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DURHAM REGION PLANNING	
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ATTENTION	COPIES TO
FILE#	

July 7, 2017

BY COURIER

Mr. B.E. Bridgeman, MCIP, RPP
Commissioner of Planning and Economic Development
Regional Municipality of Durham
Planning and Economic Development Department
Planning Division
605 Rossland Road East
P.O. Box 623
Whitby, ON L1N 6A3

Dear Mr. Bridgeman:

**Re: Notice of Appeal
Amendment No. 107 to the Municipality of Clarington Official Plan
COPA 2016-0001
Loblaw Properties Limited and Choice Properties REIT**

We act on behalf of CP REIT Ontario Properties Limited ("CP REIT") which is the owner of the lands municipally known as 80 King Avenue West in Newcastle and 2375 Highway 2 in Bowmanville (the "Sites").

On June 19, 2017 the Commissioner of Planning and Economic Development for the Regional Municipality of Durham, as the approval authority, made a decision to approve Amendment No. 107 to the Municipality of Clarington Official Plan ("OPA 107") as adopted by Council in November 2016. OPA 107 addresses growth management and intensification with the Municipality's urban areas.

Planning consultants, Zelinka Priamo Ltd, presented written submissions on behalf of our client to the Municipality of Clarington at both the Public Information meeting held on September 12, 2016 and at the Planning and Development Committee meeting on October 24, 2016. In both of these submissions our client's concerns related to OPA 107 were made clear. Since the approval of OPA 107 our client continues to have concerns with the following policies contained with the amendment:

For **Section 5.4.3.i)**: in the comments from Zelinka Priamo Ltd. dated September 9, 2016 clarification was requested as to whether external garbage and recycling compactors would be interpreted as refuse and recycling external to the principal building, whereby a separate roofed and gated enclosure would be required. The October 24, 2016 Staff Response indicated "External garbage and recycling compactors would be interpreted as a refuse area". Based on our review of the approved OPA 107, we propose that additional flexibility should be added to the policy in order to continue to permit external garbage and recycling compactors, including those typically utilized by food stores and supermarkets; and

July 6, 2017

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For **Section 10.3.5** and the minimum height of two storeys for all new commercial development within Urban and Village Centres, Regional and Local Corridors and Waterfront Places: the comments from Zelinka Priamo dated September 9, 2016 requested flexibility be maintained for operational needs and site context and/or to allow these policies to be implemented over the longer term as development and intensification come to fruition. Clarification was requested as to whether a partial mezzanine would satisfy a minimum two storey requirement. The October 24, 2016 Staff Response indicated "A mezzanine would not be considered a second storey based on the definition in the plan for 'Storey'". Based on our review of approved OPA 107, our client continues to seek flexibility as it relates to the two storey policy.

On behalf of our client, we are hereby writing to appeal the approval of the above-referenced policies in the Official Plan Amendment to the Ontario Municipal Board, pursuant to subsection 17(36) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, for the reasons listed above. Enclosed with this notice of appeal is a cheque in the amount of \$300.00, made payable to the Minister of Finance, representing the filing fee for this appeal, and one completed Ontario Municipal Board Appellant Form (A1).

We trust the enclosed is satisfactory. Should you require any further information, please do not hesitate to contact the undersigned, or Josh Hilburt, Land Use Planner with this office at (416) 865-3087

Yours truly,

AIRD & BERLIS LLP



Eileen P.K. Costello

EPKC/jh

Encl.

AIRD BERLIS



Ontario

Environment and Land Tribunals Ontario
Ontario Municipal Board

655 Bay Street, Suite 1500
 Toronto ON M5G 1E5

Telephone: 416-212-6349

Toll Free: 1-866-448-2248

Fax: 416-326-5370

Website: www.elto.gov.on.ca

Appellant Form (A1)

Receipt Number (OMB Office Use Only)

Date Stamp - Appeal Received by Municipality

1. Appeal Type (Please check all applicable boxes) *

Subject of Appeal	Type of Appeal	Act Reference (Section)
<i>Planning Act Matters</i>		
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision by local council that adopted an OP or OPA (exempt from approval by Minister or Approval Authority)	17(24)
	<input checked="" type="checkbox"/> Appeal a decision of an Approval Authority that approved or did not approve all or part of a plan or amendment	17(36)
	<input type="checkbox"/> Approval Authority failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Council failed to adopt the requested amendment within 180 days	22(7)
	<input type="checkbox"/> Council refused the requested amendment	
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control Zoning By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Minor Variance	<input type="checkbox"/> Appeal a decision of the Committee of Adjustment that approved or refused the application	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision that approved or refused the application	
	<input type="checkbox"/> Appeal conditions imposed	53(19)
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Application for consent – Approval Authority failed to make a decision on the application within 90 days	53(14)
Plan of Subdivision	<input type="checkbox"/> Application for a plan of subdivision – Approval Authority failed to make a decision on the plan within 180 days	51(34)
	<input type="checkbox"/> Appeal a decision of an Approval Authority that approved a plan of subdivision	
	<input type="checkbox"/> Appeal a decision of an Approval Authority that did not approve a plan of subdivision	51(39)
	<input type="checkbox"/> Appeal a lapsing provision imposed by an Approval Authority	
	<input type="checkbox"/> Appeal conditions imposed by an Approval Authority	
	<input type="checkbox"/> Appeal conditions - after expiry of 20 day appeal period but before final approval (only applicant or public body may appeal)	51(43)
	<input type="checkbox"/> Appeal changed conditions	51(48)

Subject of Appeal	Type of Appeal	Act Reference (Section)
Development Charges Act Matters		
Development Charge By-law	<input type="checkbox"/> Appeal a Development Charge By-law	14
	<input type="checkbox"/> Appeal an amendment to a Development Charge By-law	19(1)
Development Charge Complaint	<input type="checkbox"/> Appeal municipality's decision regarding a complaint	22(1)
	<input type="checkbox"/> Failed to make a decision on the complaint within 60 days	22(2)
Front-ending Agreement	<input type="checkbox"/> Objection to a front-ending agreement	47
	<input type="checkbox"/> Objection to an amendment to a front-ending agreement	50
Education Act Matters		
Education Development Charge By-law	<input type="checkbox"/> Appeal an Education Development Charge By-law	257.65
	<input type="checkbox"/> Appeal an amendment to an Education Development Charge By-law	257.74(1)
Education Development Charge Complaint	<input type="checkbox"/> Appeal approval authority's decision regarding a complaint	257.87(1)
	<input type="checkbox"/> Failed to make a decision on the complaint within 60 days	257.87(2)
Aggregate Resources Act Matters		
Aggregate Removal Licence	<input type="checkbox"/> One or more objections against an application for a 'Class A' aggregate removal licence	11(5)
	<input type="checkbox"/> One or more objections against an application for a 'Class B' aggregate removal licence	
	<input type="checkbox"/> Application for a 'Class A' licence – refused by Minister	11(11)
	<input type="checkbox"/> Application for a 'Class B' licence – refused by Minister	
	<input type="checkbox"/> Changes to conditions to a licence	13(6)
	<input type="checkbox"/> Amendment of site plans	16(8)
	<input type="checkbox"/> Minister proposes to transfer the licence – applicant does not have licensee's consent	18(5)
	<input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant is licensee or has licensee's consent to transfer	
	<input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant does not have licensee's consent to transfer	
<input type="checkbox"/> Revocation of licence	20(4)	
Municipal Act Matters		
Ward Boundary By-law	<input type="checkbox"/> Appeal the passing of a by-law to divide the municipality into wards	222(4)
	<input type="checkbox"/> Appeal the passing of a by-law to redivide the municipality into wards	
	<input type="checkbox"/> Appeal the passing of a by-law to dissolve the existing wards	
Ontario Heritage Act Matters		
Heritage Conservation District	<input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation study area	40.1(4)
	<input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation district	41(4)

Other Matters

Subject of Appeal Official Plan	Act/Legislation Name Planning Act	Section Number 17(36)
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2. Location Information

Address and/or Legal Description of property subject to the appeal *
80 King Avenue West, Newcastle and 2375 Highway 2, Bowmanville.

Municipality *
Municipality of Clarington

Upper Tier (Example: county, district, region)
Regional Municipality of Durham

3. Appellant/Objector Information

Note: You must notify the OMB of any change of address or telephone number in writing. Please quote your OMB Case/File Number(s) after they have been assigned.

Last Name Cimer	First Name Joseph
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Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)
CP REIT Properties Limited

Professional Title

Email Address
Joseph.Cimer@choicereit.ca

Daytime Telephone Number * 647-640-5296 ext.	Alternate Telephone Number	Fax Number
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Mailing Address

Unit Number	Street Number * 22	Street Name * St Clair Avenue East	PO Box
City/Town * Toronto	Province * ON	Country * Canada	Postal Code * M4T 2S5

4. Representative Information

I hereby authorize the named company and/or individual(s) to represent me

Last Name Costello	First Name Eileen
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Company Name
Aird & Berlis LLP

Professional Title
Solicitor

Email Address
ecostello@airdberlis.com

Daytime Telephone Number 416-865-4740 ext.	Alternate Telephone Number	Fax Number 416-863-1515
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Mailing Address

Unit Number 1800	Street Number 181	Street Name Bay Street	PO Box
City/Town Toronto	Province ON	Country Canada	Postal Code M5J 2T9

Note: If you are representing the appellant and are **not** a solicitor, please confirm that you have written authorization, as required by the OMB's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

5. Appeal Specific Information

Municipal Reference Number(s)
COPA 2016-0001

Outline the nature of your appeal and the reasons for your appeal *
Please see attached covering letter.

Oral/written submissions to council

Did you make your opinions regarding this matter known to council?

Oral submissions at a public meeting Written submissions to council

Planning Act matters only

Applicable only to official plans/amendments, zoning by-laws/amendments and minor variances that came into effect/were passed on or after July 1, 2016 (Bill 73)

Is the 2-year no application restriction under section 22(2.2) or 34(10.0.0.2) or 45(1.4) applicable?

Yes No

6. Related Matters

Are there other appeals not yet filed with the Municipality?

Yes No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

Yes No ▼

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s)

7. Scheduling Information

How many days do you estimate are needed for hearing this appeal?

1 day 2 days 3 days 4 days 1 week

More than 1 week ► Please specify number of days

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?

1

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.)
Land Use Planner

Do you believe this matter would benefit from mediation?

(Prior to scheduling a matter for mediation, the OMB will conduct an assessment to determine its suitability for mediation)

Yes No

8. Required Fee

Total Fee Submitted * \$ 300

Payment Method * Certified cheque Money Order Solicitor's general or trust account cheque

9. Declaration

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Eileen P.K. Costello		2017/07-06

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.