

February 3, 2023

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street – 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark:

**Re: Toronto Official Plan Amendment 570
ERO Number 019-5937
Ministry Reference Number 20-OP-227259**

**Toronto Official Plan Amendment 570
Major Transit Station Areas
Request for Modification to Site and Area Specific Policy 675
1875-1901 Eglinton Avenue West, 137 Kirknewton Road & 156 Dynevor Road and 1886-
1928 Eglinton Avenue West and 5-7 Fairbank Avenue**

**Toronto Official Plan Amendment 570 (“OPA 570”) Should be Modified to Establish
Meaningful Minimum Densities in the Fairbank Major Transit Station Area**

We act for CB Eglinton Phase 3 Ltd., the owner of the lands at 1875-1901 Eglinton Avenue West, 137 Kirknewton Road & 156 Dynevor Road in the City of Toronto (the “**South Parcel**”) and for 1924 Eglinton Ltd., CB Eglinton Properties Ltd. and 1886 Eglinton West Ltd., the owner of the lands at 1886-1928 Eglinton Avenue West & 5-7 Fairbank Avenue (the “**North Parcel**”).

The South Parcel and the North Parcel (collectively, the “**Subject Lands**”) are within Site and Area Specific Policy 675 (the Fairbank Station Major Transit Station Area) established by OPA 570. The amendment includes mapping that establishes artificially low minimum densities for the Subject Lands. We are writing to request that the policies be modified to include more meaningful minimum densities, that will serve as an incentive to achieve intensification at the relevant Major Transit Station Areas. This submission is also accompanied by a planning report by WND Associates.



The City of Toronto has adopted OPA 570, which establishes Major Transit Station Area policies for 57 Major Transit Station Areas. The amendment includes mapping for each Major Transit Station Area with minimum densities.

However, these densities have been set at such artificially low levels that the policies will fail to achieve the principal objective of encouraging intensification at major transit stations. In many cases, the minimum densities are well below the densities of existing buildings or approved development proposals. Virtually nowhere will the proposed minimum densities serve as meaningful incentives to intensify development.

We are requesting that the Minister modify the minimum density mapping applicable to lands in Site and Area Specific Policy 675 in OPA 570 to reflect higher minimum densities, reflective of existing planning approvals and active development applications. Such modifications will help to accelerate the process of approving intensification applications. They will deliver housing and economic activity consistent with the provincial vision, with less excessive process, and in a faster time frame.

Major Transit Station Areas Have Been Established in the *Planning Act*, R.S.O. 1990, c. P. 13 (the “Planning Act”) as Locations Where the Province Envisions Intensification and Concentrations of Population and Jobs That Will be Transit-Reliant

Previous provincial governments amended the Planning Act by introducing Section 17(15) and (16) which provide for the establishment of Protected Major Transit Station Areas. Among other things, these sections include provisions for the establishment of minimum densities in these areas. To reflect the priority that the Province places on the importance of delivering growth in the Protected Major Transit Station Areas, the statute does not permit appeals to the Tribunal of any minimum density policies. The policy direction inherent in these changes has been maintained by the current government.

At the time the Planning Act changes were presented by the Legislature, the Minister outlined the objectives as follows:

To make the best possible use of our government’s transit investments and to help support municipal control over local planning, we are proposing a new planning tool that municipalities can use. This tool would allow municipalities to designate and zone protected major transit station areas. The province or an approval authority would approve these policies when they’re being put in place and whenever they are being changed. When the municipality designates these areas, there would be no appeal of the official plan policies on the number of residents and jobs in the area or on building densities and heights. Once designated, the municipality would zone for density and height requirements meant to support transit service.

There would only be limited opportunities to appeal the zoning requirements. Zoning would need to conform with the provisions and standards set out in the official plan and provincial plans and policies. Municipalities would be able to plan for and develop transit-supportive densities to ensure that they have residents close to transit to encourage the transit ridership that makes the operation of transit cost-effective.

The clear intention of the new statutory provisions was to smooth the way for intensification of areas around transit stations. This was seen as a sound planning approach that will both reduce congestion and encourage use of public transit. This was also seen as a way of ensuring that public investment in transit infrastructure was then used efficiently by ensuring development in the vicinity of stations.

Provincial Growth Plan Emphasizes That the Policy Direction of Major Transit Station Areas is to Deliver a “High Level of Employment and Residential Densities”

The Growth Plan for the Greater Golden Horseshoe, 2020 (the “**Growth Plan**”) even more clearly establishes that the provincial objective behind the establishment of Major Transit Station Areas is to achieve intensification – higher densities – around transit stations.

Policy 2.2.4 specifically addresses transit corridors and transit stations. Policy 2.2.4.8 **requires that all Major Transit Station Areas “be planned and designed to be transit-supportive.”** The Growth Plan defines transit-supportive as: “Relating to development that makes transit viable and improves the quality of the experience using transit. It often refers to **compact, mixed-use development that has a high level of employment and residential densities...**”. The clear policy objective is to see higher densities encouraged through the use of minimum density designations.

However, the City of Toronto’s approach in OPA 570 establishes minimum densities in Major Transit Station Areas that are so low that they cannot be considered in any way to be encouraging meaningful intensification and the higher densities of development contemplated by the Growth Plan.

Ontario’s Housing Action Plan Highlights the Importance of Higher Densities Around Transit Stations

The current government has been moving aggressively to address the housing supply crisis in Ontario. Throughout, the government has emphasized the importance of development around transit stations to deliver meaningfully to the supply of housing, in the right places.

In November 2022, the Minister released the most recent version of the Provincial Housing Supply Action Plan, entitled “More Homes Built Faster”. The plan includes the following:

Density near transit hubs

Adding more basement apartments will help, but we need to enable more density to truly address the housing crisis. **The logical place to put more housing is near major transit hubs, so people can easily get to work, school and back home.** Once the Minister approves the key development policies for major transit hubs, we’re proposing to require municipalities to update their zoning by-laws within one year to help get shovels in the ground faster.

The Province has stated clearly that intensification at Major Transit Station Areas is “the logical place to put more housing”.

This section from the Plan also emphasizes the role of the Minister in ensuring that the “key development policies for major transit hubs” are in place. As such, it is important for the Minister to exercise his powers of modification when considering policies like those in OPA 570 to ensure that the minimum densities actually encourage housing intensification to happen in Major Transit Station Areas.

It is also significant that the Housing Supply Action Plan identifies the need for official plan policies and zoning to be in place quickly to “get shovels in the ground faster” in delivering housing at transit station areas. The approach of the City of Toronto, in setting artificially low minimum densities, seeks to do exactly the opposite. Toronto is creating a situation where further Official Plan Amendment and rezoning applications (and the years of related process) are required before the hoped for transit-supportive development approvals can be achieved, further delaying the delivery of that housing supply. Simply put, the City’s OPA 570 creates a need for additional process, rather than achieving the Provincial objective of moving towards higher as-of-right densities allowing the construction of housing to proceed with less red tape and process delays.

Plans for South Parcel Would Offer Significant Housing Supply – Could Deliver Approximately 300 Units of New Housing and North Parcel Could Deliver Approximately 294 Units Total

The plans for the Subject Lands reflects the potential for a significant addition of new housing supply in an ideal location – a three-minute walk from a TTC LRT Station.

While no planning application has been filed with the City of Toronto for the South Parcel, our client has prepared a concept plan to see what could possibly be achieved onsite. The concept plan demonstrates that approximately 300 residential units can be accommodated on the South Parcel, which would be composed of a broad range and mix of unit sizes.

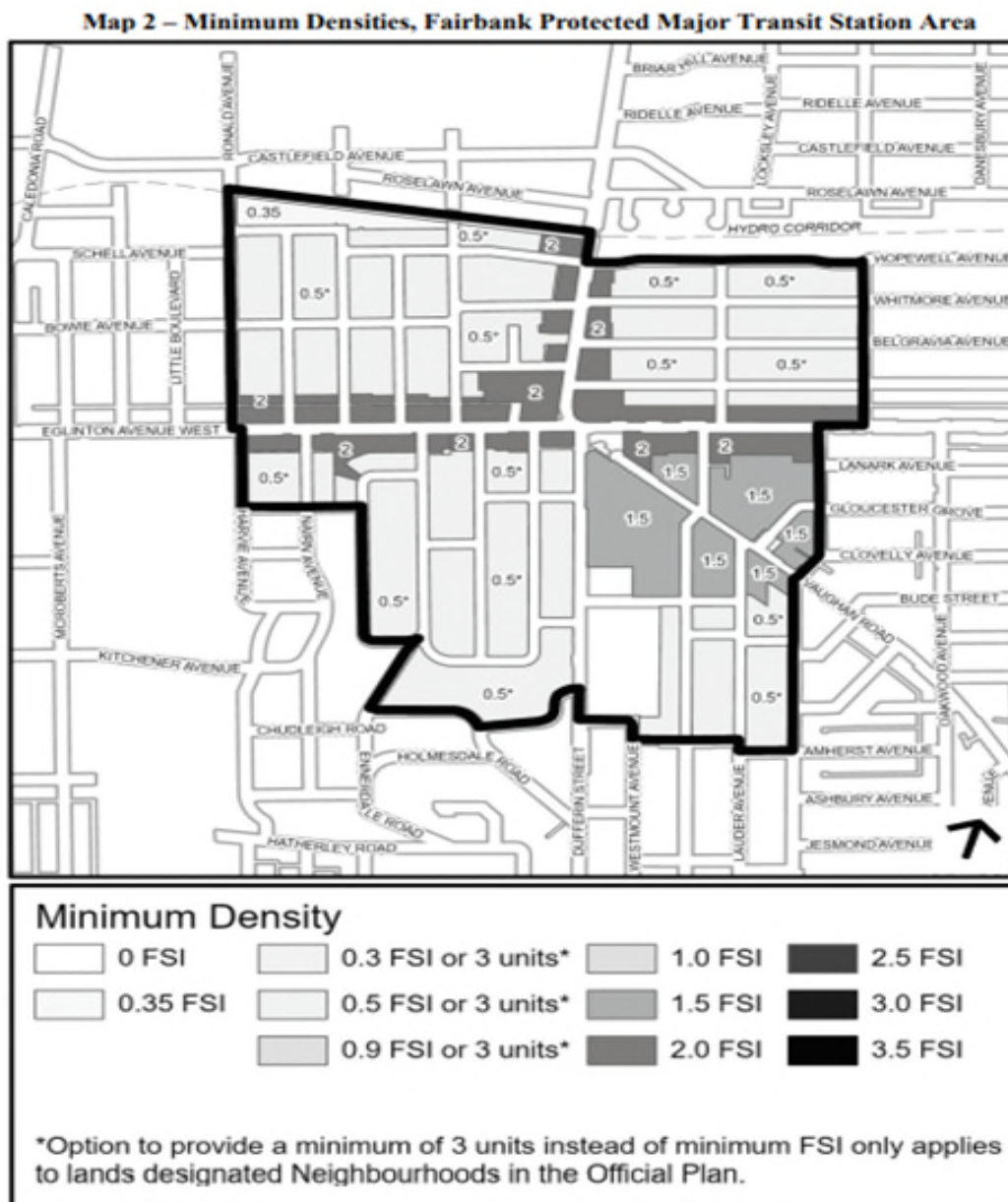
A Site Plan Application was submitted for the east portion of the North Parcel (1886-1920 Eglinton Avenue West) in 2020 to permit a 9-storey building with a total of 194 residential units in immediate proximity to the Fairbank LRT station. However, the east portion of the North Parcel can accommodate greater density than what is current planned for the site. The tall buildings in the existing and planned context, as well as the North Parcel’s extensive frontage along Eglinton Avenue West and its location just west of the Fairbank LRT Station, allow for a even greater minimum density on the North Parcel. Our client undertook a density analysis and determined that an approximate total of 294 residential units can be delivered on the east portion of the North Parcel. As a result, a minimum density of 9.0 FSI on the North Parcel is appropriate.

The plans for the Subject Lands take advantage of their locations along Eglinton Avenue West to put forward designs that reflect the need to add housing along this major street while incorporating stepbacks as a transition down to the stable low-density neighbourhoods to the south of the South Parcel and to the north of the North Parcel. As such, modifications to OPA 570 to facilitate construction of this housing will offer an opportunity for new homes for hundreds, and a healthy addition to the supply of housing in the Province.

Mapping in OPA 570 Applies Artificially Low Densities to the Fairbank Protected Major Transit Station Area (Site and Area Specific Policy 675)

The Subject Lands are located on Eglinton Avenue West, just west of Dufferin Street and in close proximity to the Fairbank LRT Station – which is located at the corner of Eglinton Avenue West and Dufferin. The Subject Lands are in the Fairbank Protected Major Transit Station Area. The Eglinton & Dufferin intersection is the focus of the Fairbank Station Site and Area Specific Policy 675.

Below is the adopted minimum density map:



The Subject Lands are designated with a minimum density of 2 times the area of the lot. It is unlikely that this is the kind of density, in proximity to a TTC LRT Station intersection, that the Province would consider to be high residential density, or meaningful intensification in a transit-supportive fashion.

The City's Adopted Minimum Densities Are Actually Below Already Planned and Approved Density Permissions

The City of Toronto has established an interactive tool for Major Transit Station Areas. What the tool reveals for the area in question is that it already generally has higher density permissions than the minimum densities established by OPA 570. This demonstrates the extent to which the minimum densities in the Amendment are artificially low – and so low as to not serve as an incentive for intensification.

In the table below, the “planned density” taken from the City’s interactive tool is based upon all sites developing in accordance with their existing planning permissions. These planned density figures account for the in-effect Official Plan land use designations, zoning by-law permissions, densities in Secondary Plans, and approved developments that have not yet been built.

Major Transit Station Area	Existing Planned Density	OPA Minimum Density
Fairbank	262 people & jobs/hectare	160 people & jobs/hectare

The above figures indicate how meaningless the minimum densities proposed for Major Transit Station Areas in OPA 570 are. They can hardly be seen to serve as an incentive to increase densities, when existing planning permissions ALREADY permit higher densities. It is clear that the City’s exercise in conforming to the Growth Plan clearly does not conform with the Provincial policy direction to meaningfully intensify in Major Transit Station Areas.

Even the Minimum Densities in OPA 570 Are Unlikely to Be Achieved As Mapped

The City’s analysis and calculations are based on a highly unlikely assumption: that all land parcels will develop according to their full potential under the proposed densities.

This assumption is unlikely to be realized for a number of reasons including, among others, the following:

- It is virtually never the case that all land parcels in a particular area develop at the permitted densities. Some landowners are always “waiting” for better circumstances in the future.
- Many existing structures are economically viable as built, and will not be replaced.
- The densities in OPA 570 are not sufficiently high to make the replacement of existing low density structures, with only modestly larger buildings, economically viable.

Similar factors are in play with respect to the existing planning permissions. According to the information in the City's interactive tool for Major Transit Station Areas, existing development (2016) in the area is well below the currently-permitted planning permissions. This reflects the practical reality that it does not make sense for small parcels to redevelop to higher densities if the gains are only modest. The difference must be sufficient to make sense, if actual intensification and development to planning potential is to be achieved.

Paradoxically, the new minimum densities adopted are so low as to not meaningfully encourage redevelopment proposals – meaning the area will be more inclined to stagnate, rather than revitalize.

Major Transit Station Area Existing Planned Density Actual Current Density (2016)

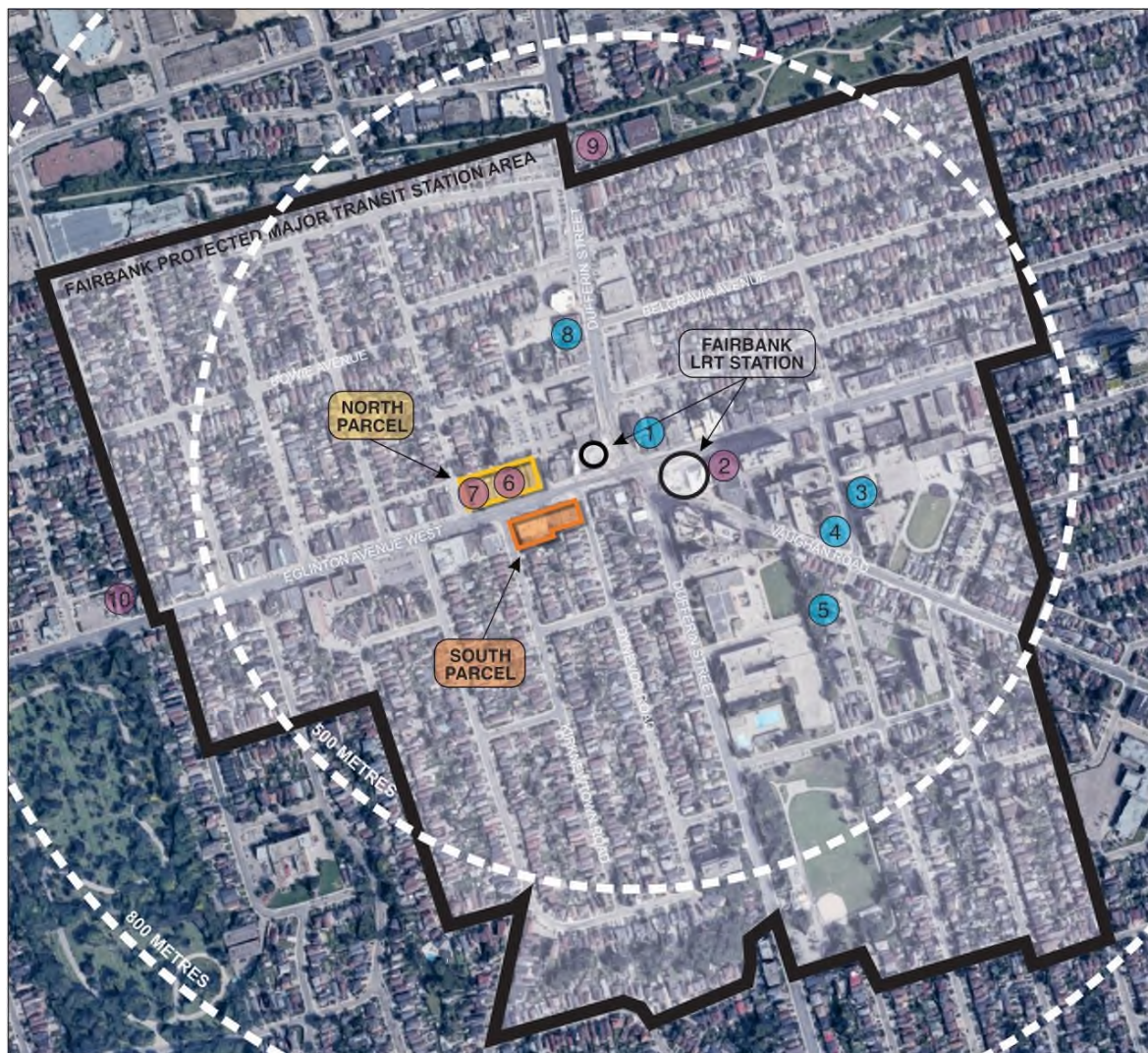
Fairbank	262 people & jobs/hectare	105 people & jobs/hectare (approx..)
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The above figures demonstrates that existing planning permissions substantially exceed what actually gets built – by a factor of 250% in this area. This underlines the importance of establishing minimum densities that are meaningful if the intensification and increased housing supply sought by the Province is to result.

The Fairbank Protected Major Transit Station Area Already Features Numerous Planning Applications – All of Which Are Seeking Density Permissions Well Above Those Contemplated in OPA 570

There are a number of active applications underway in the Fairbank Protected Major Transit Station Area. This reflects the market's anticipation and assessment that the area is well-suited for residential intensification, with the soon-to-be-opened Eglinton LRT and Fairbank LRT Station.

The below map and table summarize these applications:



Surrounding Developments (Proposed and Approved)

- | | |
|---|--|
| ① 1812 - 1818 Eglinton Avenue West (35-storeys; FSI 10.69) | ⑥ 1886 - 1920 Eglinton Avenue West (9-storeys; FSI 5.88) |
| ② 1801 - 1807 Eglinton Avenue West (41-storeys; FSI 16.4) | ⑦ 1924 - 1928 Eglinton Avenue West & 5 - 7 Fairbank Avenue (8-storeys; FSI 4.75) |
| ③ 645 - 655 Northcliffe Boulevard (15-storeys; FSI 10.3) | ⑧ 2402 - 2418 Dufferin Street & 4 - 10 Ramsden Road (24-storeys; FSI 7.25) |
| ④ 775 Vaughan Road - 783 & 672 - 680 Northcliffe Boulevard (36-storeys; FSI 13.7) | ⑨ 2433 Dufferin Street (8-storeys; FSI 4.8) |
| ⑤ 632 - 652 Northcliffe Boulevard (36-storeys; FSI 11.0) | ⑩ 2116 Eglinton Avenue West (8-storeys; FSI 5.01) |

① Applications Under Review

② Approved Applications (Zoning By-law Amendment or Minor Variance)

Figure 1: Surrounding Development Applications (Proposed and Approved)

Minister is Asked to Modify the Minimum Density Mapping for Site and Area Specific Policy 675 in OPA 570

We are requesting that the Minister modify the mapping of minimum densities in the Fairbank Protected Major Transit Station Area to reflect increased minimum densities.

A preliminary analysis was done to investigate alternative minimum densities for properties within the Fairbank Protected Major Transit Station Area.

The analysis assessed key criteria for determining where greater densities may be warranted/feasibly accommodated:

1. Proximity to transit stations – in line with planning policy direction, the greatest heights and densities are assigned nearest to Fairbank LRT Station, with a gradual downward transition as one moves away from the Station
2. Size of parcel – large sites (either existing or where logical land assemblies could feasibly occur) are generally assigned lower densities, even with close proximity to transit, as they are thought to be more likely to develop with on-site open spaces (thus bringing down the overall density of the site).

To support the determination of appropriate alternative minimum densities, a planning analysis was prepared which looked at approved and in-progress development applications, and the Eglinton Corridor study work related to Official Plan Amendment 253. Analysis was focused around the Dufferin & Eglinton intersection.

Below is the recommended minimum density mapping for Site and Area Specific Policy 675:



Figure 7- Proposed Minimum Densities for SASP 675

Minister Should Modify OPA 570 As Requested – In the Alternative, the Minister Should Refer the Minimum Density Mapping in OPA 570, Site and Area Specific Policy 675 to the Ontario Land Tribunal (the “Tribunal”) for a Hearing

It is clear that the City of Toronto’s OPA 570 is not in conformity with the policies of the Growth Plan, as it does not properly encourage the intensification of Major Transit Station Areas and higher densities in transit-supportive development. On the contrary, the City has set the minimum densities at such a low level that any meaningful intensification will actually require Official Plan Amendment applications and lengthy approval processes, including potential exposure to appeals to the Tribunal. This clearly is not in conformity with Provincial policy as articulated in both the Growth Plan and the Housing Supply Action Plan.

Under Section 3 of the Planning Act, the Minister is required to act in conformity with Provincial plans (including the Growth Plan) in making decisions – including exercising his powers as the approval authority for Toronto’s Official Plan. Clearly, he cannot approve OPA 570 as adopted by Toronto City Council, and be acting in conformity with the Section 3 obligations.

The Minister should exercise his authority to make the modifications to OPA 570 as requested in this submission.

In particular, the Minister should modify OPA 570 by substituting the alternative minimum density mapping for Site and Area Specific Policy 675.

Such modifications would ensure that more appropriate minimum density were established. Under the new Provincial rules, the City would be required to make zoning changes to conform with the modified Official Plan Amendment within one year. This will accelerate the potential to encourage and achieve final planning approvals on numerous sites, including that at 1887-1901 Eglinton Avenue West. The outcome will make possible the delivery of a meaningful increase in the housing supply at an early date.

As noted, the plans for the Subject Lands demonstrate the potential to collectively deliver approximately 594 units of housing. This represents an opportunity to deliver a significant addition to the housing supply in exactly the type of location the Province has identified as ideal for new housing – a site within an Major Transit Station Area for an LRT Station.

In the alternative, in the event that the Minister is not prepared to make the requested modification, we request that the Minister refer the question of the appropriate minimum density mapping for Site and Area Specific Policy 675 to the Tribunal for a hearing.

Yours sincerely,



AIRD & BERLIS LLP

Hon. Peter Van Loan
Partner

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