

Attachment 2 – Confidential Information – Made Public by City Council on February 7, 2011

CONFIDENTIAL PENDING APPROVAL

MEMORANDUM OF UNDERSTANDING

MEDIATION SESSION JANUARY 17 & 18, 2011

2 TRUE DAVIDSON DRIVE

OMB CASE NO: PL100346

BETWEEN:

CITY OF TORONTO (the “City”)

- and -

JASAMAX HOLDINGS LTD. (“Jasamax”)

WHEREAS Jasamax appealed its applications for official plan amendment, zoning by-law amendment and site plan approval related to the construction of a single family dwelling at 2 True Davidson Drive, Toronto (aka Block 63, 66M-2374) to the Ontario Municipal Board (the "Appeals");

AND WHEREAS the site and other lands are subject to a Subdivision Agreement, dated January 18, 1999 and an Amending Agreement, dated May 1, 2001, between Jasamax and the City (the "Subdivision Agreement");

AND WHEREAS the Subdivision Agreement contemplates certain conveyances from Block 63 to the City of Toronto and to the Toronto and Region Conservation Authority (“TRCA”) that remain outstanding but that will result in a parcel of surplus tableland surrounded on two sides by top-of-bank where the dwelling is proposed (Parts 1 and 2, 66R-21079);

AND WHEREAS the City and TRCA require completion of the conveyances and the City also requires completion of certain other obligations pursuant to the Subdivision Agreement in connection with slope stabilization work along Bayview Avenue that affects lands within and adjacent to Block 63, prior to final approval of the subject planning applications;

AND WHEREAS a hearing on the Appeals was initially scheduled for October 24-28, 2010, but on the instruction of City Council, the City Solicitor brought a motion to request, and did obtain, an adjournment to allow an opportunity for community consultation prior to Council giving direction for the purposes of the hearing;

AND WHEREAS a community meeting took place on September 30, 2010 and the hearing is now scheduled for February 8-11, 2011, being peremptory on the City, as well as the residents should they seek to obtain party status;

AND WHEREAS at its meeting December 16, 2010, Council considered a Supplementary Report from Staff, dated November 23, 2011, seeking direction for the purpose of the hearing;

AND WHEREAS Council did not adopt the Staff recommendations or the proposed official plan amendment (“OPA”) and zoning by-law amendment (“ZBA”) in a form agreeable to Jasamax but rather directed the City Solicitor to retain consultants as necessary and oppose the applications at the hearing. It also directed that Jasamax be requested to participate in mediation, arranged at the City expense, that included representatives of the area residents and TRCA;

AND WHEREAS Jasamax agreed to participate in a without prejudice mediation session and Angelo Delfino was selected as the mutually agreed upon Mediator. The sessions took place January 17 & 18, 2011 with the applicant, City, TRCA and area residents all represented;

AND WHEREAS minutes of settlement were not reached but certain principles were developed to work toward resolution which were to be set out in a Memorandum of Understanding;

AND WHEREAS for the purpose of preparation of the Memorandum of Understanding it was agreed that, following the mediation session:

- a) Jasamax would advise as to the extent to which it would agree to set the building footprint, or a portion thereof, back from the proposed no build buffer zone in the vicinity of the contemplated turret to respond to concerns raised in relation to the development setback requirement of 10m from top-of-bank as now expressed in the new Toronto Official Plan; and
- b) the City and TRCA would identify the requirements related to the respective conveyances to them of parts of Block 63 pursuant to the Subdivision Agreement to assist Jasamax with moving forward expeditiously in this regard;

AND WHEREAS it was anticipated that Jasamax and the City, as Parties to the OMB proceedings, as well as the Residents Representatives and the TRCA, as participants in the mediation, would confirm their agreement that the Memorandum of Understanding accurately reflected discussion at the time of the mediation and their intent to proceed on the basis of the same;

NOW THEREFORE the Parties agree as follows:

Principles of Approach for Resolution:

1. It is agreed that the following principles will provide a framework of the approach that the Parties propose to implement in anticipated resolution of the Appeals:
 - i) Additional or revised plans, drawings, reports, studies and clarifications required by the City (the “Supporting Submissions” as described in Clause 2 below) will be submitted by Jasamax to the satisfaction of the City in order to finalize the details of proposed OPA and ZBA revisions and to revise/update the site plan submission;

- ii) The Parties agree to proceed on the basis of modifications to the proposed OPA and ZBA through text and map schedules that relate to:
 - a. more specifically delineating the lands designated *Natural Areas* in the OPA and incorporating mandatory language in the text;
 - b. delineating the no build buffer zone as well as the building envelope in the ZBA using fixed points relative to the property boundary;
 - c. restricting any encroachment of retaining walls into the no build buffer zone to approved or restricted locations only as shown on implementing zoning by-law maps;
 - d. restricting noise attenuation fencing to approved or restricted locations relative to the no build buffer zone only as shown on implementing zoning by-law maps; and
 - e. implementing, by text and/or map(s) in the ZBA, an increased setback of the building envelope, or portion thereof, by not less than 0.6 metres at the location where the envelope currently abuts the no build buffer zone;
- iii) Jasamax agrees to make a revised submission of plans and drawings to reflect agreed upon modifications to the OPA and ZBA as well as the Supporting Submissions to the satisfaction of the City for circulation and for draft conditions of site plan approval to be prepared;
- iv) To the extent that the Supporting Submissions bring forward new information, identify discrepancies or raise issues that would necessitate unanticipated modifications to the proposal or the contemplated planning approvals, the Parties agree to make every effort to reach reasonable and mutually agreeable solutions;
- v) The City and TRCA will advise Jasamax of the requirements to be satisfied prior to the respective conveyances to them of Part 4, 66R-21079 and Part 3, 66R-21079 as contemplated by the Subdivision Agreement and will provide additional clarification and details as may be requested by Jasamax. Jasamax agrees to complete the requirements and undertake the conveyances prior to the OMB issuing a final Order approving the OPA and ZBA;
- vi) Jasamax agrees that site plan approval requirements will include the registration of restrictive covenants and/or easements, or other instrument in a form satisfactory to the City and TRCA, over the no build zone that will have the effect of prohibiting the construction of structures, the alteration of approved drainage and grading and prohibiting any action that may adversely impact adjacent slopes and valley lands;
- vii) It is the mutual desire of the Parties that the work undertaken based on these principles will result in the parties resolving issues before the OMB on a consensual basis once the OPA, ZBA and site plan submission are in final form, the site plan and draft conditions of approval settled and the required conveyances to the City and TRCA completed pursuant to the Subdivision Agreement;
- viii) The Parties are in agreement that adjourning the February OMB hearing to a date in the early summer 2011 would, subject to unanticipated issues arising as a result of the Supporting Submissions or the conveyancing requirements, provide a realistic timeframe within which to complete outstanding matters and resolve the Appeals as contemplated; and

- ix) The Parties acknowledge and agree that should issues arise in the context of implementing these principles for resolution that are unable to be resolved, a hearing may result on specifically defined aspects of the applications.

Supporting Submission Requirements:

- 2. For the purpose of finalizing the OPA and ZBA as contemplated and completing site plan submissions, Jasamax agrees to provide, to the satisfaction of the City and TRCA, as applicable, the following Supporting Submissions:

Related to preparation of modified OPA, ZBA and site plan:

- i) update and revise the Noise Impact Study Addendum #2 prepared by Marshall Macklin Monaghan, dated September 10, 2004 to reflect changes to applicable Ministry of Environment noise objectives, proposed grading and building location as well as to update recommendations related to construction detail and the location of proposed noise attenuation fencing relative to the top-of-bank and property boundaries;
- ii) submit revised site plan drawings that illustrate front drainage toward True Davidson Drive at a slope of not less than 2%, that include information related to 100 year storage volumes (required/available), that respect the current City minimum tree protection zone requirements and that includes the location and design details of proposed retaining walls and proposed noise attenuation fencing;
- iii) submit an analysis prepared by a qualified engineer illustrating satisfactory capacity of any proposed drainage swale on the south side of the proposed development lot adjacent to the Bayview Avenue slope, including at the location where the no build buffer zone and the building envelope are in close proximity;
- iv) provide current topographic information on a plan signed by a surveyor that includes the proposed property line and surrounding lands;
- v) provide cross sections of the slopes surrounding the proposed development lot taken at 5 m intervals and perpendicular to the slope face from the ditch of Bayview Avenue or from Cudmore Creek, as applicable, and showing the proposed property lines, the intersection of the 2:1 slope line with existing ground within the proposed lot, the existing ground surface, the proposed future site grading, the location of proposed structures and foundation, the location of proposed retaining walls and noise attenuation features and illustrating the depth of footings required within the proposed lot;
- vi) update and revise the Arborist Report prepared by Tree Specialists Inc, dated April 19, 2008 as well as Drawing VA1-BLK63 entitled "Tree Protection and Landscape Plan" revise dated May 7, 2008 to clearly illustrate proposed lot boundaries, minimum tree protection distances based on the current City of Toronto Protection Policy and Specifications for Construction Near Trees, proposed protection measures, the location of the no build zone, any change in tree conditions as well as the location of proposed retaining walls and noise attenuation features. Agreement on Notes to the plans related to restrictions within the no build zone will also be required; and

- vii) such other documentation that may be demonstrated to be reasonably required as a result of the submission and review of the foregoing by the City and TRCA, as applicable.

Related to completion of site plan submission and finalization of draft approval conditions:

- viii) in connection with the revised site plan submission, Jasamax agrees to also address other requirements that have been the subject of ongoing discussions, including:
 - a. provision of certifications from the consulting engineer pursuant to the Subdivision Agreement that the plan conforms to the Plans and Specifications specific to the reverse grade driveway;
 - b. revision or update to applicable Plans and Specifications identified in the Subdivision Agreement with respect to development within Block 63 on the proposed surplus parcel;
 - c. inclusion of appropriate Notes on plans and drawings related to grading and drainage and restrictions/obligations related to the no build zone; and
 - d. details for protection of the adjacent slopes during construction of the noise attenuation fencing and retaining wall, including any proposed construction phasing.

City Conveyance Requirements (Part 4, 66R-21079):

- 3. Prior to the planning approvals contemplated, Jasamax agrees to complete the conveyance of Part 4, 66R-21079 to the City, for nominal consideration, free and clear of encumbrances and at its expense in accordance with the Subdivision Agreement, to the satisfaction of the City Solicitor. The requirements that must be completed to the satisfaction of the City prior to the conveyance will include, but not be limited to:
 - i) Submission by Jasamax of as constructed drawings and details as are required by Technical Services pursuant to the Subdivision Agreement related to all slope stabilization works undertaken along Bayview Avenue adjacent to the subdivision lands (66M-2374) (the "Bayview Slope Works");
 - ii) Drawing N1, the "Bayview Avenue Slope Naturalization Plan", dated April 25, 2008, shall be revised to include the boundary of the proposed development lot and be updated as necessary to reflect the most recent as constructed Bayview Slope Works, changes to tree condition and accurate references relating to the type and number of species now planted on the completed slope ("Naturalization Landscaping");
 - iii) An inspection undertaken of the Bayview Avenue slope on a date to be determined by the City based on spring thaw conditions but not earlier than May 1, 2011, shall have been undertaken to confirm that the condition of the Bayview Slope Works and Naturalization Landscaping following the winter 2010-2011 is satisfactory for acceptance;
 - iv) An amendment to the Subdivision Agreement shall have been authorized by City Council and entered into between Jasamax and the City with respect to the terms and conditions

of acceptance of the Bayview Slope Works and Naturalization Landscaping as they relate to the original Remediation Works defined and contemplated by the Subdivision Agreement. The amending agreement shall be registered on title to Block 63, as well as such other lands as may be determined appropriate, to the satisfaction of the City Solicitor;

- v) All of the Bayview Slope Works and Naturalization Landscaping shall have been accepted by the City in accordance with the Subdivision Agreement; and
- vi) All conveyancing requirements as set out in the Subdivision Agreement or as required by the City Solicitor shall have been completed to the satisfaction of the City Solicitor.

TRCA Conveyance Requirements (Part 3, 66R-21079):

- 4. Prior to the planning approvals contemplated, Jasamax agrees to complete the conveyance of Part 3, 66R-21079 to the TRCA, for nominal consideration, free and clear of encumbrances and at its expense in accordance with the Subdivision Agreement and all standard TRCA acquisition requirements, to the satisfaction of the TRCA legal counsel. Jasamax agrees to contact TRCA directly to finalize details and establish a program for completion of all requirements.

Revised Site Plan Submission:

- 5. Jasamax agrees that it will be necessary to make a revised submission of site plans and drawings to reflect agreed upon modifications to the OPA and ZBA as well as the Supporting Submissions to the satisfaction of the City for circulation and comment. It is contemplated that draft conditions of approval will then be prepared for submission to the OMB and may include preapproval conditions (ie. entering into the City's standard site plan agreement, implementation of sediment control and tree protection measures, provision of financial security for tree protection, registration of restrictive covenants applicable to the no build zone) which the City would require to be satisfied prior to an Order of the OMB granting final site plan approval.

Restrictive Covenants over No Build Zone:

- 6. The Parties agree that at the time of the conveyances to the City and TRCA referred to in clauses 3 and 4 above, satisfactory arrangements shall be in place for the immediate registration of restrictive covenants and/or easements, or other instruments in a form satisfactory to and in favour of the City and TRCA, as applicable, over the no build buffer zone that have the effect of prohibiting the construction of structures, the alteration of approved drainage and grading and any action that may adversely impact adjacent slopes and valley. The Site Plan Agreement will include similar conditions. Jasamax agrees, at its expense, to prepare and deposit a reference plan, satisfactory to the City and TRCA, describing the lands to be subject to the restrictive covenants and/or easements.

Ontario Municipal Board Proceedings:

- 7. It is the intent of the Parties to proceed with the steps identified herein, to request, on consent, an adjournment of the February hearing and to reschedule to a mutually agreeable date in the early

summer (the Parties contemplate potentially a date in June) subject to OMB availability. At that time, if all matters have been completed and documentation finalized, it is expected that the Appeals could be fully resolved on a consent basis. In the alternative, if matters remain outstanding, as necessary, the OMB could be spoken to or requested to make a determination on any specific unresolved issue at that time.

Time of the Essence:

8. The Parties acknowledge and agree that the timing contemplated in Clause 7 contemplates that they act reasonably and efficiently in implementing all stages of the proposed resolution. To this end, Jasamax agrees to have submitted, to the satisfaction of the City, all necessary Supporting Submissions and as constructed drawings related to the Bayview Slope Works and Naturalization Plan as well as to have established a program for completion of its conveyance requirements with TRCA, not later than one month from the date hereof.

Party Approval Required:

9. It is acknowledged and agreed that this Memorandum of Understanding is subject to the approval of Jasamax and subject to the approval of City Council at its meeting on February 7 and 8, 2011, and to such further direction as may be required thereafter.

Confidentiality:

10. The Memorandum of Understanding will remain confidential by the Parties and the participants in the mediation pending confirmation by the City Solicitor of final approval by Jasamax and the City.

Reasonableness of Parties:

11. The Parties agree to act reasonably in furtherance of the principles articulated in the Memorandum of Understanding and agree to undertake such further actions and provide information which will assist in this respect.

Dated this 4th day of February, 2011

Jasamax Holdings Ltd.

City of Toronto