

November 1, 2011

DELIVERED BY EMAIL

Rosemary MacKenzie (Clerk for Etobicoke York Community Council) and members of
Community Council.
Etobicoke Civic Centre
Main floor, 399 The West Mall
Toronto, Ontario
M9C 2Y2

Dear Sirs and Mesdames

Re: 2019579 Ontario Inc. ("**Alder Place**") development of 5485 – 5487 Dundas Street
West, Toronto (the "**Alder Lands**")

And Re: Consideration of the proposed by-laws by Etobicoke York Community Council on
November 2nd, 2011
City File No. 11-107405 WET 05 OZ (the "**Alder Application**")
Our File: 35460

Please be advised that we represent Alder Place. We are in receipt of the staff report dated October 17, 2011 prepared for the Etobicoke York Community Council, that deals not only with the zoning applications of the Alder Lands but with zoning applications for the lands owned by the "Dunshorn Landowners Group ("**Dunshorn**") abutting the Alder Lands (the "**Dunshorn Lands**" and with the Alder Lands and the Dunshorn Lands referred to collectively as the "**Block Lands**").

The final proposed zoning by-law for the Alder Application was available late last week while the proposed zoning by-laws for the Dunshorn Lands (the "**Dunshorn Applications**") were only made available late last evening. We have now had a chance to review the report and the draft bylaws for all of the Block Lands and have significant concerns with the cost sharing arrangements required between the landowners with respect to the proposed internal roads and road improvements. We believe that the conditions as now proposed will significantly and detrimentally impact on Alder Place's ability to develop its lands in an orderly and beneficial way and this will in turn have a negative impact on the orderly development of the Block Lands. Our client has indicated that it cannot accept the proposed by-laws in their present form.

The staff report is very clear with respect to the internal road and servicing arrangements that need to be the subject of the cost sharing agreement between Alder and Dunshorn (the "**CSA**"), and we do not need to re-iterate the facts regarding the roads and services in this letter.

As a preliminary note this will confirm our client's position that it has at all times and currently remains, committed to participating in a fair cost sharing arrangement with Dunshorn. Our client received an initial proposal from that group, dated September 22, 2011 and met with the group on October 17, 2011 to review the proposal. At that meeting Dunshorn made significant verbal

amendments to its proposal. Alder Place has now submitted a counter proposal to Dunshorn which addresses the additional requests from Dunshorn.

The current form of the by-laws, if passed, would have a significant impact on these discussions and on the ability of Alder Place to comply with the City's requirements to have its site use the private roads initially constructed by Dunshorn. When Alder met with the City's representatives on October 18, 2011 we were advised that the City would require that the cost sharing arrangements with respect to external sanitary sewer works and other matters required by the City as a condition of the development of the Block Lands had to be in place prior to the bills going before Toronto Council in February, 2012, assuming that same were recommended by community council. Alder Place was further advised at that time that cost sharing arrangements for the internal roads and services between the parties had to be in place prior to site plan approval of each of the applicants' lands. The mechanism for this would be the Section 37 Agreements that each applicant must enter into in order to obtain the additional density requested.

However when the bills were made available last week and yesterday evening, the position of the City had changed and notwithstanding that the conditions in each by-law appear substantially the same and therefore reciprocal in nature, they do not operate in that manner for all practical purposes. The current by-laws for the Dunshorn Lands now permit Dunshorn to proceed with its development without any cost sharing arrangement with Alder Place being in place and Alder Place must negotiate or arbitrate a cost sharing agreement with Dunshorn prior to it being permitted to apply for site plan approval.

There are a host of other practical issues that arise as a consequence of dealing with the cost sharing in this manner proposed. For instance, if Dunshorn develops and registers a condominium corporation on part of its lands and the Section 37 agreement binds title, is Alder Place negotiating with that entity on the right of access, even though that entity did not make the cost sharing payments? How does Alder Place ensure that the condominium will provide the requisite access to and easement over the private road. The ability to require that condominium corporations grant easements to the Alder Place lands in the future is an issue. This would require condominium by-laws, votes by unit owners, Planning Act consents, etc., and each of these procedures has practical limitations and issues. In addition the Dunshorn by-laws provide that Alder Place must pay for the access to the Private Roads when the access is provided. However, the easements providing legal access should be in place at the time of site plan approval or registration of a condominium or condominiums on the Dunshorn Lands. However if the easement is granted at that time and Alder Place is not developing its lands at that time then the payment is premature and the City should have another means of controlling the access issue. The City has now opted to treat the driveway on Alder Place's lands in the same fashion as the private road and will require a public access. However Alder Place is not protected in the same manner as Dunshorn as there are no obligations to enter into cost sharing arrangements with Alder Place to deal with its construction costs. In addition if Dunshorn proceeds with its development and a full signalized intersection is installed on Dundas Street, east of Shorncliffe, will this result in the full access into our client's lands being affected or altered and this may have an impact on our client's existing development. There is nothing mentioned in the by-laws or Section 37 requirements dealing with this important issue.

In our opinion there are too many negative implications and practical issues that mitigate against leaving the finalization of the cost sharing issues to later in the process pursuant to the Section 37 agreement. To be fair to both parties and in order to deal with this so that the most orderly development of the lands is accomplished, the cost sharing issues should be resolved before the by-laws are presented for passing to the City council.

Our client would agree that its development will follow those of Dunshorn and that Dunshorn should not be frustrated in its ability to move forward with its development. However by effectively back-ending the cost sharing issues, you place Alder Place in an untenable position of potentially not being able to move forward with its development. Alder Place cannot even apply for site plan approval under the current proposal while Dunshorn is not subject to that same obligation. If the intent of the by-laws is to facilitate and mandate the finalization of the cost sharing arrangements, and this does appear to be something the City wants, then our position is that the current by-laws do not accomplish that.

Since it is clear that Alder Place will not be moving towards any site plan approval at this time, the best remedy is to oblige the cost sharing arrangements to be in place before the final zoning is approved for any parties, with a caveat that if the parties cannot reach an agreement within an agreed upon time frame, that they will proceed to binding arbitration. This will require a simplified agreement between the parties which should be a condition of the zoning by-laws being passed. Alder Place is prepared to enter into such an agreement with Dunshorn to provide for a specific window to negotiate the cost sharing agreement and if the parties cannot reach such agreement to then move directly onto binding arbitration. In this way the interests of each of the applicants is protected and Dunshorn is not delayed.

Therefore we request that the by-laws be amended to reflect the foregoing.

Yours very truly
BAKER SCHNEIDER RUGGIERO LLP

David Spencer**

Per: David Spencer

** executed electronically pursuant to the Electronic Commerce Act, 2000

cc. – Messrs. Angelo and Michael Scauzillo
Mr. Kurt Franklin
Mr. Sean L. Gosnell
Mr. Barry Horosko
Mr. Brian Gallagher – City of Toronto

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