

October 6, 2020

By E-Mail to scc@toronto.ca

Scarborough Community Council
City of Toronto
Scarborough Civic Centre, 3rd Floor
150 Borough Drive
Toronto, ON M1P 4N7

Attention: Carlie Turpin, Administrator

Dear Members of Scarborough Community Council:

**Re: Golden Mile Secondary Plan – Final Report and Supplementary Report
Agenda Item SC18.1**

We are counsel to 1941 Eglinton East Holdings Inc. (“1941 Eglinton”), the owner of the lands municipally known as 1941 Eglinton Avenue East, which is located on the south side of Eglinton Avenue and east of Warden Avenue, within the area of the proposed Golden Mile Secondary Plan (the “Secondary Plan”).

We understand that 1941 Eglinton is representing the interests and has the support of all of the other private landowners within the approximate 4 acre block bounded by Warden Avenue, Eglinton Avenue East, Prudham Gate and Civic Road (the “Subject Block”). A map identifying the Subject Block is enclosed for reference.

Our client’s planning consultant, Michael Goldberg of Goldberg Group, made a written submission to the Scarborough Community Council (“SCC”), dated July 7, 2020 (Communication SC16.3.2), in which he identified a number of concerns with the proposed Secondary Plan. In doing so, he also provided a planning opinion in support of revisions to the Secondary Plan to permit high density mixed-use redevelopment (including residential uses) within the Subject Block.

I reiterated a number of those comments when I made a deputation to SCC at its meeting on July 17, 2020, noting that **there is no apparent planning justification for restricting the Subject Block to employment uses and limiting heights to mid-rise buildings, particularly when the proposed Secondary Plan contemplates high density mixed-use redevelopment with building heights up to 30 storeys immediately across the street, on the north side of Eglinton Avenue east of Warden Avenue.**

At the July 17, 2020 meeting, SCC deferred its consideration of the proposed Official Plan Amendment No. 499 (“OPA 499”), which includes the Secondary Plan, and directed staff to consult with stakeholders who had made submissions regarding the proposed Secondary Plan and report back to the October meeting of SCC.

In response to that direction, we wrote to the City’s Legal Services Division on August 10, 2020, and copied staff of the City Planning Division. In that letter, we confirmed that one of our client’s key objections to the proposed Secondary Plan is that it fails to provide permission for residential uses within the Subject Block in the context of high density mixed-use redevelopment. A copy of our August 10, 2020 letter (excluding attachments) is attached.

Further, we proactively addressed the issue of the City having recently initiated an Official Plan review and Growth Plan conformity exercise, noting that **a municipal comprehensive review (“MCR”) exercise is not the only process by which the City may redesignate *General Employment Areas* lands for non-employment uses or permit residential uses on such lands.**

Rather, we directed staff to Policy 2.2.5.10 of the 2019 *Growth Plan for the Greater Golden Horseshoe* (the “Growth Plan”), which states that “until the next *municipal comprehensive review*, lands within existing *employment areas* may be converted to a designation that permits non-employment uses”, provided that certain criteria are satisfied. One of those criteria is that the conversion would “not include any part of an *employment area* identified as a *provincially significant employment zone*”. Although the Subject Block is currently designated as *General Employment Areas* in the City’s Official Plan, it is not identified as a *provincially significant employment zone*.

In response to those who may suggest that our client’s request to redesignate the Subject Block for mixed-use redevelopment should instead be considered through the City’s MCR exercise, we note the following:

The City’s MCR exercise has only recently been initiated, is not expected to be completed until spring 2022 at the earliest, and will then be subject to the final decision of the Minister of Municipal Affairs and Housing, perhaps sometime in late 2022 or 2023. Thus, the MCR process will take years to complete, it will leave the future use of a key block within the Secondary Plan in a state of uncertainty for years after the Secondary Plan has been adopted, and the final decision-maker will not be City Council.

Conversely, **there is a clear path forward to implement amendments to permit high density, mixed-use redevelopment within the Subject Block through the Secondary Plan process. Doing so will result in a more expedited approvals process, thereby allowing the public benefits of redevelopment to be realized sooner, will ensure that the Secondary Plan can be implemented in a more**

comprehensive and integrated manner, and will allow City Council to be the decision-making authority for this important block within the Secondary Plan.

Following our letter of August 10, 2020, the Province amended the Growth Plan, including Policy 2.2.5.10, by expanding the authority to convert lands within an existing employment area to a designation that permits non-employment uses. More specifically, on August 28, 2020, the Province approved Amendment 1 to the Growth Plan, which amended Policy 2.2.5.10 to also permit conversions of lands within employment areas that are within a *provincially significant employment zone* if the employment area is located within a *major transit station area*, which is generally defined as the area within an approximate 500 to 800 metre radius of a transit station.

Although this recent amendment to the Growth Plan would not apply to the Subject Block, as the lands are not within a *provincially significant employment zone*, the amendment represents a further signal from the Province of its general support for approving higher density mixed-use development around major transit stations in a more expedited timeframe.

The Subject Block clearly meets the criteria for a *major transit station area*, being located immediately adjacent to the planned “Golden Mile” station along the Eglinton Crosstown LRT corridor. In addition, Warden Avenue is identified on Map 45-17 of the proposed Secondary Plan as one of only two north-south “Transit Priority Segments” within the area, making the intersection of Eglinton Avenue and Warden Avenue a “top-tier” transit node within the Secondary Plan area.

We also note that at its meeting on June 29, 2020, City Council endorsed a staff recommended work program (Agenda Item PH14.4) that identified the Golden Mile station as one of the “Phase 1” sites in the City’s three-phase implementation approach to delineate and set the density targets of all *major transit station areas* across the City.

With respect to the City’s in-force employment land conversion policies, it is noteworthy that these policies were approved in the context of the 2006 version of the Growth Plan, which did not include Policy 2.2.5.10, as referenced above. Importantly, any adoption of OPA 499 and the Secondary Plan by City Council is required to conform to the current Growth Plan, and not the 2006 Growth Plan. In addition, in the event of any conflict between the current Growth Plan and the City’s Official Plan, the Growth Plan prevails by virtue of subsection 14(2) of the *Places to Grow Act, 2005*. Thus, **the current employment land conversion policies in the City’s Official Plan cannot be used to prevent consideration of a conversion of the Subject Block to permit non-employment uses through the Secondary Plan process, which is explicitly contemplated in Policy 2.2.5.10 of the Growth Plan.**

In response to our letter of August 10, 2020, City staff arranged a videoconference with representatives of 1941 Eglinton to discuss our concerns, which occurred on September 10, 2020.

We have since had an opportunity to review the Supplementary Report from the City Planning Division dated September 29, 2020, together with the revised draft OPA 499 and Secondary Plan in Attachment 1 to the report.

Unfortunately, virtually none of the concerns we identified with the earlier version of the draft OPA 499 and Secondary Plan have been addressed in the revised version prepared by City staff. For example, despite staff's acknowledgement that it is important to "ensure that the policies are flexible to accommodate specific site conditions and design considerations" and some minor revisions that are now being proposed, we continue to believe that the recommended built form policies in Section 7 of the Secondary Plan are unduly prescriptive, as is the proposed unit mix requirement in Policy 9.2. We also continue to seek clarity regarding proposed Policy 13.18 b).

Perhaps most importantly, City staff has not proposed any revisions to OPA 499 to address our client's concerns regarding the appropriate land use permissions for the Subject Block, nor the fundamentally different treatment in the proposed Secondary Plan between the lands on the south side of Eglinton Avenue versus the lands on the north side of Eglinton Avenue, east of Warden Avenue. In fact, despite repeatedly raising these issues in: i) Mr. Goldberg's written submission on July 7, 2020; ii) my deputation to SCC on July 17, 2020; iii) my letter to the City's Legal Services Division dated August 10, 2020; and iv) during our videoconference with City staff on September 10, 2020, the Supplementary Report makes no reference whatsoever to these concerns.

It continues to be our view that retaining the Subject Block in a designation that would restrict the future use of the lands solely for employment uses fails to properly integrate and align the City's land use designations and policies for the Subject Block with the significant public infrastructure investment that has been made for higher order transit within the adjacent corridor, and will ultimately undermine the City's stated objective of transforming this underutilized and auto-oriented area into "a connected, accessible, diverse, complete and liveable mixed-use community", particularly for this important transit node within the Secondary Plan area.

With that in mind, we are attaching in Schedule "A" to this submission requested revisions to OPA 499 that would allow the Subject Block to be redeveloped for high density mixed-use development (including residential uses), thereby ensuring that the lands on both the north and south sides of Eglinton Avenue east of Warden Avenue are fairly treated in a reasonably similar manner.

Of note, the revisions that we are proposing also include a new Site and Area Specific Policy in the Secondary Plan to ensure that future redevelopment of the Subject Block would include a minimum amount of space for non-residential uses and maintain a significant number of jobs, and addressing the applicable criteria for employment land conversions in Policy 2.2.5.10 of the Growth Plan.

We thank the members of Scarborough Community Council in advance for their consideration of this submission, and we would be pleased to discuss the contents of this letter and/or the proposed revisions to OPA 499 in advance of the meeting on October 16, 2020.

Finally, kindly ensure that we receive notice of any decision by Scarborough Community Council and/or City Council regarding this matter.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

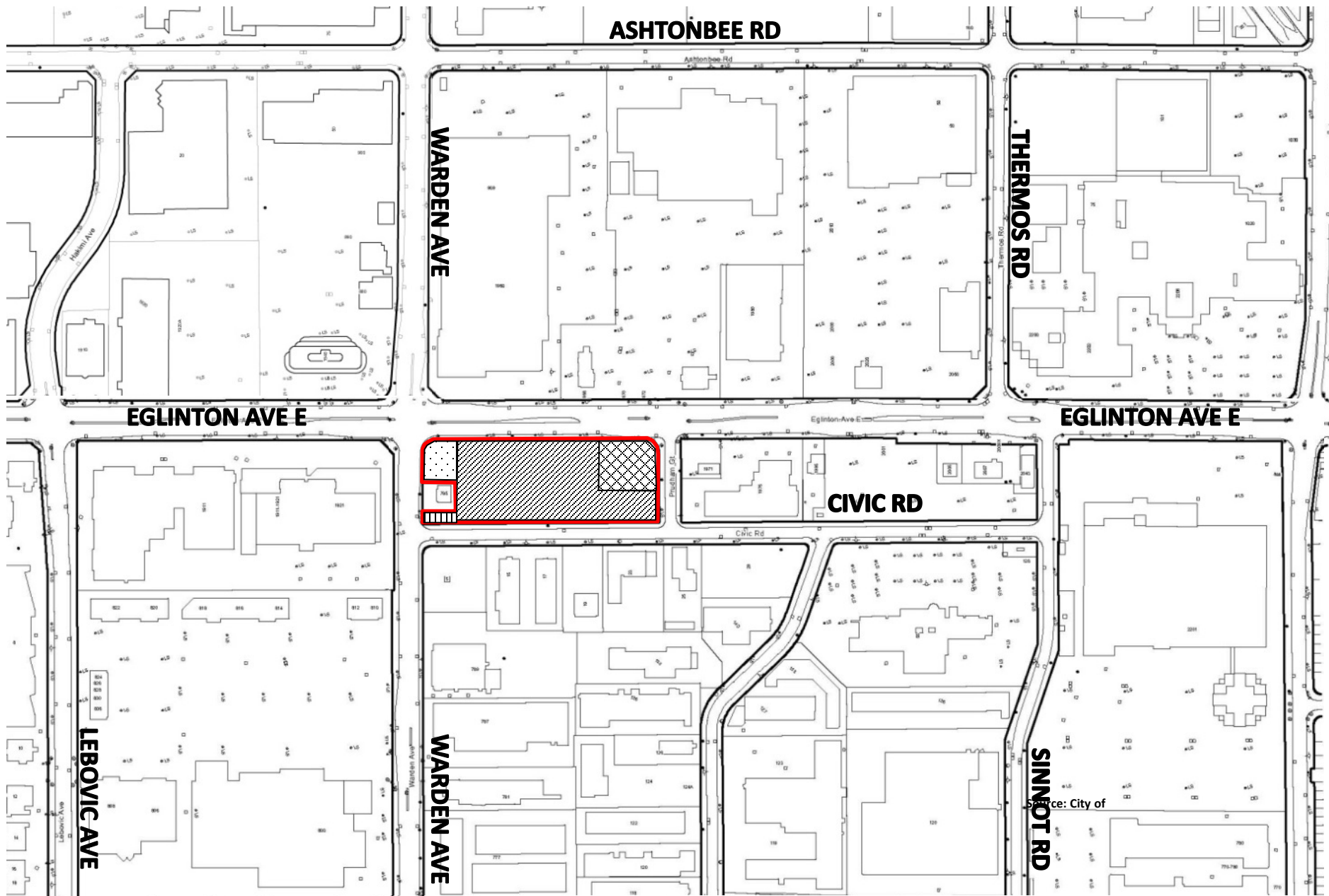
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copy: Daniel Elmadany and Nathan Muscat, City of Toronto, Legal Services
Paul Zuliani, Victor Gottwald and Emily Caldwell, City of Toronto, City Planning
Client
Michael Goldberg and Janice Robinson, Goldberg Group

SCHEDULE “A”

Proposed Revisions to OPA 499 and Golden Mile Secondary Plan for the Block Bounded by Warden Avenue, Eglinton Avenue East, Prudham Gate and Civic Road:

1. Amend Map 2, Urban Structure, by removing the lands from “Employment Areas”.
2. Amend Map 20, Land Use Plan, by redesignating the lands from “General Employment Areas” to “Mixed Use Areas”.
3. Amend Map 45-2 of the proposed Golden Mile Secondary Plan by removing the lands from “Employment District” and include the lands within the “East District”.
4. Amend Map 45-3 of the proposed Golden Mile Secondary Plan by removing the lands from “Employment Area” and include the lands within “Mixed Use Transit Nodes”.
5. Amend Map 45-5 of the proposed Golden Mile Secondary Plan by establishing the Maximum Permitted FSI (Gross) for the lands as the same that applies to the lands at the northeast corner of Eglinton Avenue East and Warden Avenue.
6. Amend Map 45-13 of the proposed Golden Mile Secondary Plan by removing the Subject Lands from the orange area identified as “Mid-rise buildings (5-11 storeys)” and include the lands within the purple area that applies to the lands at the northeast corner of Eglinton Avenue East and Warden Avenue.
7. Add the following Site and Area Specific Policy 14.2 to the proposed Golden Mile Secondary Plan:
 - 14.2 **Block bounded by Warden Avenue, Eglinton Avenue East, Prudham Gate and Civic Road**
 - 14.2.1 Residential and/or other sensitive uses are permitted, subject to the following:
 - a) Any development on the lands that includes residential and/or other sensitive uses will, at the same time, maintain a significant number of jobs on those lands and will comply with Policy 4.5 of this Plan;
 - b) A Compatibility/Mitigation Study and a Noise Impact and Air Quality Study demonstrate that the proposed residential and/or other sensitive uses will not adversely affect the overall viability of nearby employment areas; and
 - c) Appropriate studies demonstrate that there are sufficient existing or planned infrastructure and public service facilities to accommodate the proposed uses.



-  SUBJECT BLOCK
-  1923 EGLINTON AVENUE EAST
-  793 WARDEN AVENUE
-  1941 EGLINTON AVENUE EAST
-  1957 EGLINTON AVENUE EAST

Source: City of

KEY MAP

August 10, 2020

By E-Mail

Daniel Elmadany and Nathan Muscat
City of Toronto, Legal Services Division
Metro Hall, 26th Floor
55 John Street
Toronto, Ontario
M5V 3C6

Dear Sirs:

**Re: Proposed Modifications to Draft OPA 499 (Golden Mile Secondary Plan)
Agenda Item SC16.3**

Background

We are counsel to 1941 Eglinton East Holdings Inc. (“1941 Eglinton”), the owner of the lands municipally known as 1941 Eglinton Avenue East, which is located within the area of the proposed Golden Mile Secondary Plan (the “Secondary Plan”).

We understand that 1941 Eglinton is representing the interests and has the support of all of the other private landowners within the block bounded by Warden Avenue, Eglinton Avenue East, Prudham Gate and Civic Road (the “Subject Block”). A key map of the Subject Block is attached for ease of reference.

As you know, our client’s planning consultant, Michael Goldberg of Goldberg Group, made a written submission to the Scarborough Community Council (“SCC”), dated July 7, 2020 (Communication SC16.3.2), in which he identified a number of concerns with the proposed Secondary Plan. In doing so, he also provided a planning opinion in support of revisions to the Secondary Plan to permit high density mixed-use redevelopment (including residential uses) within the Subject Block. I then reiterated a number of those comments when I made a deputation to the SCC at its meeting on July 17, 2020.

Proposed Modifications to Draft OPA 499 (Golden Mile Secondary Plan)

As you are aware, SCC deferred its consideration of the proposed Secondary Plan to its meeting on October 7, 2020, in order to afford an opportunity for City staff and certain members of SCC to have discussions and attempt to resolve differences with the

landowners within the Secondary Plan area who had expressed concerns with the proposed Secondary Plan at the meeting on July 17, 2020.

In anticipation of, and to assist with those discussions, we are providing you with our client's proposed modifications to the City's draft OPA 499, including both policy and mapping revisions to the proposed Secondary Plan. Please note that although the proposed modifications are being provided on a "without prejudice" basis, this covering letter is not being provided on a "without prejudice or confidential basis", and may form part of the public record.

As you know, one of our client's key objections to the proposed Secondary Plan is that it fails to provide permission for residential uses on the Subject Block in the context of high density mixed-use redevelopment, a point that we clearly made known to SCC at its meeting on July 17, 2020. In that regard, we note that in deferring its consideration of the proposed Secondary Plan to enable discussions with the landowners, SCC did not stipulate any restriction on the scope or content of those discussions, despite being aware that certain landowners, including 1941 Eglinton, had made requests for residential permissions on lands currently designated *General Employment Areas*. Thus, we expect that City staff will, in good faith, engage in discussions with our client and its representatives between now and the October 7, 2020 SCC meeting regarding all of the issues identified by our client, including its request for residential permissions within the Subject Block.

Meanwhile, we are aware that the City has recently initiated an Official Plan review and "Growth Plan" conformity exercise, which will include, among other things, consideration of requests to convert lands designated *Core Employment Areas* or *General Employment Areas* for non-employment uses. Of course, this is not the only process by which the City may consider requests to re-designate *General Employment Areas* lands or to permit residential uses on such lands. Rather, Policy 2.2.5.10 of the 2019 *Growth Plan for the Greater Golden Horseshoe* (the "Growth Plan") states that "until the next *municipal comprehensive review*, lands within existing *employment areas* may be converted to a designation that permits non-employment uses", provided that certain criteria are satisfied. One of those criteria is that the conversion would "not include any part of an *employment area* identified as a *provincially significant employment zone*". Although the Subject Block is currently designated as *General Employment Areas* in the City's Official Plan, it is not identified as a *provincially significant employment zone*.

With respect to the City's "in-force conversion policies", you are no doubt aware that these policies were approved in the context of the 2006 version of the Growth Plan, which did not include Policy 2.2.5.10, as referenced above. As you know, any adoption of the Secondary Plan by City Council later this year would need to conform to the 2019 Growth Plan, not the 2006 Growth Plan. Further, in the event of any conflict between the 2019 Growth Plan and the City's Official Plan, the 2019 Growth Plan prevails by virtue of subsection 14(2) of the *Places to Grow Act, 2005*.

Accordingly, our client maintains its position regarding the appropriateness of permitting residential uses within the Subject Block through the Secondary Plan process. Likewise, we expect that City staff will engage with our client and its representatives between now and the October SCC meeting to discuss this matter, together with 1941 Eglinton's other concerns with the proposed Secondary Plan.

Conclusion

We look forward to hearing from you in order to initiate dialogue with City staff and/or the Councillor(s) regarding each of the proposed modifications in the attached document well in advance of the SCC meeting on October 7, 2020.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

encls.

copy: Paul Zuliani, Victor Gottwald and Emily Caldwell, City of Toronto, City Planning Client
Michael Goldberg and Janice Robinson, Goldberg Group