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VIA FACSIMILE

Denis Kelly, Clerk
Regional Municipality of York
17250 Yonge Street
Newmarket, ON L3Y 6Z1

Dear Mr. Kelly:

Re: Proposed 2007 Development Charges By-law
Meeting of Finance and Administration Committee – May 3, 2007

As you are aware, we act on behalf of Loblaw Properties Limited with respect to the above-noted matter.

We were in attendance at the previous public meeting with respect to the proposed Development Charges By-law. At that time, we indicated that our client was very concerned about the proposed dramatic, nearly 200 percent increase in the rate of the non-residential charge applicable to retail uses and that it had retained urbanMetrics inc. to carry out an in-depth review of the background study and proposed By-law. On behalf of our client, urbanMetrics has been involved in discussions with Regional staff and stakeholder meetings.

The review of the background study, supplemented by ongoing discussions, has yielded numerous specific issues with respect to the proposed By-law. Our client shares many of the concerns previously articulated by the non-residential development sector. The purpose of this letter is to supplement those issues from the perspective of the retail sector, including the following:

1. There are three fundamental issues with the calculation of the subway component of the proposed charge. First, only a small portion of the cost is proposed to be allocated to benefit existing development. This is at odds with the reality of the proposed subway corridor which is already largely developed with commercial and industrial uses. Only those uses within the proposed subway corridor will have any impact on subway usage, and the vast majority of new growth in the corridor will be in the form of high density office and residential development and not retail. Any new retail growth elsewhere in the Region will have no bearing on subway ridership. A very low "benefit to existing" ratio is therefore not representative of the true impact of retail development on the subway system. Secondly, the cost allocation between the retail and non-retail sectors is a source of significant concern. As noted previously, the impact of new retail development on subway usage will be minuscule in light of the form of development anticipated along the subway corridor. The share of the costs proposed to be borne by the retail sector is

therefore too high. Finally, retail uses are not a particularly significant generator of transit trips in comparison to residential and other non-residential uses. Therefore, it seems neither fair nor reasonable that the proposed undiscounted retail charge for the subway is more than three times as high as the charge applicable to non-retail uses.

2. A number of concerns exist with respect to the cost of roads included in the background study. First, we question the use of the ITE model to arrive at a split between retail and non-retail trip generation, because the ITE model is based on American data which likely does not represent local conditions. In addition, the proposed charge constitutes a form of double recovery vis-à-vis the retail sector. As outlined above, the charge for the subway is exceptionally high for retail uses (when in fact retail has historically generated minimal transit use), disclosing an assumption on the part of the drafters that the modal split for retail will shift away from private transportation. At the same time, the charge for roads is based on a traffic generation model which is biased toward private modes of transportation. It appears to be neither fair nor accurate to expect the retail sector to bear a disproportionate share of the subway cost and road costs. Finally, there is no explanation as to whether the traffic generation figures used to calculate the retail sector's traffic generation volumes take into account peak and off-peak periods, since shopping is an activity undertaken largely after business hours.

3. The treatment of the cost of high occupancy vehicle ("HOV") lanes cost is problematic for several reasons. First, it appears doubtful whether this is a cost that is legitimately fully attributable to the roads component of the proposed charge. The purpose of HOV lanes is to aid the Region's transit strategy at least as much as it is to alleviate traffic volumes. Therefore, it appears that a portion of the cost of HOV lanes ought to be allocated to the transit component of the study. In fact, it is possible that the transit passenger volume in the HOV lanes outnumbers the users of private vehicles. Secondly and more specifically from a retail perspective, the HOV lanes are required to serve predominately commuter trips. Persons using the HOV lanes are, for the most part, not travelling to retail destinations. Therefore, as a matter of fairness, the retail sector should not pay the highest rates for a service for which it largely does not increase the need.

4. Retail uses typically rely on significantly less water and sewer capacity than other non-residential uses. This fact is not reflected by the methodology of the proposed By-law. An alternative way of addressing this inequity would be to consider user rates instead of development charges for water and sewage services.

5. We are in agreement with the previously-voiced concern over the Region's decision not to follow the Places to Grow projections, including the Provincial employment forecasts, in the calculation of the development charge rates.

6. Our client believes that the proposed development charge rates for services including roads, transit, water and sewers do not reflect the relatively low need for them resulting from retail development. For this reason, there is substantial justification to provide relief to their retail sector through a discount as well as phasing-in of the charge over the life of the by-law, irrespective of its ultimate quantum.

7. Our consultants' review of development charge rates in neighbouring upper tier municipalities indicates that the proposed rate in York Region is approximately three times higher than the proposed rates in Peel Region and Toronto and four times higher than that in Durham Region. Although retail uses are generally related to population growth, the fact that comparable rates are very substantially lower in neighbouring regions is likely to influence development patterns, particularly in areas near regional boundaries. In other words, retailers with an opportunity to serve residents of York Region from an adjacent municipality may well be attracted by suddenly significantly lower land development costs. The non-residential development sector in York Region would be significantly disadvantaged by the new rates if the extent of the disparity continues.

As noted at the outset of this correspondence, our client remains engaged in the consultation process and continues to participate in stakeholder discussions. The purpose of the this correspondence has been to record our client's concern with the proposed rate as a way of facilitating a resolution of this issue. We will be in attendance at tomorrow's Committee meeting and would be pleased to answer any questions.

Yours very truly,

AIRD & BERLIS LLP

Tom Halinski
TH/dd

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