

GOLDBERG GROUP LAND USE PLANNING AND DEVELOPMENT
2098 AVENUE ROAD, TORONTO, ONTARIO M5M 4A8

Witness Statement of Michael S. Goldberg, MCIP, RPP

OMB File No.: PL130592

Appeals of Zoning By-law 569-2017

City of Toronto

Prepared for: Ontario Associates of Architects

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APPENDIX 1

ACKNOWLEDGEMENT OF EXPERT'S DUTY AND CURRICULUM VITAE OF MICHAEL S. GOLDBERG

1.0 The Witness

- 1.1 I am the founding Principal of Goldberg Group, a land use planning consulting firm based in Toronto, engaged in a broad range of land use planning and development files on behalf of private and public sector clients across the Province of Ontario. I have appeared before the Ontario Municipal Board (OMB) on many prior occasions relating to a wide range of land use planning matters. A copy of my Curriculum Vitae and Acknowledgement of Expert's Duty form is provided in **Appendix 1** of this Witness Statement.
- 1.2 I graduated with a Bachelors of Applied Arts in Urban and Regional Planning from Ryerson Polytechnical University in 1983; I became a Full Member of the Canadian Institute of Planners (CIP) in 1985; and I am a Registered Professional Planner (RPP). As such, I have continuously been practicing as a professional planner for approximately 34 years.
- 1.3 My firm was retained by the Ontario Association of Architects (OAA) in May 2017, following my review of some material forward to me by legal counsel for the OAA.
- 1.4 In my professional practice, I regularly work with many by-laws of the former municipalities in the City of Toronto as well as with By-law 569-2013. Part of my practice includes many past and current files for low rise and grade related housing, where Committee of Adjustment (COA) applications and appeals are part of the process. Through this experience, I have become very familiar with many of the provisions of By-law 569-2013 and particularly those that are the subject of this OMB hearing.

2.0 Purpose of this Witness Statement

- 2.1 On May 19, 2017, the OAA legal counsel, Ron Kanter, issued a letter to the Ontario Municipal Board (OMB) setting out the List of Issues the OAA wish to canvas at this hearing, and the By-law 569-2013 provisions that are under appeal. This Witness Statement will address most of these Issues, from a land
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use planning perspective, as they relate to most of the By-law provisions that are under appeal.

- 2.2 The facts and opinions expressed in this Witness Statement are, in part, supported by the evidence of Mark Sterling, the architectural, planning and urban design expert retained by the OAA in this matter.

3.0 General Comments on By-law 569-2013

- 3.1 One of the consequences of the problematic provisions of By-law 569-2013, is that in any given minor variance application for a single dwelling, multiple variances are regularly required to vary a combination of some of these provisions. Some of the By-law 569-2013 provisions require variances on most proposed dwellings I have assisted on. Often the nature of the minor variances to By-law 569-2013, are very technical, as opposed to substantive, yet the number of minor variances for one dwelling can be multiple. This has led to considerable misunderstanding, at times alarm by surrounding residents receiving Notices from the COA, and unnecessary resident opposition because of the number of variances involved. Often the residents do not understand the technical nature of the variances. They just know that there are variances to a relatively new by-law and object to the number of these variances.
- 3.2 Should the problematic provisions of By-law 569-2013, be revised, some of these minor variances can be avoided and some of the unnecessarily complicated minor variance applications could be avoided. This may avoid or diminish the number of appeals to the Toronto Appeal Body (TLAB).
- 3.3 In addition, one of my comments concerning By-law 569-2013 is the very technical nature of some of the provisions, where some provisions do not assist in the substantive planning evaluation of a given application. In other words, if the provision relates only to what is happening inside the dwelling or below grade, and within a roof space that would otherwise be permitted, then that provision likely does not contribute to the substantive planning evaluation of the exterior of the dwelling. If that is the case, then I question the planning utility of
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- such a provision.
- 3.4 Another common problem with some of the By-law 569-2013 provisions is that the some standards and methods of determining the standards that apply to a project are very different provisions, compared to those utilized when the neighbourhoods in Toronto were built or when properties within the neighbourhood were redeveloped with replacement dwellings or additions. These differences produce different and commonly higher 'numbers' to some performance standards for the dwelling being considered by By-law 569-2013, when compared to the numbers that apply to the existing neighbourhood. This creates complications with evaluating a planning application since you are not comparing apples with apples. When Notices for a COA application list minor variances with considerably higher numbers, particularly where there is no substantive difference between the dwelling under consideration and the existing dwellings forming the neighbourhood, then confusion, opposition and misinformation results.
- 3.5 The differences in 'numbers' will also, increasingly, become problematic should the provisions of Official Plan Amendment (OPA) 320 come into force and effect, as is desired by the City. OPA 320 amends the City Official Plan policies relating to Neighbourhoods and Healthy Neighbourhoods. OPA 320 contains Development Criteria that require, among other things, an evaluation of prevailing heights, densities, setbacks, and massing which are 'numbers' related. If the method of, producing the numbers differ with most of the neighbourhood within which a proposed dwelling is located, then it will be difficult and potentially, unnecessarily controversial how planning evaluations are undertaken before COA and TLAB.
- 3.6 Zoning by-laws are intended to implement the Official Plan. In my opinion, some of the By-law 569-2013 provisions under appeal make it difficult to demonstrate that now, and should OPA 320 come into effect, will become even more difficult to demonstrate.
- 3.7 There is a tradition in the City of Toronto to artificially maintain certain by-law

provisions at a standard, such that, if almost anything is proposed to an existing dwelling or a replacement dwelling, then it is not possible to satisfy the by-law provision and a more public process, through the COA is required. This development control technique has been operational and understood for years. The best known example of this is the By-law density limit of 0.35 Floor Space Index (FSI) in neighbourhoods such as Forest Hill, Lawrence Park, North Toronto and Rosedale. Another such example is the 30% lot coverage limit in large parts of Willowdale in the former City of North York. Seeking minor variances to these density limits toward a higher 'unofficial' number has become part of the culture in those specified neighbourhoods.

3.8 My concern with certain provisions of By-law 569-2013 is that the menu of development control provisions is expanding. If certain provisions need to be varied with most applications for a dwelling, then the standard is either questionable or being used as a development control mechanism. In either case, the standard is problematic and its merit should be closely examined. If the provision contributes little to the planning evaluation of the exterior of a proposed dwelling, then in my opinion, the provision should not be included in the by-law.

3.9 As a planner who has worked within the Neighbourhoods of the City for many years, I have seen my share of COA and OMB hearings where neighbour(s) are pitted against a neighbour(s), the expense and time it takes to seek resolution, and the unsatisfactory outcome these proceedings can produce. My opinion is that this may still continue but can be diminished, should By-law 569-2013 be approved with clear and understandable provisions that deals with, or addresses, the planning substance of a proposed dwelling.

3.10 I will provide evidence on some of the Minor Variance applications my office has worked on which illustrate the points I make above.

4.0 Review of the Appealed Provisions by the OAA of By-law 569-2013

4.1 I understand that the City has suggested that the hearing be organized by topic, as follows:

1. Height (related to principal buildings)
2. Building Depth and Length (related to principal buildings)
3. Floor Area (related to principal buildings)
4. Setbacks and Separation (related to principal buildings)
5. Platforms and encroachments (related to principal buildings)
6. Ancillary Buildings and Structures
7. Parking Space Location and Access

This Witness Statement will organize my evaluation of the appealed provisions of By-law 569-2013 according to this list of topic areas. I expect that I will deliver my evidence on all topics appealed by the OAA at one time since they are inter-related and in my opinion, should be considered in conjunction with each other.

4.2 Height (Related to Principal Buildings)

4.2.1 This topic relates to the following By-law 569-2013 provisions:

Regulations Applying to the Residential Zone

- 10.5.40.10 (1): Determining the Height of a Building (applies to all zones)
- 10.10.40.10 (2): Maximum Height of Specified Pairs of Main Walls
- 10.10.40.10 (4): Roof Slope Restriction for Detached House
- 10.10.40.10. (5): Width of dormers in a Roof Above a Second Storey or Higher
- 10.10.40.30. (1): Height of First Floor Above Established Grade

Regulations Applying to the Residential Detached (RD) Zone

- 10.20.40.10 (2): Maximum Height of specified Pairs of Main Walls
- 10.20.40.10 (4): Restrictions for a Detached House with a Flat or Shallow Roof
- 10.20.40.10 (7): Width of Dormers in a Roof Above a Second Storey or Higher.

4.2.2 Height Regulations Applying to the Residential Zone

4.2.2.1 Section 10.5.40.10 (1): Determining the Height of a Building – This provision requires that height be taken from established grade to the highest point in the building. In By-law 438-83 relating to the former City of Toronto, and in By-law 7625, relating to the former City of North York, the height standard is taken to the mid-point between the top of roof and the eave line. Established

grade has also changed from both of these by-laws. While By-law 569-2013 changed the way height is measured, it generally maintained the same numeric standard. Since the same numeric standard previously applied to the mid-point in the roof and under By-law 569-2013, now applies to the top of the roof, then the standard has effectively lowered the maximum height for all buildings in the neighbourhood. This is not well understood.

4.2.2.2 Since the Healthy Neighbourhoods and Neighbourhoods sections of the Official Plan call for height to respect and reinforce the existing physical character of the neighbourhood, the only way to determine if a new build will in fact achieve this, is to have a surveyor go around the neighbourhood and shoot the geodetic elevation of the existing homes in the neighbourhood. There would be no other way to determine an apples-to-apples comparison under the changed By-law 569-2013 method of measuring height. The reality is that existing roofs in the neighbourhood may in fact be higher since they were approved and built under a by-law regime that measured the same maximum height number to the mid-point of the roof, as opposed to the top of the roof. By-law 569-2013 has the resultant effect of potentially lowering the maximum height in a neighbourhood while the City OP says that building proposals shall respect and reinforce the existing physical character.

4.2.2.3 10.10.40.10 (2): Maximum Height of Specified Pairs of Main Walls – This is new to By-law 569-2013 that was not included in any of the previous former City by-laws. In my experience, this is also one of the most common By-law 569-2013 provisions that require minor variances, particularly on more narrow lots such as lots 12 m or less where applicants frequently want to build an integral garage as the required parking space. The reason for this in new replacement dwellings is, on the more narrow lots, the builder or home owner building a new home will build the first main living level above the at-grade garage, as opposed to constructing the at-grade garage and having it penetrate (or take a considerable amount of floor space away from) the main living level. Where the main living level is above the garage, the garage penetrates, into, and take usable floor space away from, the basement. On the lots generally greater than 12 m in width, there is sufficient building width

and main living floor area to accommodate a garage that penetrates into the main living level and therefore this is less of an issue. In some of the neighbourhoods however, even on lots larger than 12 m in width, a clean main living level is desired (without the garage penetrating into the main living level) and a variance to the main building wall heights standard of By-law 2013 is required.

A diagram will be put into evidence showing this.

4.2.2.4 In my opinion, the main building wall heights established in By-law 2013 is too low. I will show a diagram demonstrating why it is too low and what realistic number could remedy this unnecessary and frequently misunderstood By-law 2013 provision.

4.2.2.5 10.10.40.10 (4): Roof Slope Restrictions for a Detached House
10.10.40.10 (5): Width of Dormers in a Roof Above a Second Storey or Higher

These provisions will be responded to by Mark Sterling and examples to illustrate the point may be provided.

4.2.2.6 10.10.40.10 (6): Height of First Floor Above Established Grade

This provision reads:

“In the R Zone, for a **detached house** or a **semi-detached house**, the permitted maximum height of the **first floor** above **established grade** is 1.2 metres.”

This provision must be read in conjunction with Section 10.5.40.10: First Floor Location Requirements, which read:

“A minimum of 10.0 square metres of the **first floor** must be within 4.0 metres of the front **main wall**.”

4.2.2.7 Through diagram(s) I will demonstrate the problematic nature of this provision.

4.2.2.8 The main problem with the combination of these two provisions is that it causes variances for building elements that are inside the house and not outside of the house. From a planning perspective, these provisions are frequently required to be varied, but have no substantive bearing on the planning merits of the dwelling application. As with some other provisions, this highly technical provision, once varied can trigger other variances which lead to considerable misunderstanding and confusion of a proposed building project.

4.2.2.9 This provision frequently leads to:

- a) The lowest level of the home is the basement, yet can technically be considered the first floor;
- b) If the porch and vestibule of the dwelling are within 1.2 m of established grade, but the floor area is less than 10 m², then the vestibule is not considered the first floor. The intent of that provision, as I understand it, is to ensure that the porch and main front door are set at an elevation that is close to the ground, so it relates to the traditional porch and door height of Toronto homes. The 10 m² happens inside the house and is frequently varied, particularly on more narrow lots, since the 10 m² vestibule is an unnecessary use of scarce floor space of a small house.
- c) If the lowest level of the dwelling is considered the first floor and not the basement, then By-law 569-2013 will consider the floor above the first floor as the 2nd floor and the floor above that as the 3rd floor. From the outside of the house in all other respects, it would appear and function as a 2 storey home (basement + 2 living levels above), but in this scenario, it is considered a 3 storey home. If there are 3 living levels above the lowest level in this circumstance, then By-law 2013 considers that home to be a 4 storey home when for all practical purposes, it is a 3 storey home.
- d) Calling what is practically the basement the first floor, also brings into play other by-law provisions that may need to be varied as a result. Such examples include the Gross Floor Area (GFA), size of rear terraces, rear decks standards, and the number of rear facing terraces.
- e) As indicated, this By-law 569-2013 standard frequently is highly technical as it relates to what is only happening inside the house and when varied, leads to a mischaracterization of what the house is from the perspective of how it presents to the outside world. In other words, the house on the outside could look the same as other houses that are considered 2 and 3

storey houses but due to this standard, is considered a 3 and 4 storey house.

- f) In some parts of Toronto, such as the former City of North York, only 2 storey houses are permitted and this provision can have the effect of defining a house as a 3 storey house when it looks like any other 2 storey house. This too causes misunderstanding and controversy when a variance is sought from this standard.

4.2.3 Height Regulations Applying to the Residential Detached (RD) Zone

- 4.2.3.1 10.20.40.10 (2): Maximum Height of Specified Pairs of Main Walls
10.20.40.10 (7): Width of Dormers in a Roof Above a Second Storey or Higher

These provisions have been responded to earlier in this Witness Statement

- 4.2.3.2 10.20.40.10 (4): Restrictions for a Detached House with a Flat or Shallow Roof

This provision is among the most contentious By-law 2013 provisions as it prohibits a 3 storey flat roofed dwelling while restricting overall height to 7.2 m. This, provision is problematic generally and particularly for more narrow lots.

- 4.2.3.3 One of the most serious concerns about this is its limitation on flat roofed contemporary or modern architectural styled homes. The contemporary or modern architectural styled homes are commonly flat roofed homes and this provision is impractical, and in many cases, makes such homes impossible to design/build without variances to these provisions of By-law 569-2013.

- 4.2.3.4 Part of the impracticality of this provision of the by-law is that the by-law requires an at-grade garage (parking space), to be located behind the main front wall of the dwelling. With a height maximum of 7.2 m, there is only sufficient height to accommodate 1 living level above the garage, not 2. Therefore, in this scenario, on the ground level, the garage penetrates into, or takes valuable living floor space away from, the main living level. On smaller, more narrow, lots the floor space for a 2 storey dwelling is not large in any

event and such a main floor arrangement is undesirable. It is undesirable from a loss of floor space perspective and on the narrow lots, it is unlikely that the house will have a front room and front facing window, other than the front door.

4.2.3.5 There are remedies to this for the smaller more narrow lots. This could involve raising the height to permit the 2nd living level above the garage or eliminating the prescription in the by-law requiring the required parking space to be located behind the front main wall of the dwelling. In other words, permit the driveway to extend to the front of the house (as a driveway with a garage would), and permit the vehicle to park on the driveway as the required parking space. If that would be done, the architecture of the house would be lowered with 2 full storeys accommodated without a garage penetrating into the first living level. In addition, in such a circumstance, the architecture would improve since the front of the house would contain rooms with windows on the first living level as opposed to a garage occupying part of the front of the house. This is the way many of Toronto's older neighbourhoods originally developed and would be in keeping with many of the smaller lot neighbourhoods of Toronto.

4.2.3.6 The above only addresses the constraint in designing a 2 storey house with a flat roof. It does not address the problem of limiting flat roofs to only 2 storeys in areas of the City where there is no by-law limitation on the number of storeys where a house has a roof other than a flat roof. In my opinion, through the use of proper architectural means, such as 3rd floor design, dormers, and step backs, there is no compelling reason to prohibit a 3rd floor on a flat roofed house, if the appropriate zoning standards were incorporated into By-law 569-2013. This has been successfully done in the City but not without variances that could have been contentious.

4.2.3.7 While the COA or OMB have approved variances to the 7.2 m height limit for a flat roof and at times, a 3rd storey with a flat roof, under the current By-law 569-2013 zoning regime, a variance would be necessary to exceed either of these 2 standards. This is not a circumstance where another development

control trigger is warranted. In my opinion, proper and appropriate zoning standards could be developed by the City to permit this form of housing without the need to trigger a minor variance for every house exceeding these onerous by-law standards.

- 4.2.3.8 The Built Form Section 3.1.2 of the City's Official Plan addresses this in the sidebars relating to 'Transition' and 'Exterior Design – Character Scale and Appearance'. By taking guidance from these provisions of the City's Official Plan, appropriate zoning standards can be drafted and established in By-law 569-2013 to address concerns with the height of flat roofed houses and permitting a 3rd floor on flat roofed houses where a 3rd floor would otherwise be permitted by the by-law. In drafting and approving By-law 569-2013 in its current form, the City is requiring flat roofed houses to go through an unnecessary onerous, and at times contentious, COA process, which has the potential to limit architectural choice and interest in our residential neighbourhoods. In my opinion, this is not in the public interest.

4.3 Building Depth and Length (Related to Principal Buildings)

- 4.3.1 10.5.40.20 (1): Portion of Building to which Building Length Applies
10.5.40.20 (1): Portion of Building to which Building Depth Applies
10.10.40.30 (1): Maximum Building Depth

The Building Length and Depth prescriptions of By-law 569-2013 indicate that these elements of the building, above and below ground, are included in the measure of Building Length and Depth. If a basement extends underground in front of, or beyond, the front and/or rear main walls of the house, then it is unclear why that basement should be included in the Length and Depth measure. If the basement is underneath an otherwise permitted front porch or rear terrace/deck, then it is also unclear why those elements should be counted into Building Depth and Length. Such underground or foundation elements of a porch or terrace/deck are ordinary and otherwise permitted elements if the basement is not extended into these areas. Also, above the floor area of the otherwise permitted porch and/or terrace, there is no

massing or building.

- 4.3.2 Including the underground, or slightly protruding above ground elements of a building, into the measure of Building Depth and Length, again commonly prompts the need for minor variances, that are commonly misunderstood and potentially controversial. Also from a planning perspective, there is little if any planning utility in including these building elements into the by-law measure. As with some of the By-law provisions discussed earlier in this Witness Statement, if the by-law provision in question is technical in nature and not substantive to the planning consideration of a particular house proposal, the planning merit of the provision should be questioned, and revised.

4.4 Floor Area (related to principal buildings)

- 4.4.1 10.5.40.40 (1): Inclusion of Attic Space as Gross Floor Area in a Residential Building Other Than an Apartment Building

10.5.40.40 (3): Gross Floor Area Calculations for a Residential Building Other Than an Apartment Building

The inclusion of a Gross Floor Area (GFA) standard in a By-law is intended to control the extent of building mass and the potential impact on the neighbourhood. The GFA 'number' is intended to reflect such a measure however it is often time a number without much planning meaning. GFA is a poor measure of building mass for a variety of reasons. When GFA is applied to an attic space, it too is not a good measure of the building mass, or its impact on the neighbourhood, but functions as a measure of above ground habitable floor space. In other words, it measures the habitable space inside the building but not the mass of the building.

- 4.4.2 By definition, an attic space is space that is within a roof that could otherwise be the exact same roof, without counting as GFA, as long as there is no habitable space located within it. Also, architects often design houses with roof dormers as part of the aesthetic design of the building, without any habitable space in the attic or behind those dormers. In that circumstance,

we refer to such dormers as 'faux' dormers since they are simply decorative.

- 4.4.3 The inclusion of attic space as GFA only once it become habitable does not constructively contribute to the planning evaluation of the proposed dwelling. The exact same house on its outside could locate on site either with or without habitable space in the attic. The addition of that space into the measure of GFA artificially inflates the 'number' without contributing to the planning evaluation of the GFA.
- 4.4.4 This measure, which already exists in the former City of Toronto By-law 438-86, causes unnecessary controversy, potentially encourages incrementalism and, artificially inflates the GFA measure. This in turn causes variances, controversy and appeals. If one cannot distinguish between a house with 'faux' dormer(s) and one with real dormers, then inclusion of the attic space in the GFA measure has questionable planning merit. A lot coverage standard, in combination with other standards, could be a potential remedy.
- 4.4.5 Section 10.5.40.40 (3) may require 50% of the basement of a dwelling to be included in the GFA measure if the established grade is higher than the average elevation of the ground along the rear main wall than 2.5 m. Such a measure was not in the original City of Toronto By-law 438-86 and as such, the neighbourhood did not evolve over the years with such a measure. Such a measure penalizes natural walk-out properties where the grade falls from front to back. By including 50% of the basement, the GFA number is artificially inflated and therefore any GFA variance is also artificially inflated.
- 4.4.6 By artificially inflating the GFA number and therefore the GFA minor variance, residents can be quite alarmed since they are left with the impression that the proposed house is much larger when it is not. Since the City's Official Plan says that in Neighbourhoods new development shall respect and reinforce the existing physical character of the neighbourhood, it would not appear that this provision implements this City Official Plan provision. There is no planning meaning with the 'number' if it cannot be compared to the neighbourhood within which the proposal is located. This is the case with this
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provisions and it does not bring a meaningful planning measure forward for planning evaluation of a proposed house.

5.0 Conclusions, Summary of the Issues List

5.1 I will summarize my planning opinion, in the context of the Issues contained in the Issues List.

5.2 Issue 1 - Are the “Principal Building Requirements” of By-law 569-2013 for the Residential Zone Ch. 10.10.40, RD Zone Ch. 10.20.40 and RS Zone 10.40.40 in conformity with the City’s Official Plan? Specifically:

- a) 2.3.1 Healthy Neighbourhoods;
- b) 3.1.2 Built Form;
- c) 4.1 Neighbourhoods;
- d) 4.1.5 Development Criteria in Neighbourhoods;
- e) 5.3.1 The Official Plan Guides City Actions.

5.2.1 I will review in my oral evidence, the details of these sections of the City’s Official Plan. In my opinion, there is a disconnect between many of the provisions I have analyzed above and the provisions of these sections of the City’s Official Plan. As such, the sections I have reviewed, in many cases, are not in conformity with these sections of the Official Plan and should be revised

5.3 Issue 2 - Do the height provisions of the “Principal Building Requirements” of By-law 569-2013 for the RD Zone found in Ch. 10.20.40.10 which explicitly prohibit flat roofed buildings more than two storeys in height and require that three storey buildings have two opposite main walls at a two-storey height and a sloped roof:

- f) unfairly or unreasonably restrict residential development?
- g) exceed the mandate and intent of the original New Zoning By-law Project?

5.3.1 I will only comment on (f) above. In my opinion, the answer is yes for the reasons explained in the body of my Witness Statement.

5.4 **Issue 3** - Do the height provisions of the “Principal Building Requirements” of By-law 569-2013 for the Residential Zone Ch. 10.10.40.10 and RS Zone Ch. 10.40.40.10, the effect of which is to limit the construction of flat roofed buildings more than two storeys in height and to require that three storey buildings have two opposite main walls at a two-storey height and a sloped roof:

- h) unfairly or unreasonably restrict residential development?
- i) exceed the mandate and intent of the original New Zoning By-law Project?

5.4.1 I will only comment on (h) above. In my opinion, the answer is yes for the reasons explained in the body of my Witness Statement.

5.5 **Issue 4** - Given that the pre-existing maximum permitted building heights were not modified on a City-wide basis in the creation of By-law 569-2013, do the provisions of Chapter 10.5.40.10 regarding **Determining the Height of a Building** and Chapter 10.5.60.40 regarding **Determining the Height of Ancillary Buildings or Structures**, both in the Residential Zone Category, adequately reconcile the differences in the ways in which the determination of the height of a building that are found in the Zoning By-laws of the former municipalities? Specifically, is development in the parts of the City, where maximum permitted building heights were previously measured to the mid-point of a sloping roof unfairly or unreasonably restricted by By-law 569-2013?

5.5.1 For the reasons explained in the body of this Witness Statement, the new height measures of By-law 569-2013 unfairly and unreasonably restricts development.

5.6 **Issue 5** - Do the provisions of Chapter 10.5.40.20 (1) **Portion of Building to which Building Length Applies** and 10.5.40.30 (1) **Portion of Building to which Building Depth Applies** unnecessarily restrict construction of parts of a building or structure below ground?

5.6.1 Yes, for the reasons explained in the body of this Witness Statement.

5.7 **Issue 6** - Do the provisions of Chapter 10.5.40.40 (1) **Inclusion of Attic Space as Gross Floor Area in a Residential Building Other Than an Apartment Building** inappropriately result in the inclusion of floor area that is not considered to be habitable space in the Ontario Building Code in the calculation of the Gross Floor Area in a residential building?

5.7.1 Yes and it is a measure that does not contribute to the appropriate planning analysis of a housing proposal where a 3rd floor is permitted.

5.8 **Issue 7 - Do the provisions of Chapter 10.5.40.40 (3) Gross Floor Area Calculations for a Residential Building Other Than an Apartment Building inappropriately result in the inclusion of floor area in a basement in the calculation of the Gross Floor Area in a residential building?**

5.8.1 In my opinion yes.

5.9 **Issue 8 - Do the height provisions and the height exemptions provisions of the "Principal Building Requirements" of By-law 569-2013 for the Residential Zone, RD Zone and RS Zone, provide adequate flexibility in the derivation of contextually appropriate residential built form? In particular, should By-law sections 10.10.40.10 Height, 10.10.40.11 Height Exemptions, 10.20.40.10 Height, 10.20.40.11 Height Exemptions, 10.40.40.10 Height, 10.40.40.11 Height Exemptions be rewritten to include a more flexible and contextually responsive approach to the description of potential built form on a lot?**

5.9.1 In my opinion such an exercise would bring the provisions into conformity with the Official plan.

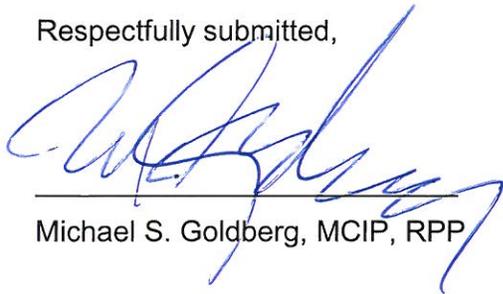
6.0 Overall Conclusions

6.1 The principal theme of my criticism of the sections discussed of By-law 569-2013 in this Witness Statement is that the By-law provisions should be purposeful and bring meaning to the planning analysis of any given proposal for an expanded dwelling or a replacement house. The provisions of By-law 569-2013 are lacking in a significant way in this regard to the extent that they should be sent back to the City to rewrite and reconsider. This should be done with greater regard for the fit of new houses in different neighbourhoods in the City, the different neighbourhood lot sizes, house sizes, and the influence those factors have on different architecture and design solutions for housing. Such an exercise would also result in some of these by-law provisions conforming with the Official Plan.

6.2 It is also my opinion, that should the above be successfully explored, there would be less need for minor variance applications, or that, minor variance application list of variances will diminish. The import of this may result is a better understanding of minor variance applications, less confusion from Notices, and potentially less conflict as between neighbours, the City and an applicant, all of which is in the public interest.

6.3 I therefore recommend to the OMB that the appeal of the OAA be granted, and that those provisions of By-law 569-2013 discussed in this Witness Statement, be sent back to the City for further review.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Michael S. Goldberg', is written over a horizontal line.

Michael S. Goldberg, MCIP, RPP

APPENDIX 1
ACKNOWLEDGEMENT OF EXPERT'S DUTY
&
CURRICULUM VITAE OF MICHAEL S. GOLDBERG



Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

ACKNOWLEDGMENT OF EXPERT'S DUTY

Case Number	Municipality
PL130592	CITY OF TORONTO

1. My name is.....MICHAEL S. GOLDBERG.....(name)
I live at theCITY OF TORONTO.....(municipality)
in the.....(county or region)
in thePROVINCE OF ONTARIO.....(province)
2. I have been engaged by or on behalf ofONTARIO ASSOCIATION OF ARCHITECTS (OAA)... to provide evidence in relation to the above-noted Board proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date..... June 2/17

.....
Signature

CURRICULUM VITAE
OF
MICHAEL S. GOLDBERG, B.A.A., M.C.I.P., R.P.P.

CURRENT EMPLOYMENT:

- GOLDBERG GROUP
LAND USE PLANNING AND DEVELOPMENT
 - 2006 TO PRESENT
 - PRINCIPAL

EDUCATION:

- Bachelor of Applied Arts, (Urban and Regional Planning)
Ryerson Polytechnical University – 1983

PROFESSIONAL AFFILIATIONS:

- Member, Canadian Institute of Planners (1985)
- Registered Professional Planner
- Member, Ontario Professional Planners Institute
- Member, Lambda Alpha International
- Member, Building Industry and Land Development Association (BILD), formerly Urban Development Institute (UDI)

PRIOR EMPLOYMENT:

- ARMSTRONG ♦ GOLDBERG ♦ HUNTER
Professionals in Planning and Development
 - 2001 to 2006
Principal
- Walker, Nott, Dragicevic Associates Limited
 - 1991 to 2001
 - Principal 1999-2001
 - Associate Principal 1996-1999
 - Senior Associate 1992-1996
 - Senior Planner 1991-1992
- Price Waterhouse (formerly Laventhol and Horwath)
 - 1988 to 1991
 - Manager of Planning and Development
- Town of Richmond Hill
 - 1986 to 1988
 - Development Planner

- Metropolitan Toronto Region
Conservation Authority
 - 1983 to 1986
 - Planner
- City of Brampton
 - 1983
 - Research Planner

EXPERIENCE:

Mr. Goldberg has project managed a range of expropriations, lease arbitrations, Municipal Amendments, and Subdivisions, and has provided expert planning testimony to the Ontario Municipal Board, the Mining and Lands Commission and the Ontario Court system. The following are representative assignments which he has been and continues to be involved in:

RETAIL COMMERCIAL

- Retail Shopping Centre, Town of Simcoe, County of Norfolk
- Outlet Centre, Niagara-on-the-Lake
- Two storey retail Rezoning and Site Plan, Bayview Ave and Broadway Ave, Toronto
- "Mills" Format Shopping Centre Amendments and Draft Plan of Subdivision, Vaughan.
- Ongoing expansion Amendment and site plans, Vaughan Mills, Vaughan
- Lifestyle and Regional Retail Centre, former Molson Park site (Park Place), Barrie
- Lifestyle and Regional Retail Centre, Niagara on the Lake
- Supermarket anchored Retail Centre Amendments, Bathurst Street and Rutherford Road, Vaughan
- Wal Mart anchored shopping centre amendments, Stratford
- Wal Mart and Home Depot anchored shopping centre amendments, Lindsay
- Supermarket anchored amendments, Taunton Road and Thornton Road, Oshawa
- Retail commercial centre ZBA, Collingwood
- Retail and Service Commercial Site Plan and variances, Rimrock Plaza, Toronto
- Power Centre amendments, Cornwall

- Wal Mart amendment, Matheson Drive and Mavis Road, Mississauga
- Upper Canada Mall Expansion, Newmarket
- Large Format Shopping Centre, Guelph
- Large Format Shopping Centre, Brantford
- Shopping Centre Investigation, Hurontario Street in West Mayfield, Caledon
- Shopping Centre Amendments, Highway 50 & Healey Road in Bolton, Caledon
- Home Depot Amendments, Heartland, Mississauga
- Local Central Area Amendments for a Supermarket anchored Centre, Oshawa
- Retail Amendments adding to the Oakville Uptown Centre, Oakville
- Power Centre Amendments, Kingston Road and Audley Road, Ajax
- Retail Amendments, Terry Fox Way and Britannia Road West, Mississauga
- Metro East Trade Centre Amendments, Pickering
- Plaza, Including a Take-Out and Drive Through Restaurant Amendments, Hurontario and Conservation Drive, Brampton
- Power Centre Amendments, Derry Road/Highway 10, Mississauga
- Home Décor Centre Amendments, Burlington.
- Shopping Centre Amendments, Highway 2, Ajax.
- Car Dealership and Trucking Centre Amendments, Consents, Minor Variances, Newmarket and East Gwillimbury
- Car Dealership Amendments, Queensplate Drive, Etobicoke.
- Powercentre and Home Depot Amendments, Sudbury.
- Powercentre Amendments, Mavis/Britannia, Mississauga.
- Shopping Centre Amendments, Hurontario/Mayfield, Brampton.
- Regional Shopping Centre Amendments, Waterloo.
- Shopping Centre Amendments, Richmond Hill.
- Warehouse Membership Club Amendments, Barrie, Brampton,

Markham, Etobicoke, Ancaster, and Kingston.

- General Planning Review, Warehouse Membership Clubs, Various Municipalities.
- Retail Commercial Amendments, Appleview Square, Burlington.
- Retail Warehouse Amendments, Kanata.
- Power Centre Amendments, Kingston.
- Retail Commercial Rezoning, Kingston.
- Shopping Centre Amendments, Ajax.
- Supermarket Amendments, Mississauga.
- Retail Site Searches in various municipalities.

INDUSTRIAL/BUSINESS PARKS

- Auto Auction Facility OPA and ZBA, Clarington
- Employment/Industrial subdivision, Ajax
- Headford Business Park Draft Plan and Amendments, Richmond Hill
- Rezoning for Office Uses in an Industrial Area, Collingwood
- Waste Recycling Facility Amendments, Newmarket
- Commercial Compost Facilities, City of Kawartha Lakes and Haldimand County
- Industrial Amendments, Orlando Corporation, Mississauga.
- Guthrie Employment Area Subdivision and Rezoning, Ajax.
- Waste Transfer Station Amendment, Etobicoke
- Business Park Amendments, Pickering.
- Secondary Plan for Industrial Development, Richmond Hill.
- Business and Office Park Secondary Plan, rezoning and subdivisions, Burlington.
- COA OMB Hearing for a Wood Chipping Operation, former City of North York

MIXED RESIDENTIAL/COMMERCIAL

- Mid-rise Official Plan and Zoning By-law amendments, 50-52 Finch Avenue East, North York
- High density Rezoning, 31 Parliament Street, Distillery District, Toronto

- High density Rezoning, 175 Dundas Street East, Toronto
- High density Rezoning, 219 & 231 Dundas Street East, Toronto
- High density Official Plan and Zoning By-law amendments, 4800 Yonge Street at Sheppard Avenue, North York
- Mid-rise Rezoning, 245-255 Sheppard Avenue West & 250-258 Bogert Avenue, North York
- Mid-rise Rezoning, 470-530 Wilson Avenue, North York
- High density Rezoning, 150-158 Pearl Street & 15 Duncan Street, Toronto
- High density Official Plan and Zoning By-law amendments, 9839 Yonge Street, 254-264 Church Street & 17 Harding Boulevard, Richmond Hill
- High density Rezoning, 2 Carlton Street, Toronto
- High density Rezoning, 8 Elm Street, Toronto
- High density Rezoning, 260 King Street East, Toronto
- High density Rezoning, Avenue Road and Eglinton Avenue West, Toronto
- High density Rezoning , 305-311 Queen Street East
- High density Rezoning, 5480 Yonge Street, North York Centre, North York
- High Density Minor Variance, 24 Mercer Street, Toronto
- High density Rezoning, 411 Church Street, Toronto
- Mid-Rise Rezoning and Site Plan, Avenue Road between Brookdale Ave and Fairlawn Ave, Toronto
- High density amendments, southeast corner of Pharmacy Road and Eglinton Ave East, Scarborough
- High density amendments, Yonge St and Sixteenth Ave, Richmond Hill
- High density amendments, Yonge St and Major Mackenzie Drive, Richmond Hill
- Mid-Rise Rezoning and Site Plan, Bayview Avenue and High Tech Road, Richmond Hill
- High density Rezoning and Site Plan, Wilson Ave and Allen Road, Toronto
- High density OPA, 30 Tippet, Toronto
- Gibson Square high density residential amendments, North York Centre, Toronto
- High density OPA, Victoria Park Ave, south of Sheppard Ave East, Toronto
- High Density redevelopment, Sheppard Ave East and Provost Drive, Toronto
- High density amendments, Hurontario St and Nahani Way, Mississauga
- High density amendments, 40 Wellesley Street East, Toronto
- Mid-rise Rezoing, Lakeshore Rd and Superior Ave, Etobicoke
- Mid-Rise Rezoning, Lawrence Avenue West and Glenmount Dr, Toronto
- High density amendments, Bathurst St and Beverley Glen, Vaughan
- Land assembly amendments, Dundas Street and Shorncliffe Road, Toronto
- Toronto Montessori School site amendments, Caledon (Bolton)
- High Density Mixed Use Amendments, 7-21 Balmuto Street, Toronto
- Phase I, City of York City Centre Zoning By-law Amendment, City of York.
- Mixed Use Amendments, Golden Mile Site, Scarborough.
- Residential Commercial Development, Alton Community, Burlington.
- Residential and Commercial Amendments, Weston Bakeries Site, Toronto.
- New Town Amendments, Queensville, East Gwillimbury.
- Mixed Residential/Commercial Amendments, Town of Richmond Hill.
- High Density Residential Amendments, Sheraton Parkway Centre, Richmond Hill.
- Mixed Use Residential/Commercial Amendments, 1 Balmoral, Toronto.

RESIDENTIAL

- Mid-rise OPA , Rezoning and Site Plan, 41 Chatsworth Drive, Toronto
- Mid-rise Rezoning and Site Plan, 250 Lawrence Avenue West, Toronto
- Multiple townhouse projects, Bayview Avenue, between Finch Avenue and Lawrence Avenue, Toronto
- Mid-rise residential building, Bayview Avenue, just north of Steeles Avenue

- Townhouse development, Red Maple Road, Richmond Hill
- Infill subdivision in Bathurst Manor area, single and semi-detached dwellings, Toronto
- Townhouse infill, 250 Manning Ave, Toronto
- Mid-rise redevelopment, Greenbelt Drive and Nob Lane, Toronto
- High Density Residential Infill, 50 Eastdale Ave and 2 Secord Ave, Toronto
- High Density Residential OPA and ZBA, King Street East, Streetcar Developments, Toronto
- Niagara on the Green Subdivision and ZBA, Niagara on the Lake
- Urban Area Expansion OPA, Ottawa
- Townhouse OPA and ZBA, Bayview Ave and York Mills Road, Toronto
- High Density Residential Amendments, Yonge Street and Sixteenth Avenue, Richmond Hill
- Medium Density Residential Amendments, Bayview Avenue and Weldrick Avenue, Richmond Hill
- High Density Residential OPA and ZBA, Wilson Ave and Tippet Road, Toronto
- Condominium Amendments, River Road, Niagara Falls
- Times Group condominium amendment, Markham Centre, Markham
- Infill low density amendment, Chapman and Scarlet Road, Toronto
- Apartment intensification amendments, Sylvan & Havelock, Toronto
- Cosmo III rezoning, high density residential, North York Centre, Toronto
- Milton Urban Area Expansion secondary Plan, Phase 2, Milton
- Mixed Density Residential Amendments, Kipling Avenue in Woodbridge, Vaughan
- Townhouse Redevelopment and Rezoning, Horner Road, former Etobicoke
- Residential Amendments and Common Area Condominium for 57 lots, Buckhorn Lake, Galway Cavendish & Harvey
- High Density Residential Amendments, Balmuto Street, Toronto
- Residential Subdivision and rezoning, Wismer Commons Area, Markham
- Residential Consent and Minor Variance, Springwater
- Residential Infill Subdivision and Amendments, Cummer Avenue, North York
- High Density Residential Amendments, Sheppard Avenue West, near Allen Road, Toronto (North York)
- Townhouse Amendments, 45 York Mills Road, east of Yonge Street, Toronto (North York)
- Rural Residential Evaluation, Region of Durham
- Urban Area Boundary Expansion for Residential Use, Bradford West Gwillimbury
- High Density Residential Amendments, Campus 2000, Beaver Creek Business Park, Richmond Hill
- High Density Residential Amendments, Sheridan Parkway Site, Richmond Hill
- Townhouse Amendments, Berry Road, Etobicoke
- Residential Amendments and Subdivision, Palmero Area, Oakville
- Senior's Residence Amendments, Centre Street, Vaughan
- Residential Amendments and Subdivision, Halton Ceramics Site, Burlington.
- High Density OPA and Rezoning, North York.
- Rural Residential Severance Opinion, Burlington.
- Eagle Heights (formerly Grindstone) Amendments and Subdivision, Burlington.
- Medium Density, Highway No. 2 and Chapman, Ajax.
- Urban Expansion and Secondary Plan, Multi Area Developments, Hamilton.
- Bronte Creek Meadows: Conversion of Burlock Office Park to a Residential Community, Burlington.
- Residential Subdivision in Berczy Village, Markham.
- High Density Residential Amendments, Tweedsmuir Avenue, City of York.
- Estate Residential Amendments, King City.
- Mixed Density Residential Amendment, London.

- Residential Subdivision and Zoning Amendment, Mississauga.
- Townhouse Amendments, Ajax.
- Lakeside Community Subdivision and Amendments, Ajax.
- Planning Status Reports for Non-Profit Housing Projects, North York and Toronto.
- High Density Residential Amendments, North York.
- Residential Subdivision and Zoning Amendment in OPA 129 Area, Richmond Hill.
- Townhouse Amendment, Richmond Hill.
- Secondary Plan of residential development within the Parkway Belt West, Burlington.

VEHICLE SERVICE STATION

- Gas Bar/Convenience Store/Car Wash Amendments, Committee of Adjustments, Site Plans, permits and Evaluations for Imperial Oil Limited, Shell Canada Products and Canadian Tire, Richmond Hill, Toronto, North York, Burlington, Oakville, Guelph, Markham, Etobicoke, Welland, Hamilton, Stoney Creek, Milton, Mississauga, Brampton, Halton Hills, Kitchener, Scarborough, Vaughan, Ajax, Whitby, St. Catherines, London, Aurora, Newmarket, Timmins, Sudbury, Bracebridge, Perth, Gananoque, Lindsay,

EXPROPRIATION/LEASE ARBITRATION

- Southeast corner of Yonge Street and Gould Street, Expropriation by Ryerson University, Toronto
- Highway 50 and Columbia Way expropriation for a high school, Caledon
- Region of York Expropriation for the Donald Cousens Parkway, Markham
- MTO Expropriation, Highway 400 and Major Mackenzie Drive, Vaughan
- MTO Expropriation, York Road and Highway 6, Burlington
- Rodick Road Extension over Highway 407 Expropriation, Markham

- MTO Expropriation for Interchange Expansion, 4078 Ellesmere Road, Scarborough
- Lease Arbitration for the Colonnade and Britannia House properties on Bloor Street, Toronto.
- Secondary School Expropriation, Hamilton.
- Lease Arbitration, Canadian Tire Site, Toronto.
- Toronto Refiners and Smelters Expropriation, Toronto.
- Expropriation site in Ataritiri, Toronto.
- Expropriation by MTO, Highway 400 and Rutherford Road, Vaughan.
- Expropriation for Vaughan Works Yard, Vaughan.

INSTITUTIONAL

- Beth Tzedec expansion, Site Plan and Minor Variances, Toronto
- Beth Torah Synagogue expansion Site Plan and Minor Variances, Toronto
- Forest Hill Jewish Centre new synagogue, Toronto
- Holy Blossom Synagogue and Leo Baeck Day School expansion, Site Plan and ZBA, Toronto
- Multi-use, Joint Secondary School Amendments and Site Plan in a Business Park Area, Ajax.
- East York Board of Education School Planning for Kosmor Amendment and Subdivision Application, East York.

OTHER PLANNING ASSIGNMENTS

- Litigation support, removal of an easement, Whitchurch Stouffville
- Litigation Support, Markham
- Ecological Gift Planning Analysis for Environment Canada, Kingsville Ontario
- Planning Analysis for Land Claim, Orillia
- Ajax Official Plan Review, Private Clients, Ajax.
- Private Crematorium Amendments, Flamborough.
- Niagara Escarpment Commission and Urban Area Expansion Amendments, Milton.

- Supreme Court of Ontario Severance Litigation, Brampton.
- Private Funeral Home Amendments, Hamilton.
- Various Site Plan and Committee of Adjustment Applications, Richmond Hill, York, Toronto, Etobicoke, North York, Markham, Oakville, Burlington, Newmarket
- Bowling Centre Amendments and Committee of Adjustment, Richmond Hill.
- Sign By-law Litigation, Hamilton.
- Ontario Court (General) Division Affidavit Evidence Relating to Mandamus Applications.

ENVIRONMENTAL PLANNING

- Harmony Creek Subwatershed Planning, Oshawa.
- Subwatershed 19 Planning Study, Credit River, Various Municipalities.
- Advisor to the Urban Development Institute (UDI) on the Rouge River Basin Management Strategy.
- While employed with the MTRCA, was responsible for all Planning Act and Conservation Authorities Act applications in Vaughan, Richmond Hill and King.