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November 21, 2011

**DELIVERED BY EMAIL**

Town of Markham  
101 Town Centre Boulevard  
Markham, ON L3R 9W3

**Attention: Ms. Kimberly Kitteringham (Town Clerk), Mayor & Members of Council**

Dear Ms. Kitteringham, Mayor and Members of Council:

**Re: 22 Esna Park Drive, Markham  
Zoning By-law Amendment  
Markham Free Methodist Church  
ZA-11-117540**

We represent Markham Free Methodist Church, which owns the property at 22 Esna Park Drive.

Our client has been through a lengthy and complicated rezoning process and has complied with all of its obligations throughout the process.

The rezoning application was submitted on May 8, 2011 and deemed complete on June 10, 2011. The initial notice sign was erected on the property on June 17, 2011, which was well in advance of the latest possible date, June 25. Everyone passing by the site since then has been made aware of our client's intentions.

The Town mailed the statutory public meeting notice on August 24, 2011, as required by the *Planning Act*. The notice sign erected on the property was updated that same day to advise of the public meeting. As set out in more detail below, there is no doubt that those who are now objecting received or should have received the notice of the public meeting when it was sent. Yet one of the objectors did not object until months later and the other two did not appear in any way until just the past few days, almost five months later.

Our clients have scrupulously complied with their obligations. The objectors have not.

The public meeting, as required by the *Planning Act*, took place on September 13, 2011. No one appeared to object.

On September 20, 2011, Council passed a resolution approving the Zoning By-law Amendment and directing staff to prepare an implementing Zoning By-law amendment. There is no question that proper notice was given of that meeting. Council also authorized and directed staff to do all

things necessary to give effect to the resolution. After weeks of consultation between our client and Planning staff, the Zoning By-law was put before Council at its meeting of October 18<sup>th</sup>, 2011 for approval.

Dufferin Concrete, a division of Holcim (Canada) Inc. ("Holcim"), which operates a concrete ready-mix plant at 7655 Woodbine Avenue, submitted a letter on September 8, 2011, requesting that our client be responsible for assessing noise levels from nearby industrial and commercial operations and implement any potential noise mitigation measures which may be required. No specific noise concerns or mitigation measures were raised in their letter and Holcim did not state that it opposed the rezoning.

After sending the September 8th letter, Holcim did not participate further in the planning process. In particular, it did not attend the statutory public meeting nor the September 20<sup>th</sup> Council meeting at which Council approved the Zoning By-law amendment. Holcim only submitted an additional letter on October 17<sup>th</sup>, 34 days after the statutory public meeting, 39 days after its first, non committal letter, 54 days after the Town sent it the notice of the public meeting and 122 days after the initial notice sign was erected. It was in this letter that, for the first time, Holcim requested that Council defer the matter for two weeks to allow time for further investigations.

Our client submitted a letter on October 18<sup>th</sup> to the Town, objecting to this request, as our client believed that Holcim acted irresponsibly in waiting until after the rezoning application was approved with only the finalization of the By-law required to then request a deferral. However, at the October 18<sup>th</sup> meeting, Council decided to defer the matter until November 22<sup>nd</sup> so that Holcim could further investigate the impacts of our client's proposal as well as speak to MOE to obtain further information on the impacts of this proposal. As well, Council requested that staff consider two motions, one with respect to a letter/agreement or provision in the Site Plan agreement acknowledging the current noise levels from Holcim operations, and the other being the inclusion of a condition of Site Plan Approval requiring the Church to incorporate building materials into their development that would mitigate noise impacts from Holcim, if required.

Since the October 18<sup>th</sup> Council meeting, we have met with Holcim on two occasions to discuss their investigations. Our client is given to understand that Holcim has yet to contact MOE to discuss the impacts of the proposal on their Certificate of Approval (CofA). Holcim did provide a letter dated November 9, 2011, to Ms. Conrad requesting that our client conduct further noise investigations.

On November 18<sup>th</sup>, we received a letter from Humphries Planning Group Inc. on behalf of Descor Limited Partnership ("Descor"). Descor operates a wood office furniture manufacturing company at 25-39 Riviera Drive. Descor is objecting to our client's rezoning application. The points in Ms. Humphries' letter are without merit and much too late in this process as Council, as noted above, approved the Zoning amendment application two months ago. Ms. Humphries' letter only asserts that her client was not "formally" notified of the public meeting. Significantly, that letter does not assert that her client did not have actual knowledge of the application in a timely fashion. We have been advised by the Town Clerk's office that formal notice of the application was provided to the building owner, pursuant to the *Planning Act* on September 24, 2011. It is the obligation of the building owner to provide the information to their tenants.

In response to the bullet points in Ms. Humphries' letter, we note the following, in the same order as in the letter:

The letter is incorrect to assert that the Town did not consider whether the proposed land use would render adjacent industrial uses as being non-compliant with its CofA. In fact, our client submitted the required technical reports such as Planning Rationale and Noise study, in support of the application. The reports were circulated to the appropriate departments for evaluation and consideration and no concerns were raised. The reports did not specify specific CofAs because it could not do that. CofA's are specific to each business and are negotiated between that business and the MOE.

The claim that the proposed place of worship within an industrial area may not be appropriate is only based on pure speculation with no planning justification. This statement is also contrary to the Town's Official Plan Amendment 115, which states that the proposed use is appropriate and permitted in the Industrial – Business Corridor Area designation (land use designation for the property). OPA 115 is a Town-wide Official Plan amendment and was adopted in September 2003. In order for the proposed use to be permitted within this Industrial designation, there are numerous criteria that had to be complied with. This zoning amendment proposal conforms to all the requirements. During the approval of OPA 115, industrial businesses had opportunities to object or express concerns if they had any. It is inappropriate to make this argument at this juncture.

Again, the claim that there "may" be conflicts between industrial traffic and the proposed use is also pure speculation with no technical substantiation. There is no evidence at all that there are such conflicts. The peak traffic hours for industrial businesses are very different from those of a place of worship and thus the assertion is on its face highly implausible.

The paragraph about the Holding zone argues that since phasing is required for reasons of sanitary sewer capacity/flows and that the proposal is premature and should not be approved at this time, has no merit. Again, Council has approved the zoning amendment application. It is a common practice to put Holding provisions on later phases of developments and only allow the lifting of the "H" under various municipal conditions. No reason has been advanced why it cannot be used in this case.

The last point is that the place of worship is not considered to be an employment use and therefore would constitute a land use conversion. As stated above, the proposed use is already permitted in the Industrial – Business Corridor Area designation. The proposed use is a permitted use in addition to other industrial uses. As such, there is no land conversion or change in land use designation. The Town has already conducted a comprehensive review and determined that a place of worship is appropriate in this location and a permitted use. This argument is without merit.

Ms. Humphries' final statement that the zoning application is scheduled to be heard on November 22<sup>nd</sup>, is incorrect. The Zoning Amendment application was approved by Council on September 20, 2011. Council is to consider on November 22 only the wording of the Zoning By-law as prepared by Staff in consultation with our client. No assertion has been made in Ms. Humphries' letter, or to our knowledge by anyone else, that the proposed by-law does not comply with the September 20, 2011 resolution.

On November 21<sup>st</sup>, we received an additional letter from Ms. Humphries, now also representing Davencourt Investments Limited (“Davencourt”), owners of land at 15, 25, 35 and 39 Riviera Drive. Descor is a tenant of Davencourt. Similar to Descor’s objection letter, Davencourt objects to our client’s proposal with no planning merit or justification.

As noted above, we have been advised by the Town Clerk’s office that formal notice of the application was provided to Davencourt, pursuant to the *Planning Act* on September 24, 2011.

In response to the bullet points in Ms. Humphries letter, we provide the following, in the same order as the letter:

The assertion that the proposal may create regulatory agency compliance issues for current and future tenants is again pure speculation. No analysis has been provided by Davencourt to suggest there are issues.

The comment that the proposal may destabilize the existing employment area and associated operations is again pure speculation. As discussed above, the Town has approved OPA 115, an Official Plan amendment that permits the proposed use in such a location. Studies and public meetings took place prior to approval of OPA 115.

There is no evidence that the proposed use of the existing building would reduce the Town’s employment land base. When our client purchased the property, it was vacant. To the contrary, the proposal will bring in investment to the Town and create new jobs.

The last point about conflicts between existing industrial uses and the proposed land use is again without merit. The Town approved OPA 115 to allow the proposed use, as an additional use to the industrial uses, in such designation which means that the land uses are compatible.

Throughout the entire planning process for our client’s proposal, Descor and Davencourt failed to make any representation or provide written or oral communication with the Town or us expressing their concerns until November 17<sup>th</sup> and November 21<sup>st</sup>, almost two months after the rezoning was approved. Furthermore, we spoke with Ms. Humphries immediately after receiving her letter of November 17<sup>th</sup> and asked about her client’s specific issues. Ms. Humphries’ response was not encouraging in that instead of providing specific information and solutions as to how the parties may deal with it, she indicated that this is our client’s issue and therefore, our client should resolve it.

In light of Holcim’s failure to substantiate its supposed concerns (although 5 weeks were granted to them to conduct further investigation and consult with the MOE), and the lack of merits of Ms. Humphries’ arguments, we are requesting that Council proceed with considering and making a decision on the amending Zoning By-law as presented by staff with no conditions.

We will be in attending on November 22<sup>nd</sup> to speak to this matter.

Should you have any questions, do not hesitate to call me at 416-367-6251.



Yours truly,  
**BORDEN LADNER GERVAIS LLP**

Richard Ling

cc: Jim Baird, Town of Markham  
Michael Fry, Town of Markham  
Catherine Conard, Town of Markham  
May Luong, BLG  
client

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