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DELIVERED BY EMAIL (phc@toronto.ca)

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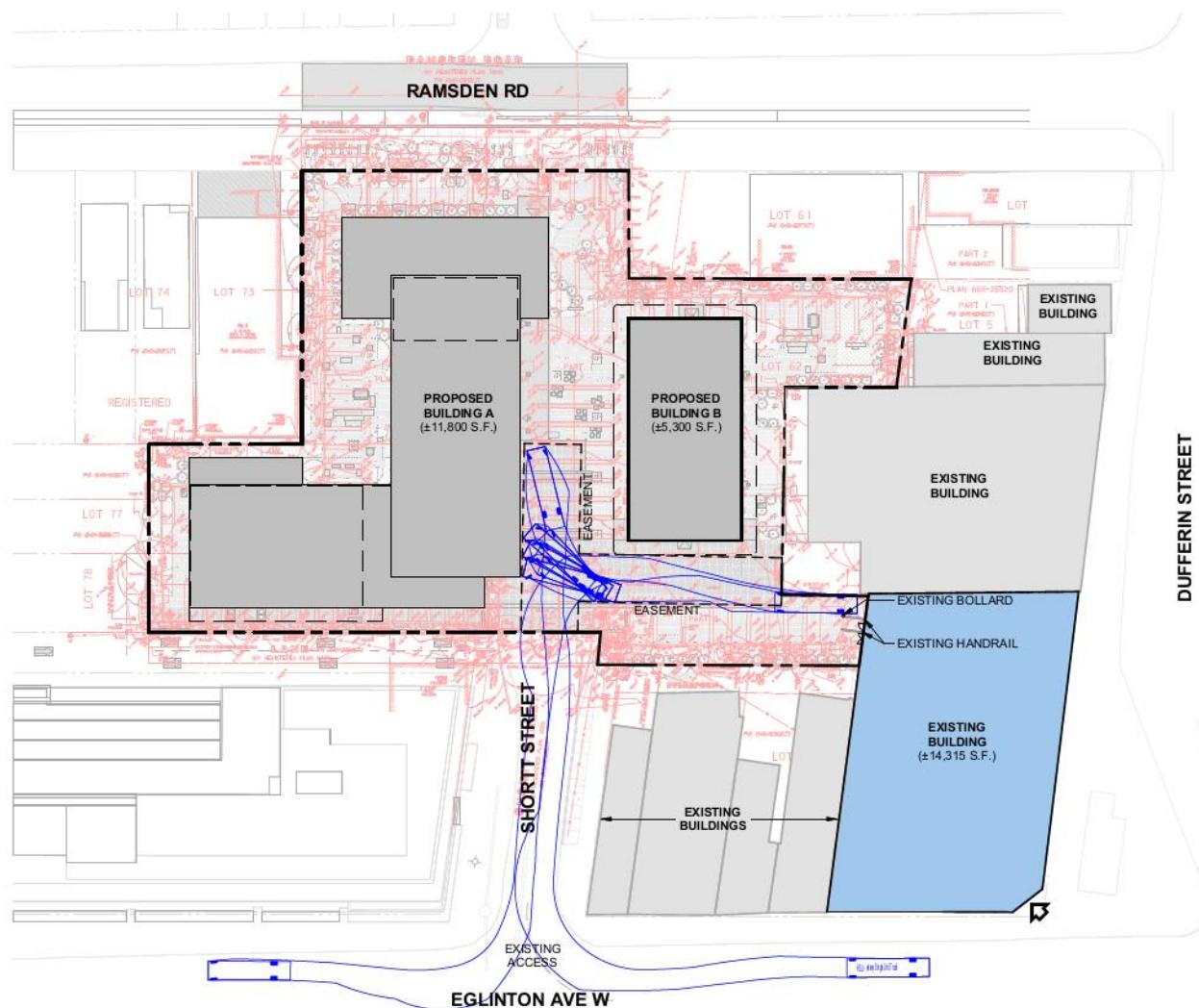
Attention: Ms. Nancy Martins, Administrator, Planning and Housing Committee

**Re: Reference PH27.5: 9 Shortt Street – Zoning By-law Amendment Application –
Decision Report – Approval (File No. 25 203821 NNY 08 OZ)
Planning and Housing Committee Meeting January 22, 2025
Comments on behalf of Shoppers Realty Inc.**

We are legal counsel for Shoppers Realty Inc. (“Shoppers”), the tenant of premises municipally known as 1840 Eglinton Avenue West, in the northwest corner of Eglinton Avenue West and Dufferin Street. Our client operates a Shoppers Drug Mart at this location. On behalf Shoppers, we write to provide comments on the above-noted application for a zoning by-law amendment (“ZBA”) approval for a mixed-use development at 9 Shortt Street. **This proposed development is a direct threat to the continued operations of the Shoppers and a Dollarama and other businesses at this intersection.**

The northwest rear corner of the Shoppers Drug Mart opens onto the Green P parking lot that will be consumed by the proposed development. More importantly, the only loading doors and facilities for the Shoppers are also in this location, accessed from the parking lot area. We understand this physical arrangement has existed for decades.

The proposed development will preclude access to the Shoppers loading facilities. Without functional loading facilities, Shoppers cannot operate at this location, nor could any other retail or service use. The figure below shows the route trucks currently take to access the loading facilities at the rear of the Shoppers store, which is shown coloured blue.



Abutting the Shoppers building to the north is a Dollarama; Shoppers and the Dollarama have the same landlord through different corporations.

An easement is outlined on the figure above. This easement, registered as Instrument No. CY444211E, was granted in 1959 by the Township of York in favour of the Dollarama parcel. The easement extends from Shortt Street directly to the Dollarama parcel property line. The easement grants to the owner of the Dollarama parcel, together with the owner's "agents, tenants, employees, workmen and all other persons" authorized by the owner,

"a free and uninterrupted right of way in common with the Party of the First Part [now City of Toronto], its agents, tenants, employees, workmen and all other persons by it duly authorized, including the Parking Authority of the Township of York and its customers, for persons and vehicles through, along and over that certain parcel of land particularly described as...";

the lands being as shown in the figure above. The easement provides direct access to the Dollarama loading and garbage area.

This easement area is shown on the architectural plans prepared for CreateTO. It is clear the City is aware of this encumbrance. However, remarkably:

- The staff report, Report for Action, dated January 8, 2025, recommending approval of the ZBA, does not even mention or discuss this easement, nor its implications;
- None of the drawings attached to the staff report show this easement or otherwise make it known to the Committee;
- The draft ZBA shows, in Diagram 4, a POPS overlapping part of the easement;
- The architectural drawings demonstrate that the lands subject to this easement must be excavated to construct underground parking and other facilities.

It is our opinion that easement CY444211E provides “free and uninterrupted” rights in favour of the Dollarama parcel, and the proposed development and associated ZBA would be **contrary to the City’s obligations under this easement**.

As indicated on the figure above, trucks accessing the Shoppers loading area – which is immediately adjacent to the Dollarama loading area – follow a route that for the most part overlaps the easement area. Accordingly, Shoppers also has an interest in the benefitting owner seeking to enforce their rights under this easement. Further, Shoppers is preparing its case to seek a court declaration that it has a prescriptive easement over its truck access route, given the usage of same to access loading in its building for decades.

The net result so far is that this proposed development threatens to put out of business the Shoppers, the Dollarama, and possibly other businesses at this corner, because no consideration has been given to the impact on the only loading and garbage facilities available to these businesses. In at least one instance, and possibly more, this outcome is contrary to legal rights accrued by the owners, even rights expressly granted by the City.

The businesses and owners will have no recourse but to seek enforcement of their legal rights; this proposed development as it is now proposed is an existential threat. This surely is not good planning. **We urge the Committee to refer this matter back to staff, and to direct that discussions be held with the affected owners and tenants with a view to finding a solution that will allow businesses to continue and this development to proceed.**

Yours very truly,
BORDEN LADNER GERVAIS LLP



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