

October 29, 2020

Brandon Correria – Manager, Special Projects
City of Vaughan
Office of the Deputy City Manager, Planning and Growth Management Portfolio
2141 Major Mackenzie Dr.
Vaughan, ON
L6A 1T1

Dear Mr. Correia:

**RE: CITY OF VAUGHAN – COMPREHENSIVE ZONING BY-LAW REVIEW COMMENT LETTER
CHOICE PROPERTIES REIT
3900-3940 HIGHWAY 7, 200 WINDFLOWER GATE, 2911 MAJOR MACKENZIE DRIVE WEST,
AND 8345 – 8555 & 8585 HIGHWAY 27
OUR FILE: Y329AO**

On behalf our client, Choice Properties REIT, we are providing this letter regarding the third draft of the City of Vaughan Comprehensive Zoning Review By-law (hereinafter the “draft Zoning By-law”) being considered for approval by Council. Our client owns several parcels of lands in the City of Vaughan, municipally addressed as follows:

- 3900-3940 Highway 7 and 200 Windflower Gate (“The Highway 7 Lands”),
- 2911 Major Mackenzie Drive West (“The Major Mackenzie Lands”) and
- 8345 – 8555 & 8585 Highway 27 (“The Highway 27 Lands”).

The Highway 7 and Major Mackenzie lands are proposed to be zoned General Mixed Use (GMU), and the Highway 27 lands are proposed to be zoned Neighbourhood Commercial (NC) under the draft Zoning By-law.

This letter builds on comments provided in two previous letters, dated March 4, 2020 and February 19, 2020, respectively, which provided comments on the second draft of the draft Zoning By-law.

We note that our previous request to permit seasonal commercial uses in the GMU zone was adopted in the third draft. Several comments remain outstanding from the second draft however, and we hold a new issue with the proposed site specific exceptions, introduced in the third draft of the draft Zoning By-law.

1. Specific Use Provisions – Outdoor Patio (Section 5.12)

Outdoor Patios have several specific use provisions under the proposed draft Zoning By-law. Several of the provisions have changed since the first draft, specifically the minimum setbacks from adjacent residential or institutional zones. The proposed setback of 30m for ground floor patios and 40m for second floor and above patios generously buffer adjacent sensitive uses. The provisions read;

4. *An outdoor patio located at grade and with direct access from the first storey of a building shall have a minimum setback of 30.0 m from any lot line abutting a residential use or Institutional Zone.*
5. *An outdoor patio located above the first storey of a building shall have a minimum setback of 40.0 m from any lot line abutting a residential use or Institutional Zone. For the purpose of this provision, the minimum setback shall be interpreted as follows:*
 - a. *The minimum setback of an outdoor patio located above the first storey shall be measured horizontally from the nearest part of an outdoor patio to the nearest lot line abutting a Residential Zone or Institutional Zone.*

We believe additional flexibility in this provision is required. The proposed setback requirements are generous and a provision to allow for a reduced setback subject to an appropriate study of impacts to the adjacent residential or institutional uses would be appropriate. Additionally, clarification of how the setback should be measured in the case when a road separates the proposed outdoor patio from the residential or institutional use should be provided. In this case, it is not clear which property line (the residential/institutional property line or outdoor patio property line) should be used. We would recommend that separation distances be measured to the actual uses versus property lines to ensure that true intent of the separation distance is met.

2. Specific Use Provisions – Seasonal Commercial Use (Section 5.18)

Seasonal Commercial Use provisions in section 5.18 set out standards requiring that they not obstruct a required parking space, and that they may operate only 120 days a year;

1. *A seasonal commercial use shall not obstruct a required parking space, driveway access, aisle, or loading space.*
2. *A seasonal commercial use shall not be permitted for more than 120 days within a single calendar year, as calculated either cumulatively or consecutively.*

We believe that requiring Seasonal Commercial Uses to not obstruct required parking spaces will inhibit the efficient development of land. If these provisions are retained, dedicated space on the lands would be required to accommodate the Seasonal Commercial Use, despite its temporary nature, creating land that sits unused for the majority of the year, or alternatively requires additional parking areas to be provided beyond the Zoning By-law rates. It is therefore recommended that the requirement for Seasonal Commercial Uses to not obstruct a required parking space be removed.

Additionally, the length of time in which a seasonal garden centre tends to change year over year and is dependent on seasonal weather. An arbitrary 120 day limit is potentially limiting to the operations of a facility such as a garden centre, as growing seasons regularly exceed that time-length. An increased limit to the maximum amount of time or removal of the 120 day limit is recommended.

3. Transition (Section 1.5)

This section outlines transition issues regarding the implementation of the Draft Zoning By-law. Clauses allowing for existing approved minor variances to continue to apply are particularly appreciated.

An additional clause allowing for minor variances within the 2-year no amendment period under Section 34 (10.0.0.1) of the Planning Act is recommended. Not allowing minor variances city-wide for a period of two years would create challenges in making minor changes to existing uses and operations of the subject lands, especially considering many site specific provisions require zoning provisions that exceed the new By-law (i.e. parking rates), so variances would be required to bring property standards more in line with the new Zoning By-law.

Additionally, given the inability for the draft By-law to accurately predict all legal non-conforming uses and accommodate their needs, a general clause should be added to allow for minor modifications and expansions of existing legal non-conforming uses, up to a certain percentage of the existing GFA (i.e. 20%). This clause would allow legal-non conforming uses to grow and change in their existing location without requiring relief from the draft Zoning By-law.

4. Proposed Zone (Section 9.0)

The proposed zone for the Highway 27 lands in the draft Zoning-By-law is Neighbourhood Commercial (NC). This zone represents a reduction in permitted uses over the existing zoning in By-law 1-88. Uses generally permitted on the lands today but not permitted in the draft Zoning By-law include:

- Place of Entertainment
- Pet Care Establishment
- Art Studio

We note that this list is smaller than in the second draft of the draft Zoning By-law as the site specific exception zones, introduced in the third draft of the draft Zoning By-law, added several permissions to the Highway 27 lands not permitted in the base NC zone. The above noted uses however remain outstanding in that they are currently permitted uses on the Highway 27 lands in Zoning By-law 1-88, and are not proposed to be carried forward to the draft By-law.

The proposed NC zone additionally does not align with the official plan designation for the lands, in which the lands are designated Low-Rise Mixed Use.

Due to the Official Plan designation of the lands, we believe a Low-Rise Mixed Use (LMU) zone or General Mixed Use Zone (GMU) zone would be more appropriate for the Highway 27 lands. These designation's permitted uses more closely align with Zoning By-law 1-88 and more closely relate to the land use designation under the Official Plan.

5. Exception Zones (Section 14.0)

The third draft of the draft Zoning By-law included for the first time the site specific exception zones and provisions. These provisions largely bring forward existing site specific provisions in Zoning By-law 1-88, regardless of changes in regulations in the draft Zoning By-law.

Each of the three sites subject to this letter are proposed to be subject to a site specific exception zone in the draft Zoning By-law. The Highway 7 lands are proposed to be subject to exception 287, the Highway 27 lands are proposed to be subject to exception 462, and the Major Mackenzie lands are proposed to be subject to exception 765.

By primarily bringing forward existing site specific provisions from Zoning By-law 1-88, the proposed site specific provisions create several issues with interpretation. The site specific provision applying to the Highway 7 lands for example, exception 287, identifies the lands as a variety of zones applicable in By-law 1-88 (C5, RM1, RM2, C2, OS2) in Figure E-537A. The exception however makes no references to these designations in the site specific provisions, or how these designations should be interpreted and whether they override the GMU zone applicable in the draft Zoning By-law.

Additionally, each site specific exception identifies several permitted uses in addition to the uses otherwise permitted in the GMU or NC zone. As these permitted uses are brought forward from Zoning By-law 1-88, they generally do not match the defined terms for uses in the draft Zoning By-law. Exactly how these uses should be interpreted is not clear.

Finally, several of the site specific exceptions place stricter regulations on a site specific basis on the lands than what is proposed in the base draft By-law zones. Parking rates in particular are significantly higher in the site specific provisions for each site. The existing site specific provisions in By-law 1-88 allow for lower parking ratios than required otherwise, however when brought forward to the draft Zoning By-law, now represent a significant increase in the minimum amount of required parking for the lands. This is counter to the goal of modernizing parking requirements in the City of Vaughan, and leaves many lands across the city fixed to parking rates set out in the previous by-law that are now outdated and no longer required.

We request that the site specific provisions applying to the Lands, exceptions 287, 462, and 765, be modified with updated permitted uses and figures that better align with the definitions and requirements of the draft Zoning By-law. Alternately, further clarification is requested on how site specific provisions should be interpreted and if zones set out in the site specific figures are applicable under the draft Zoning By-law.

Additionally, the provisions should be modified so that whenever the site specific provision conflicts with the base by-law, the less restrictive policy prevails. This includes, but would not be limited to, the removal of most site specific parking provisions which are typically higher than the requirements set out in the draft Zoning By-law.

SUMMARY

Based on the information provided and understood to date, the Highway 7 and Major Mackenzie Lands are proposed to be zoned GMU, and the Highway 27 lands zoned NC.

While the Draft Zoning By-law is generally supported by MHBC and our client, we believe that additional flexibility is needed for outdoor patios, seasonal commercial uses, and transition issues. Additionally, we find the proposed site specific provisions to be difficult to interpret and overly restrictive by bringing forward many requirements that are more restrictive than otherwise proposed in the draft Zoning By-law. The draft Zoning By-law as currently proposed could produce operational challenges for existing uses through limitations on Seasonal Commercial Uses, and produce challenges in attracting new tenants with limitations on the ability to apply for Minor Variances and operate Outdoor Patios.

Please continue to provide updates on the Draft Zoning By-law, particularly involving matters outlined above. If you have any questions, please do not hesitate to contact us.

Thank you.

Yours truly,

MHBC

A handwritten signature in black ink, appearing to read 'Oz Kemal', written in a cursive style.

Oz Kemal, BES, MCIP, RPP
Partner