City of Markham

ANALYSIS OF PROPOSED "HOUSEKEEPING" CHANGES TO VARIOUS CITY OF MARKHAM BY-LAWS

January 8, 2015 (Updated August 7, 2015)

MERIDIAN PLANNING

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1.0 INTRODUCTION

The intent of this report is to discuss, review and provide recommendations to the City of Markham on changes that should be made to various City by-laws at this time. It is recognized that the City has begun preparing a new zoning by-law, however it is anticipated that the project will take up to two years to complete (not counting appeals) and there is a need at this time to make minor changes to a number of by-laws in the City in response to issues that have been raised.

In many cases, the changes are intended to correct errors in a by-law or to ensure that the provisions applying to a particular circumstance are being dealt with consistently across the City. Given that the City of Markham is subject to over 40 freestanding by-laws, ensuring that they are all consistent with each other is an ongoing task. As a consequence, this report makes a number of recommendations on how greater consistency can be realized.

Within each of the sections below is a description of the issue, our analysis of the issue and recommendations. In some cases, a review of best practices has been carried-out and in some cases options are identified for further discussion purposes. It is anticipated that this report will be released for broader public review once finalized and that changes in approach may be considered after further input has been received.

2.0 BY-LAW ISSUES

2.1 Required Parking Space Width on Narrow Lots that are accessed by a Lane

2.1.1 Description of the Issue

Section 6.1.2(a) of By-law 28-97 indicates that *"where parking spaces are provided in a parking area, each required parking space should have a width of not less than 2.75 metres and a length of not less than 5.8 metres."* A parking area is defined by By-law 28-97 as *"an open area of land not located within a public street, private street or lane which is used for the parking of motor vehicles."* As a consequence of the above, this minimum parking space size requirement applies to open areas on lands that are considered to be parking areas. For the purposes of interpreting By-law 28-97, a parking pad would be considered a parking area.

Section 6.1.2(b) of By-law 28-97 indicates, "*where parking spaces are provided in an enclosed or underground garage, such parking spaces shall have a width of not less than 2.6 metres and a length of not less than 5.8 metres*." This provision would apply to private garages and parking garages both of which are defined terms in By-law 28-97.

By-law 177-96 contains specific provisions for detached private garages that are accessed by lanes. Section 6.3.1.1(a)(iii) of By-law 177-96 indicates that

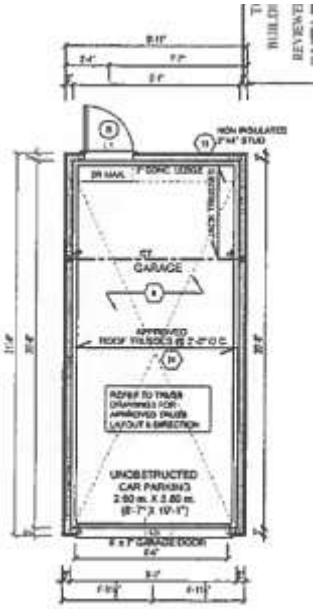
detached private garages that are accessed from a lane shall be located a minimum of 1.2 metres from the interior side lot line. This minimum setback can be reduced to 0.5 metres if there are no doors or windows on the wall facing the interior side lot line. In a circumstance where a detached private garage shares a common wall with one other detached private garage on an abutting lot, no setback from the interior side lot line would be required.

On narrow lots that are accessed by a lane, it is common for there to be one parking space in a detached garage that is accessed by a lane and one parking space located adjacent to the attached garage in an open area (a parking pad).

A review of the width of private garages that are accessed by rear lanes on lands subject to By-law 177-96 has been carried out. In this regard, there are three common circumstances in Markham.

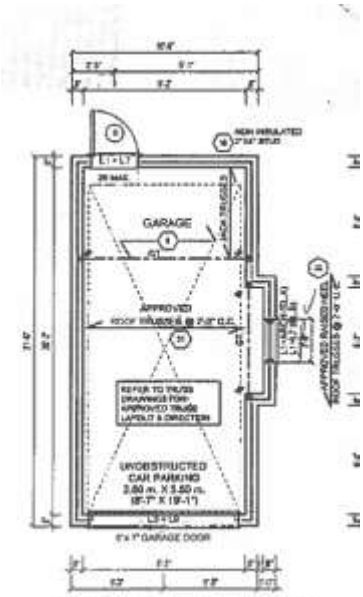
The first is a standalone single car garage that is not attached to another single car garage on the abutting lot, as shown on **Figures A1 and A2**. The width of such a single private garage can range from 2.47 metres to 3.53 metres depending on the design of the garage.

Figure A1



G4: SINGLE CAR GARAGE
ELEV. 'A' & 'B'

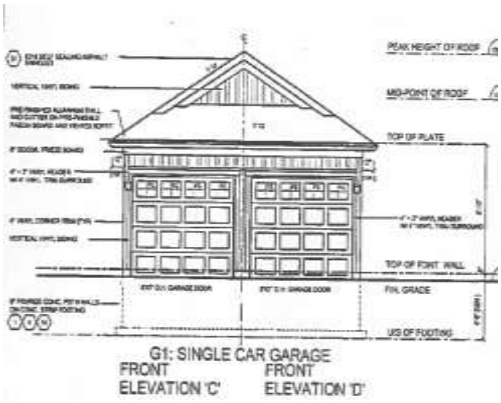
Figure A2



G4: SINGLE CAR GARAGE
ELEV. 'C'

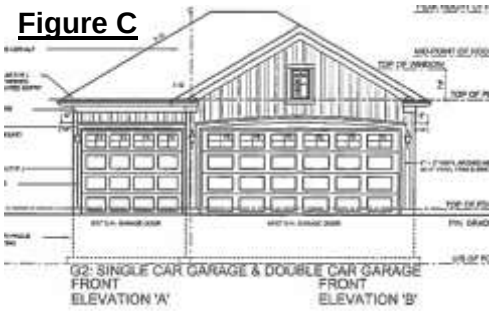
The second circumstance is where one building with two self-contained parking spaces is developed, with each parking space being on a separate lot as shown on **Figure B**. The total width of the private garage is 5.96 metres, which means that the width of the private garage on each lot is 2.98 metres.

Figure B



The third circumstance is where a building containing three parking spaces is developed, with two spaces on one lot and one space on an abutting lot as shown on **Figure C**. In this case, the width of the part of the private garage with the single space can be up to 2.8 metres.

Figure C



It is recognized that By-law 28-97 indicates that the minimum width of a parking space in a detached private garage is 2.6 metres. However, walls enclose this parking space and it is for this reason that the width of the building accommodating the parking space approaches 3 metres. Given that townhouse lots are permitted to have lot frontages of 5.5 metres in the R2, R2-1 (non wide shallow lots), R2-LA and the R3 zones on lands subject to By-law 177-96, no more than 2.5 metres would be left for the second parking space on the parking pad on a townhouse lot.

Given that the minimum required width of a parking space on a parking pad is 2.75 metres, it is not possible to provide the two required parking spaces on the lot in accordance with By-law 28-97. As a consequence, the minimum width of a lot needed to accommodate one parking space in a single garage and one space on a parking pad would be at least 5.75 metres. Since the minimum lot frontage for semi detached dwellings in the above zones is 6.6 metres, there is ample room on lots with semi-detached dwellings for both required parking spaces and there is no issue with accommodating the two required spaces in this circumstance. As a result, this is a townhouse dwelling issue only.

In a circumstance where a single car private garage is constructed, the minimum width of the lot necessary for the two required parking spaces may be as high as 6.75 metres (3.5 metres for the garage, 2.74 metres for the parking pad and the required 0.5 metre setback).

It is noted that By 177-96 expressly permits lots that have a frontage of 5.5 metres; however there may be exceptions to other by-laws that also permit

lots that have a frontage of 5.5 metres as well. As a consequence, there may be other circumstances in Markham where this issue exists.

While the above issue does need to be resolved, City staff has decided that this issue should more properly be dealt with in the context of the broader zoning by-law review currently being undertaken by the City. As a consequence, recommendations with respect to how this issue can be resolved are not presented in this report. However, a number of options are identified in the next section for discussion purposes and further evaluation.

2.1.2 Analysis

Section 6.1.2 of By-law 28-97 establishes the minimum parking space width. By-law 28-97 applies to all lands within the City of Markham unless it has been changed through an exception to any freestanding zoning by-law, or varied through an application to the Committee of Adjustment.

With respect to options, **there are two distinct options**.

The first option involves reducing the minimum parking space requirement for townhouses that are on lots that have a frontage of less than 6.5 metres and which are accessed by lanes to one parking space per dwelling unit. If a homeowner decides to locate a second space, that space would be "*extra*" and would not be subject to the minimum parking space requirements of By-law 28-97, since this requirement applies only to "*required*" parking spaces as per the title of Section 6.1.2.

If this option was selected, this would mean that the developer would be required to provide the one parking space in accordance with By-law 28-97 and any other parking space would be considered an 'extra' that would be considered at the time by the homeowner as such after the home has been purchased.

If this option is selected, the City may then be perceived to have created a circumstance where a homeowner has purchased a home on which their second vehicle, which may have a width of more than two metres, cannot be parked. While homeowners should be aware of all issues related to the parking of their vehicles before they purchase a home, this is however not always the case.

The second option involves reducing the minimum width of a required parking space on a parking pad from 2.75 metres to 2.0 metres on lots that are accessed by lane and which have a lot width of 6.75 metres or less along the rear lot line. This provision would only apply to townhouse dwellings. Given that the width of a car can range from as low as 1.6 metres to upwards of 2.1 to 2.2 metres, there may be circumstances where the homeowner's vehicle will not be able to fit within the smaller sized required parking space.

It is recommended that the two options presented above be considered as part of the broader by-law review process.

2.2 Permissions for Driveways to Cross Landscape Strips

2.2.1 Description of the Issue

The previous definition of landscaping in By-law 177-96 indicated that landscaping *"means trees, shrubs, flowers, grass or other horticultural elements, decorative stonework, screening or other architectural elements, and may include lands that are used as walkways and driveways and ramps that provide access onto the lot from the street, all of which are designed to enhance the visual amenity of a property and shall not include parking areas."*

Bylaw 2013-108 changed this definition and replaced it with the following:
"*Means trees, shrubs, flowers, grass or other horticultural elements, decorative stonework, screening or other architectural elements, all of which are designed to enhance the visual amenity of a property and shall not include parking areas, driveways or ramps and shall not be used for the parking of motor vehicles."*

The effect of the above change is that 'lands that are used as walkways and driveways and ramps that provide access onto the lot from the street' are no longer permitted in landscaping area. By-law 2014-65 made the same change to the definition of landscaping in By-law 28-97.

2.2.2 Analysis

It was never the intent of the process leading to the preparation and adoption of By-laws 2013-108 and 2014-65 to no longer permit the crossing of landscape strips by driveways. Given that driveways are necessary to access a property, there is a need to correct this issue.

2.2.3 Recommendation

It is recommended that the definition of landscaping in both By-laws 117-96 and 28-97 be modified to read as follows:

"*Means trees, shrubs, flowers, grass or other horticultural elements, decorative stonework, screening or other architectural elements, all of which are designed to enhance the visual amenity of a property and shall not include parking areas, driveways or ramps and shall not be used for the parking of motor vehicles and may include walkways, driveways and ramps that provide access onto the lot from the street*."

2.3 Prohibited Uses in Special Policy Areas

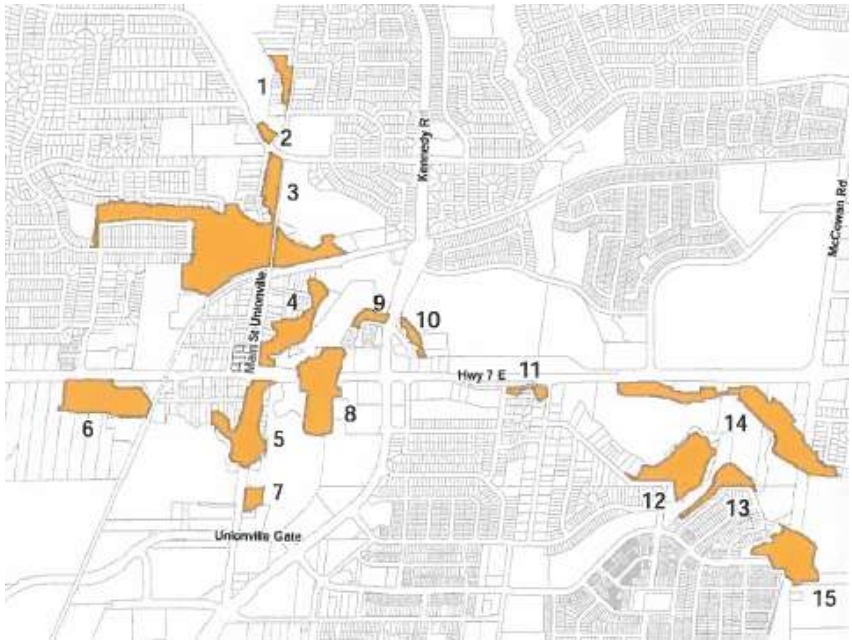
2.3.1 Description of the Issue

In a letter dated June 26, 2014, the Ministry of Municipal Affairs and Housing has requested that the list of prohibited uses in Special Policy Areas be updated to ensure that all uses that are considered to not be appropriate in Special Policy Areas are specifically prohibited.

In particular, the request is that ambulance, hospital and fire services not be permitted within Special Policy Areas. This request applies to the Unionville Special Policy Area, which is recognized by the Province as being potentially susceptible to flooding. In this regard, **Figure D** below identifies the 15 distinct areas in Unionville that are part of the Special Policy Area. There are a number of City zoning by-laws that apply in the Special Policy Area and these are By-laws 122-72, 11-72, 177-96, 304-87, 134-79 and 1229.

It is indicated in the Ministry of Municipal Affairs letter that "*it appears that prohibited uses within the SPA Zone are consistent with the 2014 Provincial Policy Statement, with the exception of By-law #177-96, which does not include emergency services such as ambulances, hospitals and fire services in its list of prohibited uses*." By-law 177-96 applies to four parcels of land in proximity to the Rouge River, located west of McCowan Road and south of Highway 7.

Figure D



2.3.2 Analysis

There is only one Special Policy Area in the City of Markham and it corresponds to the Rouge River Valley. On the basis of an analysis of the location of this Special Policy Area, it has been determined that the Special Policy Area affects lands that are subject to By-laws 122-72, 11-72, 177-96, 304-87, 134-79 and 1229.

The list of prohibited uses in Special Policy Areas in Section 6.20 of By-law 177-96 is already very extensive and goes beyond what is identified in the Provincial Policy Statement (2014). However, in order to be consistent with the 2014 Provincial Policy Statement, it is recommended that the list of prohibited uses be expanded as per the request made by the Ministry of Municipal Affairs and Housing.

2.3.3 Recommendation

It is recommended that Section 6.20 of By-law 177-96 be amended as per the MMAH letter.

2.4 Barrier Free Access and Setbacks from Lot Lines

2.4.1 Description of the Issue

A number of inconstancies have been identified by staff with respect to the way the City's by-laws deal with barrier-free access. In this regard, there is a need to update any wording dealing with barrier-free access in the relevant by-laws to ensure that the provisions are consistent with each other and reflect the current use of terminology.

2.4.2 Analysis

The Ontario Building Code defines 'Barrier Free' as follows: "*When applied to a building and its facilities, that the building and its facilities can be approached, entered and used by persons with physical or sensory disabilities.*"

On December 27, 2013, Ontario Regulation 368/13 was filed to amend the new 2012 Building Code, O.Reg.332/12. The effective date of the amendment was January 1, 2015. The amended requirements substantially enhance accessibility in newly constructed buildings and existing buildings that are to be extensively renovated.

Section 3.8 of the Ontario Building Code contains extensive rules regarding barrier-free design. However, Section 3.8.1.1(1)(a) indicates that the requirements of Section 3.8 do not apply to semi-detached houses, duplexes, triplexes, townhouses, rowhouses and boarding or rooming houses with fewer than eight boarders. While single-detached houses are not specifically mentioned, it is assumed that single-detached houses are also exempted.

Notwithstanding the above, there are occasions where barrier-free entrances

are necessary to access a dwelling unit that is accessed directly from the outside. In cases such as these, the City has been relying upon the barrier-free design provisions in Section 3.8 for guidance.

However, since wheelchair ramps and lifts (which are considered to be barrier free entrances) are considered to be structures by all City of Markham by-laws, they are required to conform to the applicable by-law.

In this regard, on June 23, 1992, By-law 110-92 came into effect and it amended all by-laws in the City, except for By-law 177-96 and By-law 2004-196, both of which came afterwards. By-law 110-92 indicates, "*no provision in any of the above noted by-laws shall apply to prevent the location of a wheelchair ramp which conforms to the requirements of the barrier-free design section of the Ontario Building Code.*" By-law 110-92 is a freestanding by-law that 'sits on top' of all of the by-laws that are affected.

Based on the plain reading of this provision, it would appear that this section allows for the construction of wheelchair ramps in accordance with the Ontario Building Code, regardless of whether the dwelling is subject to the Ontario Building Code. However, there is no mention in By-law 110-92 of other types of barrier-free access, such as lifts.

Section 6.25 of By-law 177-96 references a specific section in the Ontario Building Code that deals with barrier-free access. Section 6.25 is reproduced below.

> ***6.25 BARRIER FREE ACCESS***
> *Nothing in this By-law shall prevent the location of a barrier-free entrance that conforms to the requirements of Section 3.8 (Barrier Free Design) of the Ontario Building Code (Ontario Regulation 350/06) or it's successor. In addition, nothing shall prevent the location of barrier free entrances in a private garage, provided the required number of parking spaces can still be provided.*

The intent of Section 6.25 is to essentially permit barrier-free access into any building or structure as required and in a manner that does not need to be in compliance with the by-law.

Given that the term "*barrier-free entrance*" is used in By-law 177-96, this notwithstanding clause applies to anything that would be considered a barrier-free entrance (such as lifts) as per the Ontario Building Code. In addition, Section 6.25 does not distinguish between types of uses or types of dwelling units.

Section 4.20 of By-law 2004-196 indicates in the section entitled 'Wheelchair Ramps' that "*notwithstanding any other provision in this by-law, the location or establishment of a wheelchair ramp that conforms to the requirements of the Ontario Building Code is permitted.*" This section as written applies only to wheelchair ramps and also does not distinguish whether the building or dwelling is subject to Section 3.8 of the Ontario Building Code. In addition, this section appears to deal with wheelchair ramps only.

As a consequence of the above, it is recommended that consistent terminology that permits all types of barrier-free entrances in By-laws 119-92, 177-96 and 2004-196 be used.

2.4.3 Recommendation

On the basis of the above, it is recommended that exactly the same wording on this issue be included within By-laws 110-92, 177-96 and 2004-196. In addition, it is my opinion that the second sentence in Section 6.25 of By-law 177-96 should be applied in the three above by-laws as well. This second sentence indicates the following: "*In addition, nothing shall prevent the location of barrier free entrances in a private garage, provided the required number of parking spaces can still be provided.*" In addition, the term 'barrier-free entrance' should be used in each by-law as required.

The recommended wording for this new section is below:

> *"Barrier-free entrances – nothing in this bylaw shall prevent the establishment of barrier-free entrances in accordance with the requirements of the Ontario Building Code. In addition, nothing shall prevent the location of barrier-free entrances in a garage that is attached to a dwelling unit, provided the required number of parking spaces can still be provided."*

2.5 Setbacks and Daylighting Triangles

2.5.1 Description of the Issue

An issue has arisen with respect to how setbacks and yards are to be calculated in circumstances where a corner lot is the site of a daylighting triangle. In many subdivisions, a triangle of land is added to the right-of-way at corners. The overall intent of requiring daylighting triangles is to ensure that there is an appropriate amount of visibility at corners.

For the purposes of calculating lot frontage, the definition of lot frontage in By-law 177-96 indicates that both the exterior side lot line and the front lot line

are to be extended to their hypothetical point at which they meet to determine lot frontage. However, there are no similar provisions on how yards and setbacks should be measured in circumstances where there is a daylighting triangle on a corner lot.

An extreme example of a corner lot that is the site of a daylighting triangle is at the southeastern corner of Major MacKenzie Drive and Mingay Avenue, as shown on **Figure E**.

Figure E

In the case shown above, determining where the front lot line begins and ends is challenging. This becomes an issue whenever the required front yard is different than the required exterior side yard (for example the required front yard for townhouses in the R2-LA Zone is 0.6 metres and the required exterior side yard is 2.4 metres). There is no guidance in By-law 177-96 on how to determine whether the angled line shown above is a front or exterior side lot line – in my opinion, given that there is a clear exterior side lot line in this case along Major MacKenzie, with this lot line also being longer than the angled lot line, the angled line would then be a front lot line. Another less extreme example is the southwest corner of Major MacKenzie and Ralph Chalmers Avenue as shown on **Figure F** below.

Figure F

In this case, there is also a clear exterior side lot line that is longer than the angled line.

2.5.2 Analysis

By-law 177-96 does not specify how to deal with the issue of how to classify the 'angled lot line' discussed above, in cases where there is a daylighting triangle.

In order to solve this issue, there are a few options. The first is to indicate that the angled line is the front lot line in all circumstances where there is a daylighting triangle. This would be a simple solution since the location of the angled line is easy to determine and is in all cases in 'front' of the dwelling.

The second option is to pick the mid-point of the angle as the mid-point between the front and exterior side lot line. The third option would be to measure yards and encroachments from the hypothetical extension of the front and exterior side lot lines.

These latter two options are not recommended since different setbacks and yards from the exterior side and front lot lines would be taken from the same line in the case of the second options. The third option would potentially permit buildings to extend to the lot line in some cases, and this would not be appropriate since there is a desire for there to be some setback in most cases.

2.5.3 Recommendation

It is recommended that in case where there is a daylighting triangle, the angled line extending between the front lot line and exterior side lot line is to be considered the front lot line for the purposes of determining required yards and setbacks. In cases where there is no front lot line, the angled line that extends between the interior side lot line and the exterior side lot line would be the front lot line.

In order to implement this recommendation, a new Section 6.22 would be added to By-law 177-96. Consideration could be given to including such a

provision in all other by-laws, if this issue is an issue in those by-laws. If not, the City can wait for the new zoning by-law to incorporate such a provision in other areas. However, given the potential significance of this change in approach, it is recommended that this matter be dealt with in the comprehensive by-law review process.

2.6 Using the Centre of a Watercourse to Determine Zone Boundary

2.6.1 Description of the Issue

Section 2.3 of By-law 177-96 deals with how zone boundaries are determined. This section indicates the following:

> *"Where the boundary of any Zone is shown on the schedules forming part of this By-law, the following provisions shall apply:*
>
> *a) Where a Zone boundary is indicated as approximately following lot lines shown on a registered Plan of Subdivision or lots registered in a registry office or land titles office, the boundary shall follow such lot lines.*
> *b) Where a public street, private street, lane, railway right-of-way, electrical transmission line right-of-way, or watercourse is shown on the schedules to this By-law and serves as a boundary between two or more different Zones, a line in the middle of such street, lane, right-of-way or watercourse shall be the boundary between Zones unless specifically indicated otherwise.*
> *c) Where a Zone boundary is indicated as following the limits of the City of Markham, the limits of the City of Markham shall be the boundary.*
> *d) Where none of the above provisions apply, the Zone boundary shall be scaled from the attached schedule(s)."*

Of particular interest to City staff is how zone boundaries are determined as they relate to watercourses. In By-law 177-96, the zone boundary in this circumstance is the middle of such a watercourse. While By-law 2004-196 (applying to Markham Centre) is similar and does deal with watercourses, it also includes public transit right-of-ways in Sub-section (b), whereas public transit right-of-ways are not included within Sub-section (b) in By-law 177-96.

With respect to other City by-laws, the table below identifies how zone boundaries in relation to watercourses are dealt with.

By-law number	By-law Section	Does provision include reference to watercourses?
90-81	3.2	Yes. In Sub-sections c) and d)
88-76	4.4	Yes. Watercourses are mentioned in Sub-sections c) and d)
83-73	4.4	Yes. Watercourses are mentioned in Sub-sections c) and d)
77-73	4.4	Yes. Watercourses are mentioned in Sub-sections c) and d)

By-law number	By-law Section	Does provision include reference to watercourses?
72-81	3.2	Yes. Watercourses are mentioned in Sub-sections c) and d)
72-79	4.2	Yes. Watercourses are mentioned in Sub-sections c) and d)
47-85	3.2	Yes. Watercourses are mentioned in Sub-sections c) and d)
28-82	3.2	Yes. Watercourses are mentioned in Sub-sections c) and d)
2612	3.3	No reference to watercourse
2571	3.3	No reference to watercourse
2551	3.3	Section 3.3.3 references watercourses
250-77	4.2	References made to watercourse in Sub-sections c) and d)
2489	3.3	No reference to watercourses
2402	3.2	No reference to watercourses
2284-68	3.2	No reference to watercourses
2237	3.3	No reference to watercourses
221-81	3.2	Reference is made to watercourse in Sub-section c) and d)
2053		No reference to how zone boundaries to be determined – if section was to be added, it would be a new Section 28
19-94	3.1	References made to watercourses in Sub-section d)
196-82	3.2	Reference is made to watercourses in Sub-section c) and d)
153-80	4.2	Reference is made to watercourses in Sub-section c) and d)
184-78	4.2	Reference is made to watercourses in Sub-section c) and d)
1914		No reference to how zone boundaries to be determined – if new section to be included, it would be Section 12
165-80	3.2	Reference is made to watercourses in Sub-section c) and d)
1767	4 (iv)	No reference to watercourses
163-78	4.2	Reference is made to watercourses in Sub-section c) and d)
162-78	4.2	Reference is made to watercourses in Sub-section c) and d)
153-80	4.2	Reference is made to watercourses in Sub-section c) and d)
151-75	4.2	Reference is made to watercourses in Sub-section c) and d)
1507		There is no reference to how zone boundaries are to be determined – if new section to be added, it would be Section 9.3.
84-73	4.4	Reference is made to watercourses in Sub-section c) and d)
242-90	3.2	Reference is made to watercourses in Sub-section c) and d)
246-83	4.4	Reference is made to watercourses in Sub-section c) and d)
209-81	3.2	Reference is made to watercourses in Sub-section c) and d)
145-78	4.2	Reference is made to watercourses in Sub-section c) and d)
134-79	4.2	Reference is made to watercourses in Sub-section c) and d)
1442		There is no apparent general provision section – to be checked further
127-76	4.4	Reference is made to watercourses in Sub-section c) and d)
1229	4.3	No reference to watercourses
122-72	4.4	Reference is made to watercourses in Sub-section d) and e)
119-73	4.4	Reference is made to watercourses in Sub-section c) and d)
118-79	4.2	Reference is made to watercourses in Sub-section c) and d)
11-72	3.3	No reference made to watercourses
108-81	3.2	Reference is made to watercourses in Sub-section c) and d)
91-79	4.4	Reference is made to watercourses in Sub-section c) and d)

2.6.2 Analysis

Based on a review of all of City's by-laws, it is clear that there are a number of ways to determine zone boundaries in the City of Markham. In many of the older by-laws, there is not much latitude and in others, very dated language is used. On the basis of the above, it would be very appropriate for the means by which zone boundaries are determined to be consistently applied across the City of Markham.

2.6.3 Recommendation

It is recommended that Section 2.3 of By-law 177-96 be inserted into all other City by-laws. It is also recommended that the words "*public transit right-of-way"* be included within Sub-section (b) as well. There is no need to amend By-law 2004-196.

2.7 Reference to Floor Area in Definition of Net Floor Area

2.7.1 Description of the Issue

By-law 2014-65, which was an amendment that had the effect of updating By-law 28-97, deleted the definition of "*Floor Area*", since it was very similar to the 'gross floor area' definition in By-law 28-97. However, the definition of 'net floor area' references the "*aggregate of the Floor Areas of a building above or below established grade*". Given that the words "*Floor Areas*" is in title case, the implication is that the words are defined and in this case, the definition no longer exists.

In addition to the above, there are a number of sections in By-177-96 that include the term "floor area" in italics, which implies that there is a definition of floor area. In this regard, the term is used in the following Sections:

- 6.3.2.3;
- 6.3.1.7 (c);
- 6.4;
- 6.12.1;
- 7.9.2 (h);
- 7.10.1 (a);
- 7.109.1 (e);
- 7.136.1;
- 7.145.1 (b);
- 7.169.2 (c) (terminology used is "building floor area");
- 7.170.2 (d) (term used is 'building floor area');
- 7.170.4 (a);
- 7.176.2 (d) (term used is 'building floor area');
- 7.190.2 (c);
- 7.190.2 (c)(iii)(iv);
- 7.229.3 (b);
- 7.246.3 (a);
- 7.246.3 (b);
- 7.255.3 (a);
- 7.264.1 (e);
- 7.267.7 (d)(e);
- 7.447.4 (d);
- 7.448.4 (c);
- The definition of 'alteration'; and
- Special Provision 8 and 9 in conjunction with Table B7 (Part 4 of 4).

2.7.2 Analysis

It is my understanding that City staff is interpreting the definition of Net Floor Area to refer to Gross Floor Area. However, this should be clarified in By-law 28-97.

It is noted that By-law 2013-108, which was an update to By-law 177-96, also deleted the definition of Floor Area as well. As a consequence, there is a need to reconcile this issue in By-law 177-96 as well. In addition, all of the sections identified above should be corrected.

It is recognized that there are multiple definitions for Gross Floor Area and Floor Area in virtually all of the City's by-laws. However, the term Net Floor Area is used only in By-laws 28-97 and 177-96. There is also a definition of "*Floor Area*" and "*Net Floor Area*" in By-law 2004-196, which means that this by-law does not need to be updated. Ensuring that the correct terminology is utilized is of paramount importance in the application of By-law 28-97, since all parking standards are based on the application of a ratio relating to the amount of net floor area. As a consequence, only By-laws 28-97 and 177-96 need to be amended at this time.

2.7.3 Recommendation

On the basis of the above, below is the definition of Net Floor Area, with the addition of the word "*Gross*" shown in bold. This change will be made to both By-laws 28-97 and 177-96.

*"Floor Area, Net means the aggregate of the **Gross** Floor Areas of a Building above or below established Grade, but excluding:*

i) Motor Vehicle Parking Areas within the Building;

ii) stairways;

iii) elevator shafts and other service and mechanical shafts;

iv) service/mechanical rooms and penthouses;

v) washrooms;

vi) waste/recycling rooms;

vii) staff locker and lunch rooms;

viii) loading areas;

ix) any space with a floor to ceiling Height of less than 1.8 metres; and

x) any part of a basement that is unfinished, is used solely for storage purposes and is not accessible to the public."

In addition, it is recommended that the sections of 177-96 listed in Section 2.8.2 of this report be modified by adding either the word 'gross' or 'net' before 'floor area' as appropriate.

2.8 Definition of Public Authority

2.8.1 Description of the Issue

Staff has expressed a concern on the definition of Public Authority in By-law 177-96. In this regard, Public Authority is defined by By-law 177-96 as "*Any commission, board or authority or any quasi public body that is controlled by the Federal, Provincial, Regional and City government*."

The above definition works with the definition of "*Public Use*" in By-law 177-96, which is defined as "*means any use of land, buildings or structures by or on behalf of a public authority."*

The two above sections are then relied upon in Section 6.19 of By-law 177-96, which deals with public uses. Section 6.19 is reproduced below.

> ***6.19 PUBLIC USES***
> *The provisions of this By-law shall not apply to prevent the use of any land, building or structure for a public use by any public authority provided that:*
>
> *a) such use, building or structure complies with the standards of the Zone in which it is located; and*
> *b) no outdoor storage is permitted, unless such outdoor storage is specifically permitted in the Zone.*
>
> *Notwithstanding the above, the use of any land for infrastructure or by a component of a public transit system is permitted on all lands subject to this By-law. Public uses are permitted in any zone, notwithstanding the permission for certain public uses in a number of zones in Section 4.0 of this By-law.*

The issue with the above definition of Public Authority in particular is that it has been interpreted to not be specific to the City of Markham. This means that other Cities can theoretically use land in the City of Markham, since they are also Public Authorities.

2.8.2 Analysis

By-law 2013-108 amended the definition of Public Authority in By-law 177-96. Prior to By-law 2013-108, the definition of Public Authority read as follows

> "*Means any Provincial, Regional or Municipal commission, board, or authority or and quasi-public body that is control by a Public Authority such as a public transit commission."*

By-law 2013-108 deleted the words "*Provincial, Regional or Municipal*", added the words "the Federal, Provincial, Regional and City government" and deleted the words "a Public Authority such as a public transit commission" from the definition.

By-law 2014-65 also made the above change to By-law 28-97.

The effect of the above is that there are two separate public authority definitions in use in the City of Markham's by-laws. By-law 2009-96 added the definition of Public Authority that exists in all Markham By-laws except By-laws 177-96 and 28-97 into all of Markham's by-laws. The 2009 amendment was also the one that updated a series of provisions in all Markham by-laws regarding non-complying lots and non-complying buildings and structures.

It is my opinion that the previous definition of Public Authority is much broader than the definition included in By-law 177-96 and 28-97, since the previous definition references "any", Provincial, Regional and municipal government.

In order to determine whether other municipal zoning by-laws limit the permission for public uses to those uses carried out on or behalf of the municipality only, a review of a number of other by-laws was conducted.

The new City of Toronto By-law does not contain a definition for public authority. However, it does state states that "*facilities for public or emergency services, other than municipal shelters and municipally owned public parking is permitted in any zone, provided it is owned or operated by or for, or under the authority of, the City of Toronto or any agency of the City of Toronto*" according to Section 5.10.20.1.

In addition, 'transportation uses' are permitted in any zone with such a use being defined *"as the use of premises or facilities for the operation of a mass transit system or a transportation system that is provided by, or on behalf of, the City of Toronto, Province of Ontario or Government of Canada, or is privately operated and Federally regulated."* Given the specific reference to the City of Toronto, a transit system operated by York Region would not be covered by this definition, unless the transit was being provided on behalf of the City of Toronto. The definition of 'transportation use' is contrasted with the much broader definition of 'public utility' which "*means premises or facilities used for telecommunications, the transmission and distribution of electricity, the distribution of gas, steam or other forms of energy, or the collection, distribution, storage or treatment of water or sewage."*

Lastly, the new Toronto by-law contains a definition for 'public works yard' that also references transportation uses and in this regard is defined as *"means premises operated by, or on behalf of, the City of Toronto, Province of Ontario or Government of Canada, for the storage, manufacture, maintenance or repair of buildings, infra structure, materials or equipment. A public works yard may include uses such as a machine shop, paint shop, sign shop,*

woodworking shop, repair garage or storage facility used in connection with public works such as transportation uses and parks." This use is only permitted in certain industrial zones and it does limit the use to those uses operated by, on behalf of the City of Toronto.

In the Mississauga by-law, public authority is defined as "*means The Corporation of the City of Mississauga, The Regional Municipality of Peel, the Province of Ontario and/or the Government of Canada*." 'Transit terminals' are permitted in a number of zones, however, the definition of 'transit terminal' does not reference a public authority, which means that a station operated by any transit authority could be established.

Below is the relevant provision from the City of Vaughan by-law:

3.10 PUBLIC USES

a) Nothing in this By-law shall prevent the use of land in any Zone for a public park, community park, playground, road allowance or as a site for a statue, monument, cenotaph, other memorial or ornamental structure by the City, the Regional Municipality of York or other Government Authority referred to in Paragraph 3.10(b).

Notwithstanding this section, all requirements of this By-law shall be complied with for the lands within the Oak Ridges Moraine Area.

b) With the exception of lands within the Oak Ridges Moraine Area the provisions contained in this By-law shall not apply to the use of any land or to the erection or use of any building or structure for the purposes of the public service by the City, the Regional Municipality of York, any telephone or telegraph company, any natural gas transmission or distribution company, any conservation authority established by the Government of Ontario, any Department or Ministry of the Government of Canada or Ontario, Ontario Hydro or any Local Board, provided that (excepting electric power facilities) where such land, building or structure is located in any Zone:

i) No goods, material or equipment shall be stored in the open, except where open storage is a permitted use;
ii) The lot coverage and yard requirements described for the Zone shall be complied with; and
iii) Any above ground use carried on under the authority of this paragraph in a Residential Zone shall be enclosed in a building designed and maintained in general harmony with residential buildings of the type permitted in such Zone.

In the City Brampton by-law, it is indicated in Section 6.33.1 that "*A Public Use, including an accessory use thereto, owned or leased by the Corporation of the City of Brampton is permitted in all zoning categories and is not subject to requirements and restrictions applicable to any zone category."*

As a result of the above review, it would appear that other adjacent and similar municipalities clearly restrict the permission for public uses to those operated by or for the municipality.

In terms of options, there are three options. The first is for all City by-laws to include the definition from By-law 2009-96. The second option (which is the opposite) involves changing all of the definitions in the City's by-laws to match the definition of Public Authority in By-laws 177-96 and 28-97. The third option would be to modify the definition of Public Authority contained in all City by-laws to clearly indicate that a Public Authority, in addition to being the government of Canada, the Province of Ontario and the Region of York, is owned or operated by or for or under the authority of, the City of Markham or any agency of the City of Markham.

In order to provide clarity on this issue, it is recommended that the third option be selected.

2.8.3 Recommendation

It is recommended that all City by-law contain the following definition of Public Authority.

> ***"Public Authority** means any commission, board, or authority or any quasi-public body that is controlled by the Federal and/or Provincial governments and/or any commission, board, or authority or any quasi-public body that is controlled the Region of York and/or City of Markham, provided it is owned or operated by or for, or under the authority of, the Region of York or the City of Markham."*

2.9 Required Interior Side Yard in cases where Private Garage is in Rear Yard

2.9.1 Description of the Issue

By-law 28-97 contains provisions that require a minimum number of parking spaces, restrict the maximum width of driveways leading to a private garage and establish a number of rules respecting where driveways and the parking of vehicles are permitted on a lot. However, By-law 28-97 does not include any provisions that require the establishment of an increased interior side yard in a circumstance where a driveway from a public street accesses a private garage in the rear yard.

In cases such as this, City staff has been applying Section 6.2.4.2(a) of By-law 28-97, which indicates that the minimum driveway width shall be equal to the garage door width. This means that the minimum required interior side yard on one side would need to be large enough to accommodate the minimum driveway width requirement. City staff have indicated that it would be much more appropriate to deal with this issue head on and include a specific provision in By-law 28-97, which deals with this circumstance.

2.9.2 Analysis

By-law 2006-96 added section 6.2.2.4 into By-law 28-97. This section acts as an override over all provisions dealing with driveways and parking pads in circumstances where ground oriented residential dwellings are accessed by motor vehicles from a public street (as opposed to from a lane).

It is stated within Section 6.2.4.1(b) that a driveway associated with a ground oriented residential dwelling shall provide direct access to a private garage. Section 6.2.4.2(a) then establishes the minimum driveway width. While Section 6.2.4.4 deals with setbacks for driveways or parking pads, it only includes provisions for driveways or parking pads in the front or exterior side yards. However, these provisions do not deal specifically with the minimum set back required for the main building in a circumstance where a driveway extends from the front lot line into the rear yard to access a detached private garage.

By-law 177-96 does deal with this issue and it requires that the required interior side yard on one side be 3.5 metres if a detached private garage is located in the rear yard and is accessed by driveway that crosses the front lot line. This provision applies in the R1, R2 and R3 Zones.

Every by-law in use in the City contains the following notice on the cover regarding parking standards: "*All regulations contained in this by-law regulating parking: including definitions, parking standards, parking stall dimensions, access ramps, driveway and vehicular aisle dimensions, tandem parking, and commercial and recreational vehicle parking, have been superseded by By-law 28-97, as amended*." However, since By-law 28-97 does not deal specifically with this issue, reference must then be made to each of the by-laws that permit residential uses to determine whether an increased setback is required in a circumstance where a detached private garage is located in the rear yard and accessed by a driveway crossing the front lot line.

A review of a number of select by-laws has been carried-out to determine how this issue is dealt with. Within By-law 19-94, which applies to the Buttonville Core Area, Section 5.8.1, which was deleted by By-law 28-97 required that any private driveway leading to a private garage must have a width of not less than 2.75 metres. This provision in of itself would have required the interior side yard to also be a minimum of 2.75 metres to accommodate such a driveway. However, Section 6.2.1 then establishes a minimum side yard of 1.5 metres or single-detached, semi-detached and townhouse dwellings in the RMD Zone. As a consequence, there are potentially two 'competing' provisions in by-law 19-94 on this issue. It is suspected that this will be the se in most if not all City by-laws.

The challenge in establishing a new required interior side yard in this circumstance is that a number of legal non-complying situations may be created as a consequence, particularly in older parts of the City. While it may

be appropriate to apply the provision included within By-law 177-96 to these older parts of the City, the minimum required yard of 3.5 metres may be significantly greater than the existing yards adjacent to a number of existing homes. It is also recognized that in most cases, these circumstances will exist in older areas and that homeowners will have ensured that their homes were sufficiently set back from the interior side lot line to provide access to the private garage. For example, the interior side yard at 67 Clark Avenue is about 5.4 metres as shown on **Figure G**. However, the side yard is about 2.46 metres at 86 Morgan Avenue as shown on **Figure H**. However, the side yards can be smaller is some circumstances as shown at 74 and 76 Glen Cameron Road as shown on **Figure I**.

Figure G

Figure H

Figure I

Given that the driveway does not need to be any wider than the width of the car to allow for passage, the minimum required interior side yard could be 1.8 to 2 metres to provide for the driveway in these circumstances. It is recognized that this is less than the required minimum width of a parking space, however the parking space dimension does take into account the opening of doors to access the vehicle.

As a consequence, the minimum required interior side yard in this kind of circumstance could be 2.5 metres to be conservative. In my opinion, this would be the absolute minimum that should be applied. If a new provision is included within By-law 28-97, it would have to be written in the same manner as Section 6.2.4, which makes it clear that this new provision would be "*notwithstanding*" any other provision of any by-law that permits ground related residential dwellings.

2.9.3 Recommendation

On the basis of the above, it is recommended that a new section be included within By-law 28-97 that would require a minimum interior side yard of 2 metres on one side in a circumstance where a private detached garage is located wholly or partially within the rear yard in a circumstance where a driveway accessing the private garage crosses the front lot line. This provision would not apply to lands subject to By-law 177-96.

2.10 Definition of Business Office

2.10.1 Description of the Issue

By-law 2014-62 amended the definition of 'Business Office' in a number of by-laws to ensure that wherever the term was used, a medical office would be considered a business office. In addition, a definition of 'Medical Office' was also added to a number of City by-laws as well. The intent of these changes was to ensure that consistent terminology for business offices and medical offices was used in all City by-laws. The definition of 'Medical Office' was also amended in By-law 28-97 as a consequence of the passage of By-law 2014-65 in accordance with the above changes.

Notwithstanding the desire to ensure that the same terms were used in all by-laws, amendments to by-laws 177-96 and 2004-196 were not made. In addition, the definition of 'Business Office' in By-law 28-97 was not updated to reflect the term now included in most of the other City By-laws. As a consequence of the above, there continues to be some inconsistent terminology used in the City's by-laws with respect to the terms "*Business Offices*" and "*Medical Offices*".

2.10.2 Analysis

It is agreed that is was always the intent of the City through the passage of By-laws 2014-62 and 2014-65 to ensure that consistent terminology was used.

Notwithstanding the desire for consistency, changes were not made to By-law 2004-196 and 28-97 since the effect of the changes in both would result in there being some confusion with respect to determining what parking standard should apply. This is because By-law 28-97 contains a parking standard for medical offices (one parking space for every 20 square metres of net floor area) that is different than the parking standard for business offices (one parking space per 30 square metres of net floor area).

Within By-law 2004-196, where there was a desire to relax parking standards, the parking standard for business offices is one parking space per 37 square metres of net floor area and the parking standard for medical offices is one parking space per 30 square metres of net floor area. With medical offices, the standard decreases to one parking space per 37 square metres if the use is located in the Markham Centre Downtown 1 (MC-D1) Zone. Amending the definition of 'Business Office' to indicate that for the purposes of interpreting the definition, it includes a medical office, could cause interpretation issues in the future with the two above by-laws for this reason, since a business office as defined would also include a medical office.

With respect to By-law 177-96, the decision to not modify the definitions as per the other by-laws as discussed above was made because business offices and medical offices are not permitted in the same zones. In this regard, business offices are permitted in the NC1, NC2, NC3, CA1, CA2, CA3, CA4 and MJC Zones. Medical Offices are permitted in the same zones, except the NC3 and CA3 Zones. Both of these zones are intended to provide for small-scale retail uses in a neighbourhood setting. When By-law 177-96 was initially prepared, the medical office uses was excluded from these two zones because of concerns of how parking would be provided, particularly if the use was integrated within a residential building form. As a consequence of the above, making the same change to By-law 177-96 would have the unintended effect of permitting medical offices in two new zones in By-law 177-96.

2.10.3 Recommendation

On the basis of the above, it is recommended that no changes be made to By-laws 177-96, 28-97 and 2004-196 for the reasons described above.

Notwithstanding the above, and as discussed in Section 2.12.2 above, By-law 2014-62 amended a number of by-laws to ensure that it included the same definitions for "*Medical Office*" and "*Business Office*". However, a number of other changes are required to various by-laws to ensure that this intent is fully implemented, and these are discussed below:

a) There is a definition of "*Office*" in By-law 122-72 that conflicts with the definition of "*Business Office*". By-law 2014-62 added the term 'Business Office' to By-law 122-72. The definition of 'Office' in By-law 122-72 needs to be deleted.
b) The definition of "Medical Office" was added to By-law 47-85, which already had a definition of 'Medical Office', which was incorporated in By-law 47-85 by By-law 220-2000. As a consequence, there are now two definitions for 'Medical Office' in By-law 47-85. The older definition now needs to be deleted.
c) The 'Business Office' definition was also included within By-law 108-81 by By-law 2014-62. By-law 108-81 already had a 'Business Office' definition. The result is that there are now two definitions. This means that the previous definition, which was included within By-law 108-81 by By-law 163-97 now needs to be deleted.
d) By-law 2014-62 also added the 'Business Office' definition to By-law 90-81. However, By-law 90-81 already had a definition for "*Business Offices*", which means that there are two similar definitions in By-law 90-81 at present. This means that the previous definition also needs to be deleted.
e) By-law 2014-62 also added the 'Medical Office' definition to By-law 90-81. However, By-law 90-81 already had a definition of 'Medical Clinic', which was included in By-law 90-81 by By-law 2002-88. In order to ensure consistency across all by-laws, the term 'Medical Clinic' in By-law 90-81 needs to be deleted. In addition, By-law 90-81 also has to be amended to ensure that wherever the words to replace the words "*Medical Clinic*" with "*Medical Office*" wherever the term is used in the by-law.
f) By-law 2014-62 also added the 'Business Office' definition to By-law 12-29. By-law 1229 already contained a definition for 'Business Office', which also needs to be deleted as per the above.

2.11 Technical Issues With By-law 2014-63 (Openings)

2.11.1 Description of the Issue

By-law 2014-63 amended a number of City by-laws to restrict openings within 1.2 metres of an interior side lot line. It has been determined that By-law 196-82 was not included in the list of by-laws that were amended. In addition, while By-law 1767 is identified in the recitals, there is no actual change to By-law 1767 included within By-law 2014-63. By-law 19-94 was also not included in the list of by-laws amended by By-law 2014-63. These issues now need to be addressed to ensure consistency.

2.11.2 Analysis

It was intended originally that all by-laws that permit residential uses be subject to 2014-63. On this basis, there is a need to amend By-laws 196-82, 1767 and 19-94 accordingly.

2.11.3 Recommendation

With respect to By-law 196-82, it is recommended that a new Section 4.11 be added to By-law 196-82. This new section would include the same provision as was included in other by-laws by By-law 2014-63. This provision would state the following:

"*Notwithstanding any other provision in this by-law, an opening for a door that provides access to the interior of a single-detached or semi-detached dwelling is not permitted in any portion of a wall facing the interior side lot line that is located less than 1.2 metres from the interior side lot line."*

With respect to By-law 1767, it is recommended that a new Section 12 (iv)(c) be added to By-law 1767, with the same wording as above.

With respect to By-law 19-94, it is recommended that a new section 5.13 be added, with the wording respecting opening being the same as above.

2.12 Applicability of By-law 2014-63 (Openings) to Dwellings that are Connected Below Grade

2.12.1 Description of the Issue

By-law 2014-63 amended a number of by-laws as discussed earlier in this report to ensure that all zoning by-laws in the City restrict openings within 1.2 metres of an interior side lot line. This provision was written to apply only to single-detached or semi-detached dwellings.

However, staff has also requested that consideration be given to applying this same restriction to dwellings that may appear to be single or semi detached dwellings from the street, but which is actually another dwelling type by virtue of being connected below grade. In some parts of the City, some developments were constructed to appear as detached dwellings, however the dwellings were connected below grade. This was a common practice in the 1970's in many suburban municipalities in the Greater Toronto Area and is not a current practice in the City. However, the result is that there are circumstances where by virtue of the connection of the dwellings below grade, a dwelling unit is classified as a townhouse and staff has indicated that the restriction on openings should apply in this kind of circumstance as well.

It has also been identified by staff that By-law 2014-63, did not amend By-law 177-96. Staff has also indicated that By-law 2014-63 does not apply to By-law 2004-196 as well.

2.12.2 Analysis

With respect to the applicability of the restriction to townhouses, it is recommended that the provision added to multiple bylaws by By-law 2014-63 be modified to also apply to street townhouse dwellings. However, not all bylaws affected by Bylaw 2014-63 contain a definition of street townhouse dwellings nor permit street townhouse dwellings.

It is my understanding that this is a Bylaw 90-81 issue only and in order to deal with the issue in this bylaw, that a change be made to the restriction in this bylaw only. In this regard, it is recommended that Section 5.2.6 of Bylaw 90-81 be modified as per below:

Notwithstanding any other provision in this bylaw, an opening for a door that provides access to the interior of a single detached, semi detached or ***street townhouse dwelling*** *is not permitted in any portion of a wall facing the interior side lot line that is located less than 1.2 metres from the interior side lot line.*

With respect to By-law 177-96, there are already a number of sections where the restrictions on openings is already found. Special Provision 3 on Table B2 (the R2 Zone), establishes a 1.2 metre setback for openings for single and semi-detached dwellings. This same provision is also found in Special Provision 6, which applies to wide shallow lots in the R2 Zone as well. Special Provision 6 relating to the R2-S Zone also contains this requirement for single and semi-detached dwellings. The same provision also applies to single and semi-detached dwellings in the R2-LA Zone (Special Provision 3 to Table B4).

However, this provision has not been applied to semi-detached dwellings in the R3 Zone and single-detached dwellings in the R1 Zone. This does need to be corrected.

2.12.3 Recommendation

On the basis of the above, it is recommended that Bylaw 90-81 be modified as recommended above to also restrict openings within 1.2 metres of the interior site lot line for street townhouse dwelling units only.

It is recommended that the wording of Special Provision 4 on Table B1 of By-law 177-96 be replaced with the wording that applies to openings. For some reason, the wording in Special Provisions 3 and 4 is the same. It is also recommended that a new Special Provision 6 be added to Table B5 dealing with the R3 Zone with Special Provision 6 applied to the minimum required interior side yard.

2.13 By-law 2014-83 Issues (Lot Coverage)

2.13.1 Description of the Issue

By-law 2014-83 included a consistent definition of lot coverage in all zoning by-laws in the City. While By-law 2150 is identified in the recitals, there is no specific amendment to By-law 2150 in the body of By-law 2014-83. This issue needs to be addressed.

2.13.2 Analysis

It was the initial intent of the City that all by-laws requiring a change in the definition of 'lot coverage' be dealt with by By-law 2014-83. As a consequence, this oversight needs to be corrected.

2.13.3 Recommendation

It is recommended that the definition of 'coverage' in By-law 2150 be replaced as per By-law 2014-83.