides for the “overall soft-landscaped, residential streetscape character of the district with generous front yard setbacks and a collection of 2-3 storey house-form buildings” to be conserved, maintained and enhanced. Moreover, the statement of heritage attributes in section 4.3 describes the predominant character of the district as being low-rise and residential, “including 2-3 storey single detached, row house, semi-detached and duplex house form buildings...”.

Notwithstanding these generic descriptions of character, we note that only three of the house-form buildings located within the Sherbourne Street Character Sub-Area south of Dundas (188, 194 and 230 Sherbourne), which together constitute only a small fraction of the overall frontage on Sherbourne, are identified as contributing properties. 200 Sherbourne is also identified as a contributing property, but this appears to be due to the houses at 29-35 Pembroke Street being located on the same parcel of land, and not due to the character of the monolithic seven-storey apartment building which occupies the entire portion of the property fronting on Sherbourne. We also note that the opposite side of Sherbourne is occupied by two concrete 17 and 23 storey apartment buildings. The remainder of the properties fronting on to Sherbourne, including the six vacant lots owned by our clients, are non-contributing and not reflective of the stated character.

In light of the above, it is not accurate to describe the character of the block on which the Subject Properties are located as predominantly low-rise house-form buildings. At a minimum, any character statement associated with Sherbourne south of Dundas must recognize the mid and high-rise apartment buildings located on this block. Likewise, any character statement or description of heritage attributes attributable to the broader district must also recognize the significant number of apartment buildings located throughout the study area.

We would note that the description of Character Sub-Areas in section 5.5 of the draft King-Spadina HCD Plan takes this approach, recognizing and describing the multitude of high-rise buildings recently erected in that HCD area. The prefacing text in section 5.5 also explicitly recognizes that different forms of new development may be appropriate in different Character Sub-Areas. A similar statement should be included in the Garden District Draft HCD Plan.

Inconsistent Policy Direction in the Draft HCD Plan and OPA 82

In direct conflict with the eight proposed Character Sub-Areas in the Draft HCD Plan, OPA 82 proposes to establish four completely different “Character Areas” which only cover a portion of the properties within the Garden District. These Character Areas are identified as the areas in which new tall buildings will be permitted, and various urban design standards are imposed in relation to the future development of tall buildings within each Character Area.

The Subject Properties comprise Block 5 of the “Dundas Corridor Character Area” as delineated on Map 3 of OPA 82. The applicable policies state that the Dundas Corridor Character Area has the potential to be a vibrant retail strip, and that it will be treated as a priority retail street with retail at grade in all new developments. A new tall building would be permitted on the Subject Properties (Block 5) pursuant to OPA 82, subject to compliance with certain performance standards. However, despite the clear policy intent to permit tall buildings on Block 5 (as well as a prior staff report recommending an “Apartment Neighbourhoods” designation for the Subject Properties), the version of OPA 82 adopted by City Council designates the Subject Properties as “Neighbourhoods” and includes unclear development performance standards for Block 5. Our clients are seeking to correct these internal discrepancies through their appeal of OPA 82.

In contrast, the properties on the east side of Sherbourne, both north and south of Dundas, are included within an entirely different Character Area, the “Sherbourne Corridor Character Area”, as delineated on Map 5 of OPA 82, and are proposed to be designated either “Apartment Neighbourhoods” or “Mixed Use Areas”. Both of these designations would permit tall buildings, and yet the performance standards in Table 4.2 of OPA 82 would seem to only allow tall buildings on one property at the southeast corner of Sherbourne and Gerrard Street East, despite the fact that tall buildings already exist on other properties within this corridor.

To further confuse matters, the Draft HCD Plan now proposes to introduce another layer of inconsistency with respect to the land uses that are desired on Sherbourne Street. For the Subject Properties, there is a significant discrepancy with respect to whether Sherbourne south of Dundas

should be a residential or a retail streetscape, and it is unclear how the tall building and retail permissions applicable to the Dundas Corridor Character Area in OPA 82 can be reconciled with the new development policies and characterization of the Sherbourne Street Character Sub-Area as low-rise residential in the Draft HCD Plan.

More broadly, while we understand that OPA 82 and the Draft HCD Plan are intended to serve different purposes, we question why the Draft HCD Plan seeks to impose an additional layer of urban design control which goes far beyond the performance standards set out in OPA 82, especially for non-contributing properties. In many cases, compliance with the policies in the Draft HCD Plan would in fact frustrate the policies in OPA 82.

The inconsistencies noted above create significant uncertainty and undermine the underlying policy objective of both OPA 82 and the Draft HCD Plan to establish a coherent “character area” framework for the Garden District. Intensification should be encouraged on the Subject Properties in both OPA 82 and the Draft HCD Plan. It should not be hindered by vague and generic policies and guidelines which might be interpreted so as to frustrate architectural expression or preclude legitimate efforts to conserve, maintain and enhance the heritage attributes of the adjacent contributing properties and the broader district.

Statement of Objectives

Given the importance of the Statement of Objectives in the Draft HCD Plan as it informs the statutory test in section 41.2 of the *Ontario Heritage Act*, the objectives set out in Section 3.0 must be clear and concise in their application, entirely consistent with the version of OPA 82 that is ultimately approved by the Board, and limited in scope to those priorities that are absolutely essential to protect the cultural heritage value of the Garden District.

Accordingly, Section 3.0 should not include objectives to “conserve the predominant scale and built form pattern in each character sub-area” or to “ensure that new development and additions conserve and enhance the cultural heritage value of the... character sub-area..., particularly with respect to scale, public realm and the general pattern of built form” if the Draft HCD Plan does not accurately define the scale and built form pattern in these sub-areas. Similarly, there should not be an objective to “conserve and enhance views of contributing properties from the public realm, and specific views and vistas that contribute to an understanding of the District’s cultural heritage value” without clear policy direction which justifies the protection of such views and indicates how the objective will be interpreted.

Most importantly, in light of the encouragement in OPA 82 for intensification within the Garden District and tall buildings at appropriate locations, Section 3.0 must be modified to clearly indicate that new mid-rise and high-rise development is encouraged at appropriate locations and will be deemed to conform to the objectives of the HCD Plan.

Policies for Contributing and Non-Contributing Properties

Section 6.0 of the Draft HCD Plan states that the policies contained therein (numbered and in grey highlight) are “required components of the designating by-law and are not discretionary, unless otherwise noted”. Similarly, Section 7.0 states that the policies contained therein “provide clear and definitive direction” and are “required components” which “shall be complied with”.

It is inappropriate and unnecessary to impose mandatory policies which are to be applied rigidly and without discretion, and these statements go far beyond the statutory authority in section 41.2 of the *Ontario Heritage Act*, which provides that municipal by-laws shall not be contrary to the objectives set out in the plan. Given the inherent inconsistencies between and within OPA 82 and the Draft HCD Plan, and the fact that Section 7.0 of the Draft HCD Plan purports to strictly control the built form of the same non-contributing properties that are encouraged to intensify in OPA 82, the tenor of this direction must be relaxed.

The same comment applies to the prohibition on the demolition of contributing buildings in policy 6.4.1 (unless the integrity has been lost and not by neglect), and to a lesser extent, to the alteration policies in section 6.9. Given that a Heritage Impact Assessment is required in all cases, it is not appropriate for the Draft HCD Plan to categorically reject conservation outcomes that might otherwise be permitted by the Provincial Policy Statement and the City’s Official Plan. It is also unclear which of the demolition and alteration policies would apply to a proposal to partially demolish a building on a contributing property.

Finally, there are several specific policies within Sections 6 and 7 which lack clarity. For example, section 6.3.3 provides that with respect to additions or new development on combined properties, “the historic lot lines of the property shall be referenced in determining appropriate setbacks and step backs”. Not only is the intent of this policy unclear, but one cannot discern whether it refers to the side lot lines or the front lot line (which could be modified as a result of road widening conveyances). In addition, policy 7.6.5 calls for new development on non-contributing properties to “step back to the rear of the primary structure of adjacent contributing properties”. It is difficult to determine exactly how this policy would be interpreted.

We trust that these comments will be of assistance.

Yours truly,

Goodmans LLP



Ian Andres

IDA/tr

cc: Client

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