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**Delivered by Email (teycc@toronto.ca)**

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

Attention: Ellen Devlin, Committee Administrator

Dear Ms. Devlin:

**Re: Letter of Objection - TEYCC Agenda Item TE33.1  
Permanent Closure of the Public Lane known as Rodega Lane, abutting  
the South Limit of 65 King Street East and East of Leader Lane  
Report for Action (Ward 28)  
Toronto and East York Community Council meeting on June 6, 2018**

We are the solicitors for 485236 Ontario Limited (“485”) and Tom Jones Steak House Inc. (“Tom Jones”). 485 and Tom Jones is the owner and operator, respectively, of the Tom Jones Steakhouse located at 17 Leader Lane, also known as 40 Colborne Street, in the City of Toronto (the “Subject Property”). The Subject Property is occupied with one of Toronto’s oldest and most famous restaurants, with the building constructed in late 19<sup>th</sup> century. The Subject Property is listed as a heritage property on the City’s Heritage Register. The main entrance to the restaurant is located at the southwest corner of Rodega Lane, which immediately abuts the north side of the Subject Property (see **Attachment 1**).

On behalf of our clients, we object to the permanent closure of Rodega Lane at this time. We understand that the closure of Rodega Lane is required to facilitate the development of an 18-storey office building at 65-77 King Street East and 46 Colborne Street (“65 King”) by Carttera Private Equities (“Carttera”). Rodega Lane separates 65 King from the Subject Property.

Although our clients are not opposed to the development of 65 King in principle, it has significant concerns with the development as currently proposed. Its most serious concern, however, is with the process in which this development was considered by the City and the Ontario Municipal Board (“OMB”). The closing of Rodega Lane and sale to Carttera represents another step in advancing this process.

### **OMB's Consideration of the 65 King Development and City's Role in Settlement Process**

In October 2015, the owners of 65 King proposed a 19-storey office building to the City. The proposal required a zoning by-law amendment ("ZBA") that originally included all of the properties in the south-east corner of King Street East and Leader Lane, including the Subject Property. The proposal was later revised to remove the Subject Property, presumably because Carttera was unable to successfully acquire the lands from 485.

In February 2016, the Toronto and East York Community Council considered a preliminary report on the proposed development. Planning staff identified a number of issues and concerns that must be resolved before it could make a decision on the ZBA, including those relating to the Subject Property, such as:

- Compatibility with adjacent and nearby heritage buildings listed or designated in the City's inventory of heritage properties;
- Setbacks and/or step-backs from the Subject Property, recognizing that the Subject Property is a "contributing property" in the St. Lawrence Neighbourhood Heritage Conservation District Plan; and
- Proposed privatization of Rodega Lane.

In May 2016, the applicant appealed the ZBA to the OMB due to Council's neglect to make a decision within the required time frame. The City appears to have initially opposed the ZBA, but settled with the applicant on the basis of revised plans at the recommendation of its City Solicitor prior to the OMB hearing. On September 13, 2017, the OMB issued a decision approving the ZBA in principle but withheld its Order pending the finalization of certain implementation matters. Accordingly, the OMB still has jurisdiction to revise the ZBA, if appropriate.

### **OMB and City May Have Made Their Decision on 65 King Based on Incorrect Information**

Until very recently, Tom Jones and 485 had no knowledge of the OMB's decision on the ZBA. The following fundamental errors on the public record may explain why:

1. The OMB identifies the Applicant as "Citipark Inc., 71-75 King East LP **and 485236 Ontario Limited**" in its decisions issued February 1, 2017 (decision for the first prehearing conference) and September 13, 2018 (decision on the merits).
2. The OMB identifies the Applicant as being represented by Mr. Adam Brown of Sherman Brown LLP.
3. The cover letter from Sherman Brown LLP advises that "we are the solicitors for Citipark Inc., 71-75 King East LP, **and 485236 Ontario Limited.**"
4. The OMB Appellant Form (A1) identifies the appellant as "Citipark Inc., 71-75 King East LP **and 485236 Ontario Limited.**"

To be clear, 485 did not retain Mr. Brown or Sherman Brown LLP. 485 did not apply for the ZBA, nor did it provide its consent to be represented by Mr. Brown, Sherman Brown LLP, the applicant or Carterra in any way with respect to the development application. The above errors are extremely concerning to our clients, particularly because the proposed development would:

- a) erect a permanent wall immediately next to the windows on the second and third floors of the restaurant that currently open onto Rodega Lane, cutting off virtually all sunlight and practical use of these windows (see **Attachment 1**);
- b) cut off the visibility of the main entrance of the restaurant from King Street East, which is critical to ensure that customers are able to locate the restaurant;
- c) introduce new and significant vehicular traffic for the office tower, including loading operations, immediately in front of the main entrance of the Tom Jones Steakhouse;
- d) permit 4 storeys of underground parking immediately next to a listed heritage building with a zero meter setback on the west face of the Subject Property.

Extracts from Carterra's own heritage impact assessment report (see **Attachment 2**) admit that the Subject Property, particularly the northwest corner that abuts Rodega Lane, has heritage attributes that should be considered in assessing the appropriateness of adjacent development.

In our view, the City's and OMB's understanding as to whether 485 was represented by counsel, applied for, or agreed to the development proposal would have a material impact on the development proposal at 65 King. This is particularly the case as planning staff had identified issues of compatibility, built form and urban design that directly affect the Subject Property as matters of concern, the City Solicitor made recommendations to settle with the applicant at the OMB hearing based on revised plans, and City Council adopted the City Solicitor's recommendations.

### **Conclusions and Requested Action**

My clients remain committed to working with Carterra and the City to satisfactorily address their concerns with respect to the proposed development. As discussed, our clients are not opposed to development in principle at 65 King. However, it is our respectful opinion that it would be premature for the City to permanently close Rodega Lane without determining whether the errors as to 485's representation, or apparent acquiescence to the development as currently proposed, would have materially affected (1) the City's decision to settle the ZBA based on the development as currently proposed, and (2) the OMB's decision. Such errors must be corrected and their impacts addressed before moving forward with the development process.

**Accordingly, we request that the Toronto and East York Community Council defer the recommendations of the Acting Director, Transportation Services, Toronto and East York District to authorize the permanent closure of Rodega Lane until such time as the matter of the representation of 485236 Ontario Limited and its impact on the City's and OMB's decisions have been resolved to the satisfaction of the City Solicitor.**

We will be in attendance at the Community Council on June 6 to respond to any questions Council may have and reserve our rights to make additional submissions.

Yours very truly,  
**BORDEN LADNER GERVAIS LLP**

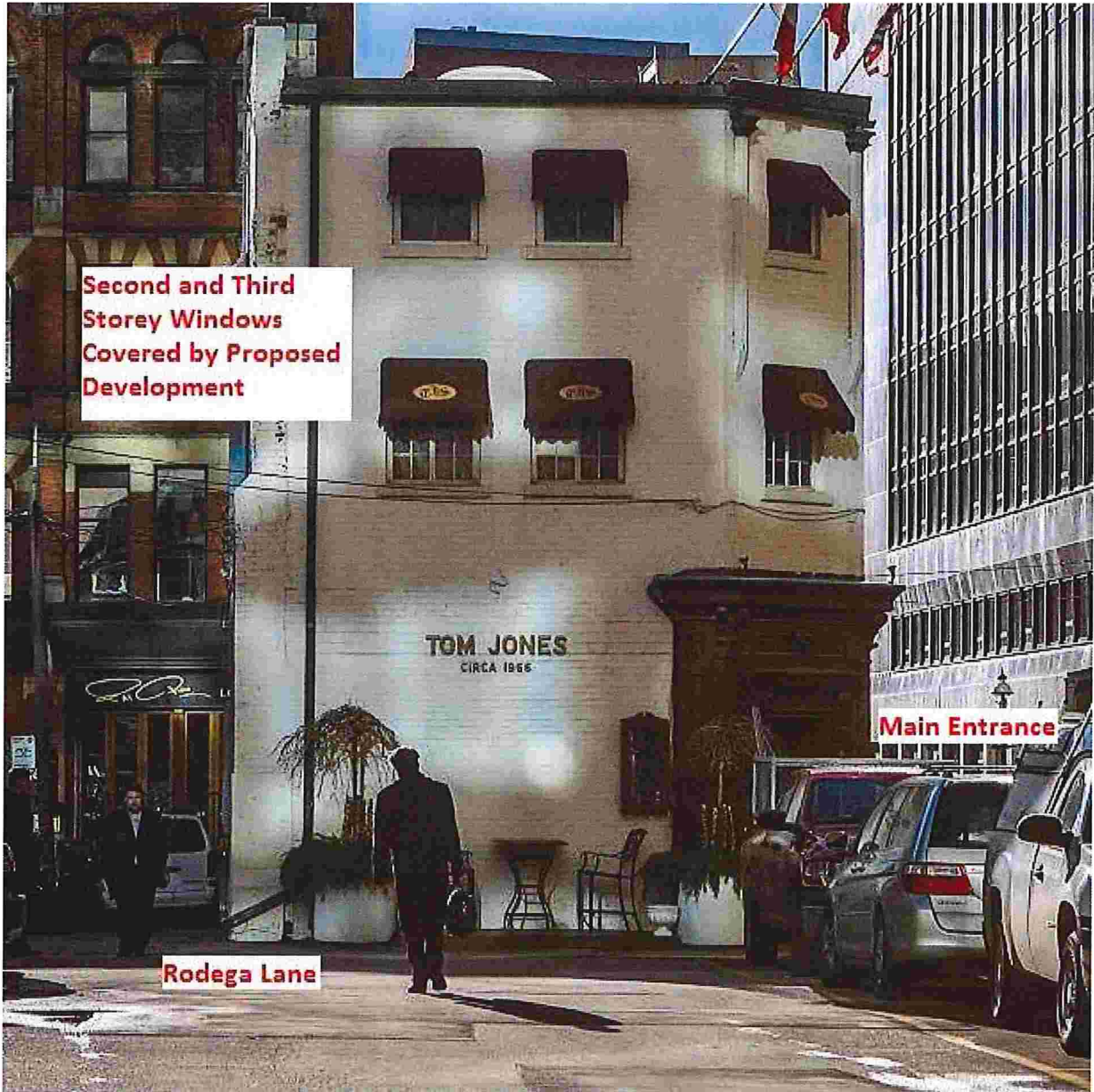


Isaac Tang  
IT/cm

/Encl.

Cc: Clients  
Councillor Lucy Troisi

**Attachment 1: Pictures of Subject Property and Rodega Lane**



## Attachment 2

GBCA Project # 15061 - 65-89 King Street East & 46 Colborne Street - Heritage Impact Assessment

*To the southwest*

Tom Jones Steakhouse (40 Colborne Street / 17 Leader Lane)

Listed, Heritage Register

This three-storey brick commercial property was evaluated by Heritage Preservation Services for its inclusion on the Heritage Register in November 2016. It was built in the late 19th century and is valued for its architectural and contextual qualities as it complements with existing commercial buildings along King Street, east of Leader Lane. Heritage attributes identified include:

- The placement, setback and orientation of the building on the northeast corner of Colborne Street and Leader Lane
- The scale, form and massing of the three-storey building with the long rectangular plan and the canted northwest corner
- The brick cladding with the brick and wood detailing
- The flat roofline, with cornices on the south and north ends and brackets on the latter end
- The entrances, which are placed in flat-headed openings on the principal (south) elevation on the northwest corner (the decorative woodwork on the northwest entrance is not original)
- On the south, west and north elevations and the northwest corner, the fenestration with the symmetrically-placed flat-headed openings and the brick detailing
- The extended east elevation, which is a party wall (originally shared with a building that was demolished) and is devoid of openings



*Present day photograph of the Tom Jones Steakhouse*

### Leader Lane Elevation

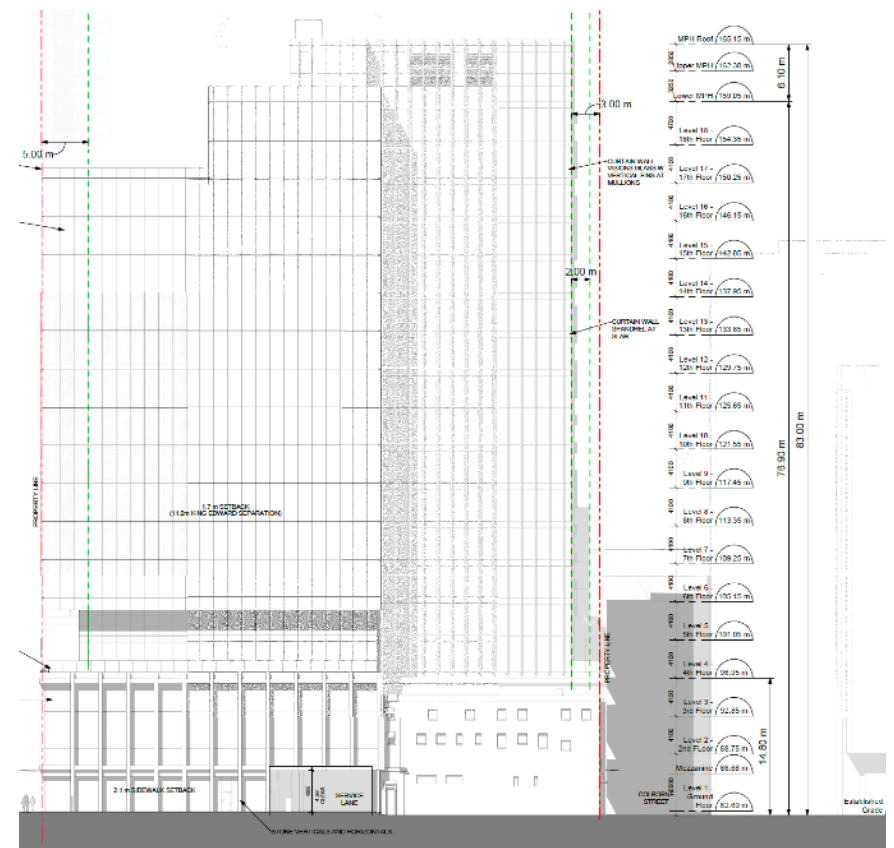
Leader Lane is considered a cultural heritage attribute in the St. Lawrence neighbourhood HCD as it connects King Street East and Colborne Street. Although not a major street, the elevation of the new building along Leader Lane continues the materiality found along King Street, and acknowledges the existing Tom Jones building by referencing the height of the wood door frame at the beveled corner, which opens a portion of the north elevation.

The second and third storey of the new development, adjacent to the north wall of the Tom Jones building are shown on the drawings to be very close to the existing building, which will have some impacts on the heritage building, and is discussed in the following page.



Looking south on Leader Lane

The existing three-storey building location in a laneway establishes its discreetness, intimacy and to some degree, a sense of isolation from the dynamic character of King Street East, which is a part of its value and character. Its ability to survive as a low scale building within a high-rise context is a reason for which it is valued.



Leader Lane elevation (IBI Group Architects)

## 6.2 Impact on Heritage Resources and proposed mitigation strategies

### *Impacts on heritage properties on the development site*

All existing buildings on the site will be conserved and integrated in the new development. The main impact is the partial demolition of portions of the buildings, where the King Street East façades will be retained in situ. At the completion of the project, the brick demising walls at the ground level will be retained to up to 2 metres, measured from the exterior face of the heritage facades. The new addition will have an overall 5 metres setback from the retained facades. Although demolition will occur on rear of the buildings, it will have no impact on the heritage attributes of the facades. The new addition is built in a manner that emphasizes the existing buildings' former scale and does not reduce the conserved façade to a two-dimensional plane. The reconstruction of the west wall of #71, currently overlaid with a black tarp, will provide some reference of the former depth of the building. Furthermore, the collective conservation of all of the facades as a whole will maintain their contextual value along King Street East.

Existing shopfronts are not original and are unsympathetic to the original style of these buildings. Shopfronts are proposed to be removed and replaced with sympathetic designs.

### *Impacts on heritage properties adjacent to the development site*

The development's new building facade, as currently shown on the drawings will have some impact on the heritage attributes of the Tom Jones building. The proposed building facade is located close to the second and third levels of the building's north elevation. Mitigation strategies can be explored to mitigate such an impact.

## 6.3 Shadow Impacts

Shadow impacts have been prepared for this development. Below is an example for the date and time indicated.

Shadows will be cast in the vicinity, however, considering the existing context of high rise buildings, such as the King Edward Hotel, 1 Toronto Street and the future development currently under construction at the southwest corner of King and Church Street, shadows cast by the development will be considered insignificant.

In the example below, the proposed building reviewed its initial massing (from a previous submission) and reduced its shadow impact over the grounds of St. James Cathedral.



Shadow study (IBI Group Architects). The purple line indicates the extent of shadows from a previous submission. The purple hatch shows the extent for the current submission.



An assessment of possible effects on the proposed development on the heritage properties is presented at right.

The table lists possible effects based on the City of Toronto's Heritage Impact Assessment Terms of Reference (August 2011)

Possible Effect	Assessment
Destruction of any, or part of any, significant heritage attributes or features	All significant heritage attributes on the development site will be maintained and restored. Demolition will occur on the back portions of the buildings, all interior partition walls, all floors and all flat roofs, which are not identified as heritage attributes. Their removal will not affect the cultural heritage value of the buildings.
Alteration that is not sympathetic, or is incompatible with the historic fabric and appearance	Alterations to the heritage buildings will include a restoration of the exterior facades and the conservation of their massing. The addition above the heritage buildings will have an overall setback of 5 metres, measured from the exterior face of the heritage buildings. This setback is compatible in maintaining the streetwall character and appearance of low scale retail buildings,
Shadows created that alter the appearance of a heritage attribute or change the viability of an associated natural feature or plantings, such as a garden	Shadows cast by the new development will not have significant impacts in the area or on heritage resources due to the existing presence of high rise buildings in the vicinity and an existing development, under construction that will be 25 storeys in building height, once completed.
Isolation of a heritage attribute from its surrounding environment, context or a significant relationship	An isolation effect identified is on the adjacent Tom Jones building, where the proposed building facade will be close to the second and third floors of the north elevation.
Direct or indirect obstruction of significant views or vistas within, from or of built and natural features	There will be no obstructions of significant views or vistas along King Street East. Key landmarks such as the grounds of the St.-James Cathedral and the cupola of St.-Lawrence Hall will remain fully visible from King Street East with the new development.
A change in land use (such as rezoning a church to a multi-unit residence) where the change in use negates the property's cultural heritage value	The addition of office usage on the site will not negate the property's cultural heritage value.
Land disturbances such as a change in grade that alters soils and drainage patterns	There will be no land disturbances as a result of this development.