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December 15, 2009

By E-Mail

Chair Bill Fisch and Members of Regional Council
The Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Attention: Mr. Denis Kelly, Regional Clerk

Dear Mr. Kelly:

Re: Draft York Region Official Plan
Submissions of Behalf of SmartCentres and Calloway REIT

We are counsel to SmartCentres and Calloway REIT, the developers and owners of a number of properties within the Region of York. Among their land holdings, SmartCentres and Calloway REIT currently own existing or planned commercial retail centres in the Town of Aurora, the Town of Markham, the Town of Richmond Hill, the City of Vaughan, and the Town of Whitchurch-Stouffville.

Our clients have reviewed the December 2009 draft of the York Region Official Plan and have identified a number of concerns with the document. Accordingly, the purpose of this letter is to highlight, for Council's consideration, some of our clients' key concerns and objections.

<u>Section 2.1 – Regional Greenlands System</u>

Policy 8 purports to require the submission of an environmental impact statement for "development applications" within 120 metres of the Regional Greenlands System. In our view, the policy should be modified to limit the requirement to situations where a change of use is proposed, requiring *Planning Act* approval. In addition, as part of this study, we do not believe that there should be a requirement to identify "enhancement opportunities".

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Section 2.2 – Natural Features

Policies 34 and 35 propose a requirement of a minimum *vegetation protection zone*, or buffer, of 30 metres from *wetlands* shown on Map 4, within which no *development* or *site alteration* would be permitted. In our view, the minimum width of this proposed buffer is excessive and has not been adequately justified as a Region-wide standard.

Section 3.3 – Provision of Human Services

Policy 13 proposes to make it a policy of Regional Council to consider the introduction of social housing and hospital development charges. Aside from any financial or other policy considerations, in our view it is inappropriate to establish, as a municipal policy, consideration of a matter for which there is currently no legislative authority.

Section 4.3 – Protecting Employment Lands

Policy 1 purports to require that the employment forecasts in Table 1 and the Region's land budget be used as the basis for planning for employment lands. Whereas the employment forecasts in Table 1 form part of the Official Plan and any revision would therefore require a formal amendment, together with a public planning process and right of appeal, the Region's land budget is prepared outside of this context. In fact, we understand that the Region is intending to amend its current land budget at some point in the new year. In our view, it is not appropriate to effectively elevate to official policy status a document that is prepared and may be amended at any time outside of the public planning process.

Further, it is unclear whether *major retail* facilities, as defined in the proposed Official Plan, are to be permitted on employment lands. Policy 2, for example, indicates that employment lands are to be protected for "employment land uses". Retail trade is clearly an "employment land use", apparently accounting for approximately 13% of the Region's total employment in 2008, and the Region has acknowledged that retail trade is an essential component of a healthy economy. At the same time, Policy 6 indicates that *major retail* is not permitted on employment lands, albeit in the context of a "conversion" policy.

It is also unclear what constitutes "employment lands" for the purposes of section 4.3 in general. The term "employment lands" is defined in Policy 6, but expressly only for the purposes of that specific policy.

Further, Policy 6 fails to acknowledge the wide variety of land uses that are already permitted within the Region's numerous employment land use designations, including, in some instances, retail. Thus, to the extent that Policy 6 is intended to limit, or may have the effect of limiting existing retail permissions, our client objects to this proposed policy.

Policy 7 is also problematic. First, like Policy 1, it references the Region's land budget, which is a document that is prepared outside of the public planning process. In addition, it purports to require a "Regional" municipal comprehensive review for the conversion of employment lands to non-employment uses, which is not in keeping with Policy 2.2.6.5 of the *Growth Plan for the Greater Golden Horseshoe* that permits the conversion of employment lands through a "municipal comprehensive review", which may be initiated by a local municipality.

The reference to "mixed-use development" in Policy 8 is unclear, as it is an undefined term. In any event, no development proposal within these areas should require a "municipal comprehensive review", in keeping with the direction of Policy 2.2.6.6 of the *Growth Plan.*

In Policy 10, it is unclear how one would define the geographic extent of the "employment land area". Further, we not believe that it is appropriate to limit *ancillary uses* based on the amount of employment, which may be constantly changing and otherwise difficult to quantify.

Policy 12 appears to limit the types of uses that may be permitted not only within employment areas, but also adjacent to employment areas on Local Corridors and other major streets, with no apparent land use planning rationale. Moreover, although we maintain that retail facilities are "employment uses", it is not clear whether this policy might be used to attempt to restrict retail facilities from such locations.

Policy 20 is overly restrictive, and fails to recognize that there may be instances where new development on private services may be appropriate.

<u>Section 4.4 – Planning for Retail</u>

Although the Region has acknowledged the importance of retail trade in the opening paragraph, inadequate attention has been given to the importance of *major retail* facilities and identifying locations where they are to be permitted, both within this Section and elsewhere in the proposed Official Plan (see, for example, Section 5.2, Policy 9; Section 5.3, Policy 10; and Section 5.4, Policy 5). Thus, this

Section should be modified to give clear direction to local municipalities to plan for and designate lands for *major retail* uses in appropriate locations.

In addition, it is not clear what is meant by saying that *major retail* facilities should not "detract" from various other areas, nor is it clear what lands are intended to be included within the term "designated or strategic employment lands" in Policy 6, particularly given the comment in Section 4.3, Policy 2 that "all employment lands identified in local municipal official plans ... are strategic".

With respect to Policy 9, it is unclear what is intended by the proposed requirement for a "Regional" impact analysis in terms of the scope of such study, and the justification for the proposed threshold size of 30,000 gross leasable square metres is unknown. Likewise, our clients seek the same clarification as it pertains to the potential requirement for a Regional Impact Analysis as part of an Official Plan Amendment application, as referred to in Table 3, under Section 8.3.

Policy 10 requires the Region to undertake a study of the Region's retail sector, although no specific timeframe for such study is indicated. In any event, we trust that any application for new retail development with the Region would be processed and could be approved prior to the completion of such study. If this is not the Region's intention, please clarify, as our clients may then object to this proposed policy.

Section 4.5 – Financial Management

Policy 2 purports to ensure that development proponents provide the funds required to deliver additional services and costs related to growth. As the funding of growth-related capital costs by development proponents is regulated, and in some cases limited, by the *Development Charges Act, 1997*, the proposed policy should explicitly recognize this reality. Likewise, the Region should also be looking to other sources of revenue, including funding from more senior levels of government, to offset the costs of services associated with growth.

Section 5.2 – Sustainable Cities, Sustainable Communities

Policy 19 is inappropriate, insofar as it purports to require new development to adhere to a "guideline" document that is beyond the Official Plan and may be amended without any public planning process and/or right of appeal. Further, we are uncertain what the requirements of the "Guidelines for Community Development in York Region" are, given that we understand that this document has not yet even been completed.

Various policies in Section 5.2, including Policies 20, 21 and 26, purport to require new buildings to achieve certain energy efficiency standards beyond the requirements of the Ontario Building Code and mandate certain methods of construction. The intended method of implementation, as well as the legislative authority for such policies, is unknown. In addition, some of these policies reference proposed standards (e.g. the Model National Energy Code for Buildings) that are outside the scope of the Official Plan and could be amended without any public planning process and/or right of appeal.

Given the above concerns, our clients similarly object to Policies 42 and 43, which purport to require local municipalities to implement the proposed sustainable building policies of the Region's Official Plan and would support even more onerous requirements at the local level.

Section 5.4 – Regional Centres and Corridors

Policies 8 and 9 are overly and unnecessarily restrictive, purporting to prohibit any new buildings that do not front onto the major street and prohibit any amount of surface parking between the main building entrance and the street.

Section 7.1 – Reducing the Demand for Services

Policy 7 is inappropriate, insofar as it purports to require new development to adhere to a "guideline" document that is beyond the Official Plan and may be amended without any public planning process and/or right of appeal.

Section 7.2 – Moving People and Goods

Policy 49 recognizes that road widenings will generally be taken equally from the centre line of the street. However, clause (b) indicates that there may be circumstances where a greater widening, or even the total widening, may be taken from one side of the street. In these circumstances, the landowner ought to receive compensation for any taking beyond that which would result from an equal widening, and the policy should incorporate language that acknowledges this requirement.

In Policy 50, the proposed requirement for a conveyance to the Region of up to the first 36 metres of a required right-of-way to accommodate a new or realigned Regional road is excessive and has not been properly justified.

We trust that Council will give due consideration to these comments as it considers adoption of the proposed Official Plan, and request that the appropriate modifications are made in order to address these concerns.

Kindly ensure that we receive notice of any decision made by Council in respect of the proposed Official Plan.

In the meantime, please do not hesitate to contact us if you have any questions regarding this submission.

Yours truly,

DAVIES HOWE PARTNERS

Mark R. Flowers

copy: Client
Barbara Jeffrey, Regiojn of York