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November 25, 2019

Via Courier and Email (clerk@toronto.ca)

Mayor and Members of Council
City of Toronto
100 Queen Street West, 10th Floor, West Tower
Toronto, ON M5H 2N2

Attention: Ms. Ulli Watkiss, City Clerk

Dear Sirs/Mesdames:

**Re: Item PH10.1- City-Initiated Priority Retail Streets Zoning By-law Amendments-
Letter of Objection**

874-878 Yonge Street, 3-11 Scollard Street

We are the solicitors for Yonge & Scollard Development Inc. (the "**Owner**"), the registered owner of lands municipally identified as 874-878 Yonge Street, 3-11 Scollard Street (the "**Lands**"), that are situated at the southwest corner of Yonge and Scollard Streets.

The Lands are the subject of a decision and order, issued by the Local Planning Appeal Tribunal ("**LPAT**") on August 27, 2019 in Case No. PL161159 which approved site-specific zoning by-law amendments to former City of Toronto Zoning By-law No. 438-86 as amended ("**By-law 438-86**") and Zoning By-law No. 569-2013, as amended ("**By-law 569-2013**") in respect of the Lands (collectively, the "**Site-Specific ZBAs**"). The Site-Specific ZBAs permit the development of a residential building upon the Lands, with at-grade retail space lining the portion of the building abutting Yonge Street (the "**Development**").

We are writing on the Owner's behalf to express concerns with respect to the proposed amendments to By-law Nos. 438-86 and 569-2013 relating to "Priority Retail Streets"(the "**Proposed Amendments**") as they relate to the Lands. At the outset, we would note that the Development on the Lands permitted by the Site-Specific ZBAs will meet the minimum ground floor frontage requirements for street-related retail/service uses prescribed by the Proposed Amendments: at least 60% of the Lands' eastern frontage along Yonge Street, identified as a priority retail street in the Proposed Amendments, will be comprised of retail space.

In their present form, however, the Proposed Amendments impose new performance standards with respect to the streetwall design of ground-level retail space abutting priority retail streets, inconsistent with the permissions for the Development that was the subject of the LPAT hearing.

Specifically, the Proposed Amendments provide for new design standards with respect to glazing that require no less than 60% of the surface of street-facing building walls fronting along

priority retail streets to consist of doors and windows. While approximately 50% of the ground level streetwall of the Development along Yonge Street is anticipated to consist of glazed doors and windows, the fundamental design of the Development limits further glazing in this area.

In light of the site-specific scrutiny of the Development's planning and design merits that preceded the LPAT's recent approval of the Site-Specific ZBAs, it is submitted that it would be inappropriate for Council to approve the Proposed Amendments in a form that would conflict with or be inconsistent with this approval.

Furthermore, the Owner would also note that the proper operation of transitional provisions included within the Proposed Amendments raise certain concerns.

The provisions respecting transition require clarification in a manner which is consistent with the recently approved Official Plan Amendment No. 406 (the "**Downtown Plan**"). Policy 1.9 of the Downtown Plan provides a specific transition regime: it effectively indicates that the Plan, inclusive of the retail policies in Policies 6.39- 6.43 that are the basis of the Proposed Amendments, does not apply to development applications deemed to be "complete" prior to the approval of OPA 406 on June 5, 2019:

1.9 This Plan does not apply to applications for official plan amendment, zoning by-law amendment, draft plan of subdivision or condominium approval, site plan approval, consent or minor variance which were complete prior to the approval of this Plan and which are not withdrawn. In-force site specific official plan and/or zoning by-law amendments shall be deemed to conform with this Plan.

As the rezoning applications that formed the basis of the appeal of the Site-Specific ZBAs to the LPAT (City File No. 16 173154 STE 27 OZ) were deemed complete on June 13, 2016 by the City, the Development is not subject to the priority retail policies set out in the Downtown Plan. The Proposed Amendments should thus be modified to provide a clear exemption therefrom for the Development as permitted by the Site-Specific ZBAs.

It is acknowledged that City staff, in a Supplementary Report, dated November 20, 2010 in respect of the Proposed Amendments, have recommended that the Proposed Amendment to By-law 569-2013 be revised to incorporate a new transitional provision (s. 600.20.15.2) that would exempt buildings for which a complete application for zoning by-law amendment was filed on or prior to June 5, 2019. Given the late release of the Supplementary Report, however, further time is required to review the technical implications of the proposed revision.

Notwithstanding, however, we would note that the proposed transitional language is found exclusively in the Proposed Amendment to By-law 569-2013. No parallel provisions for exemptions or other transitional mechanism exists in the Proposed Amendment to By-law 438-86. This omission creates the potential for inconsistent treatments for the same development under two zoning regimes: a proposed development may be exempt from the application of the standards applicable to retail streets pursuant to By-law 569-2013, but still subject to the standards pursuant to By-law 438-86 by virtue of the absence of appropriate transitional provisions therein. As the City continues to require compliance with both zoning regimes while By-law 569-2013 remains under appeal before the Local Planning Appeal Tribunal, the absence of appropriate transitional provisions from the Proposed Amendment to By-law 438-86 could thus potentially operate to prevent building permits from issuing for a development in receipt of

rezoning approvals, notwithstanding that it would qualify for transition in the Proposed Amendment to By-law 569-2013.

Based on the foregoing, the Owner respectfully submits that it would be premature for Council to approve the Proposed Amendments in their current form. In the Owner's view, the Proposed Amendments should be modified to provide a clear exemption for the Lands or otherwise modified so as to preserve the permissions provided for the Development in the Site-Specific ZBAs.

Our client believes that the issues raised herein are capable of resolution through discussion with staff. As such, the Owner requests that Council defer any decision in the matter to allow for these discussions to take place.

Please provide us with notice of any decision by Council as well as notice of any further consideration of this matter by Council, Community Council or other Committee.

Yours truly,

McCarthy Tétrault LLP

Per:



Cynthia A. MacDougall

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