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BY E-MAIL
csaunder@london.ca

June 4, 2017
File No.: 129002.1001

Planning & Environment Committee
City of London
300 Dufferin Avenue
London, Ontario
PO Box 5035, N6A 4L9

Attention: Chair and Members

Dear Sirs/Mesdames:

Re: **Official Plan Amendment Application by the City of London Wonderland Road Community Enterprise Corridor Land Use Designation in the Southwest Area Secondary Plan (the "Application")**
File No.: **O-8731**

We represent 1279059 Ontario Inc. and CLF1 (Wonderland Road) Inc. (c/o York Developments Inc. and North American Development Group ("**York/NADG**")), who own the lands municipally known as 3313-3405 Wonderland Road South and 1789 Wharncliffe Road South, London (the "**Property**").

On March 10, 2017, we submitted a letter of concern to City staff with respect to the Application. We write to express our unresolved concerns with the City of London's Application and its proposal to remove the retail commercial cap of 100,000 square metres within the Wonderland Road Community Enterprise Corridor land use designation ("**WRCEC**") of the Southwest Area Secondary Plan ("**SWAP**").

Background

York/NADG began the planning approvals process for the Property well in advance of the adoption of SWAP. In December 2005, York/NADG filed Official Plan Amendment and Zoning By-law Amendment applications for a commercial

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development on the Property (the "**York OPA/ZBA**"). The City of London began the SWAP planning process in 2008 and was subsequently adopted by City Council on November 20, 2012. The SWAP was appealed to the Ontario Municipal Board (the "**Board**") by various landowners, including York/NADG.

On June 25, 2013, City Council approved the York OPA/ZBA, which was appealed to the OMB by Greenhills SC Ltd. ("**Greenhills**") and Sifton Properties Limited ("**Sifton**"). The appeal proceedings for the York OPA/ZBA was consolidated with the appeal proceedings for SWAP.

SWAP was subsequently approved with modifications by the Board on April 29, 2014. Prior to the Board's approval of SWAP, Greenhills and Sifton withdrew their appeals, on February 18, 2014 and March 17, 2014, respectively, which resulted in the York OPA/ZBA coming into effect. Accordingly, the approval of the York OPA/ZBA preceded the approval of SWAP.

Shortly after the approval of SWAP and the York OPA/ZBA, York/NADG proceeded to file a Site Plan Application ("**SPA**") for the Property, which was later approved on May 30, 2016. The Lowes on the Property is currently in operation.

<u>Application to Remove Commercial Cap in the WRCEC</u>

We have reviewed the Staff Report on the Application that will be considered by the Planning & Environment Committee at its meeting on June 6, 2017 (the "**Staff Report**"). With the assistance of Ward Land Economics Inc., we have also reviewed the following market studies that purport to justify the proposed removal or increase of the commercial cap (collectively, the "**Market Studies**"):

1. "Retail Market Demand Analysis for the South West Area Plan, City of London, Ontario" prepared for the City of London, dated November 24, 2016 and by Kircher Research Associates Ltd. (the "**2016 Kircher Report**");

2. "Supplementary Update, Retail Market Demand and Impact Analysis, City of London, Ontario" prepared for Westbury International, dated October 6, 2015 and by Tate Economic Research Inc; and

3. "Retail Market Study, Wonderland and Bradley Avenue, London, Ontario" prepared for Southside Group, dated February 5, 2016 and by urbanMetrics inc.

We remain seriously concerned with the Application as the Staff Report contains numerous inconsistencies, inaccuracies and illogical conclusions while the Market Studies are incomplete and contain flawed assumptions. The following is a non-exhaustive summary of those concerns:

1. **There is no market justification for the removal of the commercial cap.**

Our review of the Market Studies concludes that there is no justification for the removal or increase of the 100,000 square metre commercial cap within the WRCEC at this time. The Market Studies illustrate that new commercial space within the WRCEC is supported only on a phased basis and do not justify the removal and/or increase of the commercial cap at this time.

As input to the SWAP planning process, several retail market studies were filed with the City of London and the Board. These studies provided assessments of market support for the commercial cap within the WRCEC, which was accepted by the Board in its SWAP decision.

The 2016 Kircher Report's recommendation to remove the commercial cap is based on characterizing the WRCEC as a slow growth area compared to the rest of the SWAP. In contrast, the Staff Report's recommendation to remove the commercial cap is based on the characterization of the WRCEC as a high growth area with two recent applications that propose to increase the commercial cap. Contrary to the 2016 Kircher Report, there is a significant amount of ongoing and proposed commercial development within the WRCEC. For example, the Lowes development on the Property has been built and is currently open and the balance of construction for Phase 1 (ie, north of Kilbourne Road) is anticipated to proceed by end of 2017.

Based on the 2016 Kircher Report, the total potential commercial development within the WRCEC, including other commercial space permitted in SWAP, exceeds the market support identified for all of SWAP to 2031.

Considering that the commercial cap was only established three years ago, it is premature for staff to conclude that the commercial cap is not fulfilling its intended purpose. Time should be granted for proposed and approved developments to be established before flooding the market with additional commercial space.

2. The Market Studies fail to include a market impact analysis.

The planning for future retail space ought to take into account the actual market demand and the market impact of the introduction of additional retail space. The Market Studies fail to provide a quantitative impact assessment on existing and planned commercial areas if the commercial cap is removed or increased.

The Market Studies identify a very significant existing supply of commercial space—approximately 185,000 square metres of additional commercial space permitted but not yet built in SWAP. The 100,000 square metre commercial cap has been allocated to approved developments and does not include the proposed Southside and Westbury developments.

Based on the 2016 Kircher Report, the WRCEC could ultimately result in approximately 375,000 square metres of commercial space. Without the commercial cap, approximately 246,000 square metres of commercial space could be built within the WRCEC south of Bradley Avenue—this is a significant amount of commercial space for which the associated market impact has not been assessed. It is evident that there is already a significant supply of retail space within SWAP and the removal of the commercial cap would result in an oversupply and jeopardize the planned function of the WRCEC as well as the City's Downtown, Transit Villages and other commercial areas resulting in blight, store closures and job losses. The commercial cap was established precisely to avoid the oversupply of commercial space and adverse impacts on the planned function of other commercial sites.

3. The removal of the commercial cap is contrary to planning policy.

The Staff Report claims that the removal of commercial cap and the reduction of required residential and office uses in the WRCEC are intended to help achieve the long-term vision for the WRCEC, which includes mixed use, urban forms of development along Wonderland Road, as established in the SWAP, the new *London Plan* and Provincial Policy Statement, 2014. However, the Staff Report fails to recognize that, if approved, the Application would actually have the opposite effect and promote more commercial development within the WRCEC and take away from the planned vision for the corridor. In its SWAP decision, the Board found that the commercial cap within the WRCEC would result in room for as-of-right development of complementary uses leading to a mix of uses in the corridor. The adverse market impact and deterrence of mixed-use development that would result from the Application would be contrary to planning policy.

4. There is already an equitable distribution of commercial space within the WRCEC.

The Staff Report falsely claims there has been an inequitable distribution of commercial space in the WRCEC and yet proposes to remove the commercial cap in order to promote contiguous development patterns south of Bradley Avenue (adjacent to the existing commercial development north of Bradley Avenue). This would have the result of clustering commercial uses to the northern end of WRCEC, which does not reflect the planned vision for the WRCEC. Contrary to the findings in the Staff Report, it is evident from Figure 8 of the Staff Report that commercial space has been equitably distributed along the WRCEC and not clustered to the north contiguous to the existing commercial developments north of Bradley Avenue.

It is also incorrect for the Staff Report to state that existing WRCEC policies preclude contiguous development patterns as those parcels immediately south of Bradley can proceed to be developed if those owners wish to do so. It is important to note that "equitable distribution" does not mean that every parcel of land within the WRCEC must have commercial use permissions.

The Staff Report also suggests that York/NADG gained an unfair advantage for the Property through the SWAP process but fails to appreciate that (1) York/NADG filed its OPA and ZBA applications nine years prior to the approval of SWAP and (2) the York OPA/ZBA were in force and effect prior to the approval of SWAP. The York OPA/ZBA application was well known to all parties, including the City, at the time of the hearing and the York OPA/ZBA were not ultimately challenged by any party before the Board. It is unreasonable and prejudicial for the City to now claim that the commercial cap does not function as it was intended while landowners such as York/NADG have proceeded with the development of their properties in reliance upon the policies established in SWAP.

5. **The Staff Report grossly misinterprets the OMB decision for the SWAP proceedings.**

On pages 15-16 of the Staff Report, the Board's SWAP decision is referenced but is grossly misinterpreted. In the SWAP decision, the Board referenced the *LaSalle* case which held that the Board will not intervene in the marketplace and that it is not to be used as a means to prevent competition. However, the Board referenced the *LaSalle* case in the context of the distribution of commercial space within the WRCEC and not because there was a question about whether there ought to be a commercial cap at all. As such, the Board did not suggest that there should be no commercial cap. In fact, the market studies filed with and accepted by the Board in the SWAP proceedings supported the commercial cap.

6. **There needs to be a mechanism to ensure that adequate market analysis is completed prior to the addition of commercial space within the WRCEC.**

As stated above, it is our position that the existing 100,000 square metre commercial cap for the WRCEC should remain until such time that there is sufficient market justification for an increase. However, if the commercial cap is removed, then there needs to be a mechanism in place to require market studies as part of the rezoning process to justify an increase in the commercial cap. Otherwise, there would be no market-based restriction on the amount of commercial space that can be obtained at the rezoning stage. The uncontrolled development of commercial space may result in serious adverse market impacts within the WRCEC, SWAP and the City of London.

Conclusion

The Staff Report and Market Studies contain considerable flaws and inaccuracies and provide no justification for the removal or increase of the commercial cap at this time. There has been insufficient analysis of the market impacts of additional commercial space within the WRCEC and these potential market impacts must be thoroughly understood before the commercial cap should be increased or removed. The Staff Report's suggestion that the commercial cap serves no useful planning purpose is completely unsupported based on the studies available to date.

Like other landowners within the WRCEC, York/ NADG has reasonably relied on the stable land use planning environment established through SWAP and it has proceeded with its development plans for its Property on that basis. Until such time as the market justifies otherwise, the commercial cap is necessary for the continued orderly development of commercial space within the WRCEC and, contrary to the findings of the Staff Report, the proposed removal of the commercial cap would not conform with municipal and provincial policy.

Given the magnitude of the consequences that may result from the removal of the commercial cap and the insufficient analysis of the market demand and impact of such a proposal, we request that the consideration of the Application be deferred and sent back to City staff for further analysis and review. A copy of the preliminary review by Ward Land Economics Inc., dated June 2, 2017, is attached.

We expressly reserve the right to raise additional issues with respect to the Application. Please contact the undersigned if you have any questions. Thank you for your attention to this matter.

Yours very truly,

James Harbell & Maggie Bassani

JWH/mb
Attachment
cc. Steve Bishop, *North American Development Group*
Ali Soufan, *York Developments*
Carol Wiebe, *MHBC*
Mimi Ward, *Ward Land Economics Inc.*

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June 2, 2017

File: 17-1004

Mr. Steven Bishop
Vice President, Development Services
Wonderland Road JV c/o CMSL
2851 John Street, Suite One
Markham, ON L3R 5R7

Dear Steven;

Re: Retail Commercial Market Support - Wonderland Road Enterprise Corridor Southwest Area Secondary Plan (SWAP), London

The following provides a summary of market findings regarding retail commercial market support within the *Wonderland Road Community Enterprise Corridor* (the "Enterprise Corridor" or "WRCEC") of the Southwest Area Plan (SWAP). The findings are based on reference to several market studies relevant to SWAP and the Enterprise Corridor including the market study prepared for the City of London.

This summary also accounts for comments and recommendations provided in the City of London Planning Staff Report regarding the *"Application by: The Corporation of the City of London Wonderland Road Community Enterprise Corridor Land Use Designation in the Southwest Area Secondary Plan Public Participation Meeting on June 6, 2017"* (the "June 2017 Staff Report"). The June 2017 Staff Report recommends specific changes to the WRCEC designation and include *"Removing the maximum commercial floor area".*

Based on several market studies including those conducted on behalf of the City of London, Southside Group, and Westbury International, among others, there is no justification at this time to lift the 100,000 sq.m. commercial maximum within the Enterprise Corridor.

Uncontrolled retail commercial development in the Enterprise Corridor puts the City's downtown and its revitalization as well as other existing commercial areas at risk of significant negative impact, store closures, and job losses. The City also risks pre-empting and impacting its planned commercial areas including the Enterprise Corridor, SWAP, and the Transit Villages.

Removal of the maximum commercial floor area identified in the Enterprise Corridor is not consistent with the City's market study nor is it consistent with several planning policy directions.

The market findings are based on reference to several market studies, including;

- Kircher Research Associates Ltd. report titled *"Retail Market Demand Analysis for the South West Area Plan (SWAP), City of London, Ontario, 2016-2031"* prepared for The Corporation of the City of London, Ontario, dated November 24th, 2016.
- Tate Economic Research Inc. report titled *"Supplementary Update, Retail Market Demand and Impact Analysis, City of London, Ontario"* prepared for Westbury International (1991) Corporation, dated October 6, 2015.
- urbanMetrics inc. report titled *"Retail Market Study, Wonderland Road and Bradley Avenue, London, Ontario"* prepared for Southside Group, dated February 5, 2016.

Together these studies are referred to in this letter as the "market studies" or the "current market studies".

This summary is not intended to address all components, gaps, issues, and inconsistencies of the market studies, but is intended to highlight the overall findings. This summary is also not intended to address all issues and inconsistencies of the June 2017 Staff Report.

SWAP Commercial Space Maximum

SWAP identifies phasing and staging recognizing growth already planned for urban uses elsewhere. As such, the City imposed a cap of 100,000 sq.m. of commercial space within the Enterprise Corridor.

- SWAP and the guiding policies resulted from a comprehensive planning process that extended over many years. SWAP was approved by the Ontario Municipal Board less than three years ago. Several market reports provided input to the SWAP and the planning policies restricting the total additional retail commercial space permitted in the Enterprise Corridor to a maximum of 100,000 sq.m. (approximately 1,080,000 sq.ft.).
- The current market studies identify a very significant existing supply, approximately 185,000 sq.m. (2,000,000 sq.ft.) of additional retail commercial space permitted but not yet built in SWAP. The 100,000 sq.m. (1,080,000 sq.ft.) commercial cap within the Enterprise Corridor has been allocated to approved developments and does not include the proposed Southside or Westbury developments.
- Based on the City's market study (page 88), the Enterprise Corridor could ultimately result in approximately 375,000 sq.m. (4,030,000 sq.ft.) of commercial space. The market study finds that without the commercial cap, 246,000 sq.m. (2,650,000 sq.ft.) of commercial space could be built in the Enterprise Corridor south of Bradley Ave. This is a significant amount of additional space and the market impact on the City has not been assessed.

The City's market study recommendation to remove the cap is based on a characterization of the Enterprise Corridor as a low growth area. In contrast, the impetus for Staff's review and subsequent recommendation to remove the cap is based on a characterization of the Corridor as a high growth area with two new applications that propose to increase the 100,000 sq.m. cap.

- The City's market study recommendation to remove the cap is based on an inconsistent comparison of space built within the Corridor since 2012 versus permitted but not built space outside the Corridor in SWAP.

- Contrary to the City's market study characterization of the Enterprise Corridor, there is a significant amount of retail commercial space in the Enterprise Corridor in the development process. As well, the Southside and Westbury applications propose to increase the 100,000 sq.m. commercial cap.

- The June 2017 Staff Report informs that *"These applications have provided the impetus for City staff to consider the commercial policies of WRCEC though this this (sic) City-initiated amendment so as to ensure they are considered in a comprehensive manner."*

- Staff recommend removal of the cap so that polices better align with the Shopping Area Place Type policies of The London Plan and which Staff state do not include any type of commercial cap. However, there are Specific Policies for the Shopping Area Place Type that do identify commercial caps and total retail gross floor area maximums are specified.

Market Studies and Impact Assessment

The City's market study and others illustrate that new retail space in SWAP is supported on a phased basis by target year. None of the market studies provide an impact assessment of removing the cap. The market studies do not justify removal of the Enterprise Corridor commercial cap at this time.

- The market study prepared for the City identifies market support for additional warranted retail and service commercial space[1] within SWAP based on phasing by target year as summarized on the table on the following page.

- The City's market study identifies that removal of the commercial cap is not justified over the near to long term planning horizon.

- Based on the City's market study, the total potential commercial development within the Enterprise Corridor including other commercial space permitted in SWAP exceeds the market support identified for all of SWAP to 2031.

1) Warranted space is in addition to existing space, but not in addition to the total Enterprise Corridor cap.

Additional Warranted Retail and Service Commercial Space in SWAP by Target Year

Based on the Market Study Prepared for the City

	Additional Warranted Space in SWAP	
	in sq.m.	in sq.ft.
2018	44,017	473,800
2021	63,211	680,400
2026	94,101	1,012,900
2031	138,007	1,485,500

Source: Kircher Research Associates Ltd. report titled *"Retail Market Demand Analysis for the South West Area Plan (SWAP), City of London, Ontario, 2016-2031"* prepared for The Corporation of the City of London, Ontario, dated November 24th, 2016.

Note: Warranted space is in addition to existing space, but not in addition to the total Corridor cap.

- None of the market studies provide a quantitative impact assessment on existing and planned retail commercial areas if the Enterprise Corridor cap were to be removed.
- None of the market studies provide an assessment of the impact of not providing a balanced distribution of retail commercial space required to serve the needs of existing and future residents of the City's other neighbourhood areas.
- If too much space is permitted too soon in the Enterprise Corridor, the City risks impact on existing and planned retail commercial areas including the Enterprise Corridor and SWAP, existing shopping centres, the downtown, other commercial areas, and the planned Transit Villages.

October 2014 Staff Report

The City of London Staff Report dated October 7, 2014 informs that the commercial cap imposed in the Enterprise Corridor is to prevent an over-supply of commercial space.

> "*The principle behind the inclusion of a cap on commercial development is to prevent the over-supply of commercial uses in new suburban areas, where additional public infrastructure and servicing investments are required and must be supported over the long-term.*" (page 9)

The report also informs that:

> "*By preventing over-supply through a GFA cap in planning regulations, it is anticipated that the integrity and planned function of existing commercial centres elsewhere in the City, will be preserved and that existing infrastructure and public services will continue to be efficiently utilized in those areas.*" (page 9)

If retail commercial space is built within the Enterprise Corridor before the market support is available, then this puts the City's existing and planned retail commercial lands and the planned function of commercial areas at risk of significant negative impact including the Enterprise Corridor and SWAP, the downtown, other commercial areas, and the planned Transit Villages.

This is not consistent with the City of London Official Plan, the new London Plan, or the Provincial Policy Statement which provides policy direction that protects commercial areas including the downtown.

Summary of Inconsistencies

Removal of the maximum commercial floor area identified in the Enterprise Corridor is not consistent with the City's market study nor is it consistent with several policy directions. A summary of some of the inconsistencies include the following:

- The Staff Report finding that removal of the cap would better align the WRCEC policies with the *Shopping Area Place Type* in The London Plan, is not consistent with policy 1558 which directs that *"Where there is a conflict or inconsistency between the parent policies or maps of The London Plan and the policies or maps of a secondary plan, the secondary plan policies or maps will prevail."*
- Removal of the cap is not consistent with the SWAP vision and policy direction that the Enterprise Corridor be a mixed-use area.
- The Staff Report finding that *"The Cap forces inefficient leap frog development…"* is not visually consistent with Figure 8 of the June 2017 Staff Report, nor is it consistent with the SWAP vision and permission for mixed-use development in the Enterprise Corridor.
- Removal of the cap is not consistent with the London Plan Shopping Area policy 875 which directs that *"It is not expected that new Shopping Areas will be required in London beyond what is shown on Map 1 – Place Types, over the life of this Plan, given the multitude of opportunities in the existing centres, and the many other place types that support commercial uses in the Plan."*
- Removal of the cap is not consistent with the London Plan policy 881 (2) which directs that new Shopping Area Place Types are required to *"…clearly demonstrate need…"* and must demonstrate that the proposed Shopping Area *"…will not undermine or detract from the planned function of an existing Shopping Area or any other place type shown in the City Structure Plan and on Map 1."*
- Removal of the cap is not consistent with the findings of the City's market study that additional retail commercial space is only supported on a phased basis by target year and that 138,000 sq.m. (1,485,500 sq.ft.) is warranted in 2031 for all areas of SWAP.

- Removal of the cap is not consistent with The London Plan policy 876 which directs that Shopping Area Place Types are to be distributed across the City to service neighbourhoods and collections of neighbourhoods.
- Removal of the cap is not consistent with the City's market study (page 3) which warns that *"…substantial overbuilding can be costly and inefficient, as clearly illustrated by the history of Westmount Mall which lost most retail space on its second level and Pond Mills Square, which has closed."*
- Removal of the commercial cap is not consistent with the City of London Official Plan, the new London Plan, or the Provincial Policy Statement which provides policy direction that protects commercial areas including the downtown.

Conclusion and Recommendation

Based on several market studies including that conducted on behalf of the City, there is no justification at this time to remove the 100,000 sq.m. commercial maximum within the Enterprise Corridor.

If too much space is permitted too soon in the Enterprise Corridor, the City risks significant impact on existing and planned retail commercial areas including the Enterprise Corridor and SWAP, existing shopping centres, the downtown, other commercial areas, and the planned Transit Villages.

It is recommended that the City account for and protect its existing and planned retail commercial land and the planned function of commercial areas before introducing additional retail commercial land and uncontrolled development within the Enterprise Corridor.

Yours very truly,
Ward Land Economics Inc.

Mimi Ward, PLE, MCIP, RPP.
President