

November 7, 2025

**VIA ONLINE SUBMISSION  
AND VIA EMAIL - [minister.mah@ontario.ca](mailto:minister.mah@ontario.ca)**

Our File No. 150518

Ministry of Municipal Affairs and Housing  
Municipal Services Office – Central Ontario  
(Priority Projects)  
777 Bay Street, 12<sup>th</sup> Floor  
Toronto ON M7A 2J3

Attention: Honourable Rob Flack, Minister of Municipal Affairs and Housing

Dear Minister Flack:

**Re: ERO Posting Number 025-1108  
Request for a Minister's Zoning Order ("MZO") to restrict building heights to  
protect a biomanufacturing campus in the City of Toronto  
Response on behalf of First Capital Realty Inc.**

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Aird & Berlis LLP is counsel to First Capital REIT ("First Capital") the owner, through its subsidiary Dufferin & Steeles Corporation, of 1881 Steeles Avenue West, Toronto (the "First Capital Site").

First Capital is a Canadian public real estate company that specializes in owning, operating, and developing open-air community shopping centres in densely populated urban neighbourhoods across Canada. First Capital currently has approximately 21.9 million square feet of leasable area and assets valued at over \$9 billion CAD across the country. The portfolio is primarily located in Canada's largest and fastest-growing cities, with a significant concentration in the Greater Toronto and Greater Ottawa areas.

First Capital is currently engaged in the selective development and redevelopment of its urban properties into mixed-use communities at greater densities. In Ontario, First Capital is actively advancing multiple applications on its various properties; currently, First Capital is constructing 934 purpose-built residential rental units in Ontario. The property at 1881 Steeles Avenue was identified by First Capital as being appropriate for redevelopment as a mixed-use centre. In part, this was driven by its location and existing permissions which contemplated the introduction of residential uses.

The First Capital Site is immediately adjacent to 1875 Steeles Avenue, the lands which are the subject of a development application by Tenblock Management Inc ("Tenblock"), and which are also subject to the above-noted Request for an MZO by the Minister of Economic Development, Job Creation and Trade. Our office, together with First Capital, has reviewed the MZO Request for the Tenblock lands and offers this correspondence for the Minister's consideration<sup>1</sup>.

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<sup>1</sup> Ontario, Request for a Minister's Zoning Order (MZO) to restrict building heights to protect a biomanufacturing campus in the City of Toronto Environmental Registry of Ontario Posting Number 025-1108, Available online at <https://ero.ontario.ca/notice/025-1108> (the "MZO Request").

**The purpose of this correspondence filed on behalf of First Capital is two-fold:**

- 1. to formally object to the request made by the Minister of Economic Development, Job Creation and Trade for an MZO restricting building heights on the lands at 1875 Steeles Avenue; and**
- 2. to support the request made by Tenblock, through its legal counsel and its own submissions, for this matter to be referred to the Office of the Provincial Land and Development Facilitator (“OPLDF”) for resolution.**

In summary, First Capital supports and concurs with the submissions made by and on behalf of Tenblock in opposition to the MZO Request<sup>2</sup>. To date, First Capital has not been made aware of evidence of: (1) the land use planning concern alleged by Sanofi Pasteur in respect of its operations that is the presumptive rationale for the MZO; or (2) how the 33m height limit imposed in the MZO could be responsive to any alleged land use planning concern.

The MZO Request has been made without the evidentiary basis required by the Province’s own MZO Framework and without any consultation with the parties directly affected<sup>3</sup>. The imposition of an MZO in these circumstances presents a real and substantial chilling effect on development proposals such as those advanced by Tenblock and First Capital which have engaged in the prescribed public planning process, including expert reports and peer review processes by the City of Toronto, over a period of many years. This is in direct contrast to the actions of Sanofi Pasteur which has failed to engage in the process or to respond to reasonable and good faith attempts by both Tenblock and First Capital to identify and resolve issues through mediation.

**In summary, it is First Capital’s position that the imposition of an MZO - an extraordinary legislative remedy - should not be used to truncate or circumvent the public planning process, particularly without any evidence of a land use planning issue. For all these reasons, First Capital objects to the MZO Request.**

Further, First Capital concurs with Tenblock that this matter ought to be referred to the OPLDF as that is the appropriate forum to resolve disputes related to large scale land use planning and development matters which engage more than one Provincial Ministry and have implications related to economic development and financial interests<sup>4</sup>. On these latter criteria, the implications for land use development projects such as those advanced by Tenblock and First Capital, together with the delivery of housing to support the construction industry and broader development sectors, should not be overlooked.

### **FCR’s Interest in this Matter**

The First Capital Site is currently improved with an office/retail plaza and large areas of surface parking. The property is currently underutilized and ideally situated for mixed use intensification.

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<sup>2</sup> Goodman’s LLP Correspondence to Ministry of Municipal Affairs and Housing, dated October 22, 2025

<sup>3</sup> Ontario, Ministry of Municipal Affairs and Housing “Zoning Order Framework.” Available online at <https://www.ontario.ca/page/zoning-order-framework>.

<sup>4</sup> Ontario, Office of the Provincial Land and Development Facilitator “Learn About the Office of the Provincial Land and Development Facilitator.” Available online at <https://www.ontario.ca/page/office-provincial-land-and-development-facilitator>.

The lands are designated *Mixed Use Areas* in the City of Toronto's Official Plan, a land use designation that contemplates growth and the development of complete communities.

In December 2019, First Capital filed an application for zoning by-law amendment to permit the replacement of the existing office/retail plaza with two commercial/residential buildings, 12 and 13 storeys in height, and two residential buildings that are thirty-two storeys in height. Since the filing of its application, First Capital has engaged with City staff, the adjacent landowners, including Tenblock, and the broader community through a comprehensive public planning process.

As part of that iterative planning process, First Capital has filed resubmissions in respect of a number of technical reports, including transportation, environmental and servicing, through 2020 and 2022. Those technical reports, including land use compatibility reports prepared by industry experts, have been the subject of review by City staff and, in some instances, external peer reviewers engaged by the City. To date, there has been no indication of any land use planning compatibility concerns arising from the First Capital proposal identified by City staff or the City's external peer review consultants.

It is our expectation that City staff will be reporting to North York Community Council and then Council on the First Capital application. First Capital looks forward to continuing to work with the City and the community through the redevelopment of its lands.

Through the processing of its applications, First Capital has engaged and coordinated with Tenblock on the delivery of important community benefits and infrastructure including a new public road and community park. First Capital and Tenblock have also agreed in principle upon the phasing and cost sharing associated with the delivery of this important community infrastructure.

As noted in the submissions by Tenblock, First Capital provided correspondence to both North York Community Council and City Council to confirm the work undertaken by both parties to advance these important elements of a complete community and that it had no objection to the Tenblock proposal advancing. These projects individually and collectively advance the City and the Province's goals in respect of achieving complete communities that advance housing and employment opportunities.

Throughout its process, First Capital made several attempts to engage with Sanofi Pasteur to assess any concerns related to alleged impacts of mixed-used development on the Sanofi Pasteur lands and expressed a willingness to consider revisions to its proposal to satisfy the alleged impacts. However, no productive discussions, meaningful feedback or alternative material was ever provided by Sanofi Pasteur to First Capital for consideration. As noted above, all land compatibility studies, undertaken by First Capital's consultants in accordance with the City's Terms of Reference, have concluded that the First Capital proposal to redevelop the First Capital Site is appropriate and acceptable.

Although the First Capital project has yet to come forward for consideration by North York Community Council or City Council, the process to date has occupied First Capital and its consultant team for close to six (6) years. Like Tenblock, considerable investment in terms of time and expense has been committed by First Capital to advance its project.

The timing of the Request for MZO, made without any apparent land use planning rationale, and after an extensive public planning process has a chilling effect as it relates to investment by industry leaders such as First Capital and at a time when the development industry is already under extraordinary pressure.

### **Basis for FCR's Objection and Request**

As noted at the outset of this correspondence, First Capital objects to the MZO for the following reasons.

#### *No Land Use Planning Rationale for the MZO*

The ERO posting in respect of the MZO Request advises that the purpose of the MZO is to “safeguard the continued operational viability of the Sanofi facility.” To date, First Capital is not aware of any land use planning rationale that would support the position that the viability of the Sanofi facility would be compromised by the proposed Tenblock development or, indeed the First Capital proposal.

As noted in the submissions on behalf of Tenblock, the application requirements of the City mandated a land use compatibility study and technical analysis. That work, as was the case of the work undertaken by First Capital, was the subject of an independent peer review process on behalf of the City. The City staff report recommending approval of the Tenblock proposal relies, in part, on the conclusions of that technical analysis and peer review process. To date, First Capital is not aware of any contrary sustainable evidence presented by Sanofi to contradict those conclusions.

#### *No Land Use Planning Rationale for the Height Restriction in the MZO*

If the alleged concern or impact is not demonstrably evident, the proposed response similarly cannot be demonstrated to either be necessary or reasonable. There is no such evidence or rationale provided in the MZO Request.

Without such evidence or rationale, it is impossible to evaluate the merit of the site-wide height restriction proposed in the MZO Request. What is readily apparent is that the arbitrary height limit will have the direct effect of limiting development – and the delivery of housing – on the Tenblock property. Should a similar approach be extended to the First Capital Site, the viability of the complete community being developed in this area, and the community benefits therewith, would be compromised.

At best the restrictions imposed by the MZO appear to be both arbitrary and overly broad without any apparent land use rationale.

#### *Failure of Sanofi Pasteur to Engage in Planning Process*

The submissions filed on behalf of Tenblock provides a detailed overview of the engagement, or lack thereof, by Sanofi Pasteur in the planning process. First Capital has similarly been frustrated by the unwillingness of Sanofi Pasteur to engage in the planning process or to enter a dispute resolution process.

November 7, 2025

Page 5

It is not uncommon for parties in a planning process to have confidentiality concerns as it relates to their interests, being it because of commercial competitiveness or other security concerns. The planning process has tools available, including confidential mediation through Tribunal or private mediation, to allow parties to engage in productive discussions. Our firm has been directly involved in such processes and have achieved successful outcomes as a result.

As was noted in the Tenblock submissions, the parties to the active OLT appeal in this matter supported such an approach; Sanofi Pasteur rebuffed it. The failure of Sanofi Pasteur to engage in the available process should not be the basis by which an extraordinary remedy such as a MZO is imposed on other private actors.

#### *Incomplete MZO Posting*

According to the Province's MZO Framework, the MZO Request is required to be supported by the following publicly available materials: a copy of the draft zoning order, a description of consultation with the public and engagement with Indigenous communities and a rationale of why the project requires ministerial zoning relief rather than following a municipal planning process.

The MZO Request is incomplete based on the material which has been made available in the ERO Posting. Importantly, no explanation has been provided as to why the development application proposed by Tenblock and the lands should be the subject of a MZO rather than follow the municipal planning process, particularly since that process remains underway.

The seeming arbitrary nature of the MZO Request, including the relief sought, and without any explanation as to why it is being advanced at this time is of paramount concern to First Capital in the context of its own application.

For all these reasons, First Capital supports the request of Tenblock that the Minister not grant the MZO Request and instead refer the matter to the OPLDF for resolution.

First Capital appreciates your consideration of this letter and would be pleased to discuss submission and interest in this matter directly with Ministry staff.

Yours truly,

AIRD & BERLIS LLP



Eileen P.K. Costello

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November 7, 2025

Page 6

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