

WITHOUT PREJUDICE SETTLEMENT OFFER

DENTONS

Patrick J. Devino

patrick.devino@dentons.com
D +1 416 883 4515Salans FMC SNR Denton
dentons.comDentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1T +1 416 883 4611
F +1 416 883 4592

December 6, 2013

File No. 535410-1

**DELIVERED BY COURIER
AND VIA EMAIL (sbradley@toronto.ca)**Legal Services
Planning & Administrative Tribunal Law
City of Toronto
26th Floor, Metro Hall
55 John Street
Toronto ON M5V 3C6**Attention: Mr. Stephen Bradley**

Dear Mr. Bradley:

**RE: Nos. 361 The West Mall and 24 Eva Road
- Ontario Municipal Board Appeal
- Without Prejudice Settlement Offer**

As you know, two weeks of Ontario Municipal Board hearing time have been reserved commencing on February 3, 2014.

Following extensive discussions between my client's representatives and City staff, on a without prejudice basis, I would like to propose the following settlement offer. For the sake of consistency, I will use the numbering system contained in the Staff Report dated February 6, 2013:

1. The Zoning By-law Amendment to be agreed upon is based upon the revised set of plans prepared by Turner Fleischer Architects Inc. and dated November 26, 2013. The form of zoning by-law will be generally consistent with the form currently being reviewed with City staff, as submitted December 3, 2013 and attached hereto, but will be modified to incorporate,
 - a. any modifications as may be required for the improvements to the existing rental apartment buildings resulting from paragraph 2(a)b. of this letter,
 - b. any modifications to the below grade garage structure for tree plantings, and the possible placement of a holding designation on the south west corner regarding the MTO setback requirements or some acceptable alternative, either (i) as may be agreed upon by our client and City staff prior to the OMB hearing, or (ii) in the event of no agreement being reached on those two points, then as determined by the Ontario Municipal Board with the

understanding that the other settlement terms would remain binding regardless of the decision of the Board on those two issues,

- c. any technical requirements arising from a detailed review by Planning and Buildings staff; and
 - d. incorporation of Section 37 matters in accepted City format.
2. With respect to Section 37 matters, our client would agree as follows:

(a) The following matters and community benefits:

- a. agreeing to rental tenure of the existing rental apartment buildings for a minimum of twenty (20) years;
- b. improvements to the existing rental apartment buildings including:
 - i. creation of indoor residential amenity on the second floor in the existing building with direct access to the landscaped parkade rooftop generally as shown on the revised drawings with possible further indoor residential amenity space, either: A) as may be agreed upon by our client and City staff to the satisfaction of the Chief Planner prior to the OMB hearing; or B) in the event of no agreement being reached, then as determined by the Ontario Municipal Board with the understanding that the other settlement terms would remain binding regardless of the decision of the Board on this issue; and
 - ii. the improvements outlined in the following chart:

Improvements for Existing Rental Property	
Outdoor Amenity Space	Outdoor amenity space on top of existing parkade rooftop as identified in the table Landscape Plan (R04-131025) / LPL#2012-46 provided on November 7 th , 2013
Lobby & Common Area	Common areas including hallways, stairwells and doors will be repainted (as ongoing maintenance) Install new common area carpeting
Laundry	Laundry rooms will receive new paint, plaster where warranted along with new table (5ft), 4 chairs and landscape artwork (3). Custom shelving to be installed (2 sets)

Security, Safety And Access	Install additional video surveillance cameras in underground garage and outside common areas. Install in both buildings thob and/or card access system for common area doors.
Bicycles	We will create a bicycle room for approximately 20 bikes located on car port level A
Redesign/Relocation of Facilities	Fence in garbage containers using pressure treated wood.

which improvements in I) and II) above shall be completed to the satisfaction of the Chief Planner prior to the severance of the lands and issuance of the first building permit for a new building within the proposed development and, further, neither the cost of such improvements or the cost of development will be passed through in any form, including increases in rents, to the tenants of the existing buildings.

- c. a payment in the total amount of \$1,700,000.00 (together with any increases to reflect increases in the Construction Price Statistics between January 1, 2014, and the delivery of such payment). The \$1.7 million would be prorated among the three phases of the project broken down by the amount of gross floor area and payable at the stage of each above-grade permit for each building as that permit is issued. The \$1.7 million will be as follows (or with such other allocation as may determined by City Council at the time of payment):
 - i. \$1,000,000.00 for parkland improvements to Dennis Flynn Park, including but not limited to improvements to accommodate additional recreation facilities such as a mini-soccer fields, mini-basketball courts as well as improved pedestrian walkways and improved tree planting and park lighting;
 - ii. a minimum \$350,000.00 of "public art" to be located on the subject property and provided in accordance with the City's standard Section 37 Public Art provisions, and
 - iii. \$350,000.00 for capital improvements to existing non-profit childcare facilities in the area including but not limited to Eatonville Public School .
 - d. submission of a Construction Mitigation Plan and Tenant Communication Plan prior to issuance of any building permit for the development and implementation, all to the satisfaction of the Chief Planner.
- (b) Delete. [It has been agreed with Planning staff that it is not necessary for lands to be conveyed at this time since the lands in questions are already shown in the approved Official

Plan policies and would be required to be dedicated at Site Plan Approval stage.]

- (c) Impose a Holding symbol (H) on any part of the site that does not have direct vehicular access to Eva Road or The West Mall, to be lifted upon completion of the proposed north-south road or permanent closure by MTO of the ramps connecting Eva Road and Highway 427 or other measures to the satisfaction of the Executive Director, Engineering and Construction Services, to provide vehicular and servicing access.
- (d) The owner to provide detailed cost estimates and adequate financing for 50% of the cost of constructing the proposed north-south road adjacent to their lands to the satisfaction of the Executive Director, Engineering and Construction Services prior to obtaining Site Plan Approval for the third phase, being the building adjacent to the proposed north-south road.
- (e) Delete. [Since conveyance of the road lands will not occur until the Site Plan Approval stage, there is no need to make provision for interim landscaping and maintenance. The existing situation whereby the owner maintains the existing landscaping on this property will remain until such time as the land is conveyed to the City.]

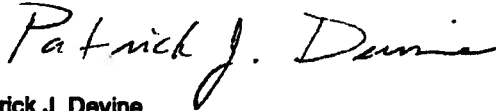
In further support of our without prejudice settlement offer, we will prepare Minutes of Settlement in the form attached, which will incorporate the terms as set out above as Appendix "1" and the settled form of the Draft Zoning By-law Amendment as Appendix "2". It should be noted that the Draft Zoning By-law Amendment that is currently being settled between my client's consultants and City planning staff has not been reviewed by the City's Buildings Department. It would be our expectation that we would make our best efforts to resolve any such revisions as may arise from their review before the settlement hearing date of February 3, 2014.

Therefore, on the basis of this without prejudice settlement offer, I would anticipate that you would seek instructions from City Council at its meeting to be held on December 16 and 17, 2013 to enter into the agreed-upon Minutes of Settlement, so that City Council would support approval of the proposed draft By-law, subject however to the understanding that there may be a need for further revision, as contemplated herein, including technical revisions to the draft By-law arising out of the future Buildings Department comments. Accordingly, it would be prudent to include in your report to Council a request for authorization from Council to allow you the latitude to make any necessary technical or other revisions required in order to agree upon a Zoning By-law Amendment which will allow for the issuance of a building permit for the enclosed plans.

Should you require anything further with respect to this matter, kindly contact me at your earliest convenience.

Yours very truly,

Dentons Canada LLP



Patrick J. Devine

PJD/mp
Enclosures

cc: Mr. Mark Piel

Appendix "2" To Minutes of Settlement
Draft Zoning By-law

ZONING BY-LAW AMENDMENT

CITY OF TORONTO

BY-LAW No. XXXX

To amend Chapters 320 and 324 of the Etobicoke Zoning Code with respect to lands municipally known as 361 The West Mall and 24 Eva Road.

WHEREAS authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. That the zoning map referred to in Section 320-5, Article II of the Zoning Code, and originally attached to the Township of Etobicoke By-law No. 11,737, be and the same is hereby amended by changing the classification of the lands located in the former Township of Etobicoke as identified within the heavy black lines on Schedule "A" annexed hereto from Fourth Density Residential Zone (R4) as amended by By-laws 716, 813 and 1683 to Sixth Density Residential Zone (R6), provided the following provisions shall apply to the development of the Lands in Schedule "A".
2. Notwithstanding Sections 320-18., 320-76., and 320-77. of the Etobicoke Zoning Code, the following development standards shall apply to the (R6) Lands described in Schedule "A" attached hereto.
3. **Definitions**

The provisions of Section 304-3 Definitions of the Etobicoke Zoning Code shall apply unless inconsistent with the provisions of this By-law. For the purposes of this By-law the following definitions shall apply:

"Accessory Building/Structure" means a subordinate building or structure, not used for human habitation, located on the same lot as the main building, and shall exclude fences;

"Building Envelope" means the building area permitted within the setbacks established in this By-law, as delineated generally on Schedule "B" attached hereto;

"Established Grade" means 136.50 metres above sea level;

"Floor Plate Area" means the gross horizontal floor area of a single floor measured from the exterior walls of a building or structure;

“Gross Floor Area” means the total area of all floors in a building between the outside faces of the exterior walls except that the following areas shall be excluded: Mechanical Floor Area; unenclosed balconies; all floor areas at least 0.6 metres below Established Grade; up to 2.0 square metres per dwelling unit for Indoor Amenity Areas; storage areas; all below grade, grade related and above-grade areas devoted to parking;

“Height” means the vertical distance between Established Grade and the highest point of the roof surface of the building, but shall exclude mechanical equipment, mechanical penthouses, parapets, architectural elements, stairs and stair enclosures, located on the roof of such building provided the maximum height of the top of such elements is not higher than 5 metres above the roof line of the said building;

“Indoor Amenity Area” means an indoor common area or areas which are provided for the use of residents of the buildings and their guests, as further described in Section 10 of this By-law, for recreational or social purposes;

“Lands” means the Lands delineated with a heavy dashed line as shown on Schedule “A” attached hereto; and for the purposes of this By-law shall be based on the Lands prior to land dedications and conveyances;

“Landscaped Open Space” means a yard or court on a lot located at grade, including land above an underground parking area, or an above ground parking deck, which is suitable for landscaping. It shall include any part of the lot occupied by accessory recreational buildings, surfaced walks, patios or similar areas, sports or recreational areas and ornamental or swimming pools, but shall exclude driveways and ramps, and motor vehicle parking areas;

“Mechanical Floor Area” means a room or enclosed area, including its enclosing walls within a building or structure above or below grade that is used exclusively for the accommodation of heating, cooling, ventilating, electrical, mechanical equipment, elevator shafts, or telecommunications equipment that serves only such building;

“Minor Projections” means minor building elements which may project from the main wall of the building into required yards and beyond the Building Envelopes, including roof eaves, window sills, railings, cornices, guard rails, balustrades, porches, balconies and bay windows, doors, canopies, exterior stairs and covered ramps, parapets and vents to a maximum projection of 1.5 metres;

“On-Site Loading Spaces” means an outdoor loading space for a proposed apartment building, as further described in Section 9(c) and Section 9(d) of this By-law, with a length of at least 13.0 metres, a width of at least 4.0 metres and a vertical clearance of at least 6.1 metres;

“Outdoor Amenity Area” means an outdoor common area or areas, which are provided for the use of residents of the buildings, and their guests, as further described in Section 10 of this By-law, for recreational or social purposes; and

“Tower Elements” means the portion of proposed apartment building C and the portion of proposed apartment building D greater than 6 storeys above Established Grade and the portion of proposed apartment building E greater than 5 storeys above Established Grade.

4. Permitted Uses

No buildings or structures shall be erected or used on the Lands, except for the following uses:

- (a) Existing apartment buildings and parking garage as shown on Part 2 of Schedule "A" attached hereto;
- (b) Proposed apartment buildings as shown on Part 1, Part 2 and Part 3 of Schedule "A" attached hereto;
- (c) Accessory Buildings/Structures and uses including those permitted under Section 320 – 76.F. of the Etobicoke Zoning Code and shall include covered ramps, exterior stairs, and garbage enclosures and ventilation shafts; and
- (d) Nothing in this By-law shall prevent the use of the Lands for a temporary sales office for the purpose of marketing and sales related to the proposed apartment building uses permitted on the Lands, on either Part 1, Part 2 or Part 3 of Schedule "A" attached hereto.

5. Gross Floor Area

The maximum Gross Floor Area, as defined herein, permitted on the Lands shall be 75,200 square metres.

6. Maximum Density

The maximum floor space index permitted on the Lands shall be 3.47 times the area of the Lands.

7. Maximum Height

The maximum building heights to be permitted on the Lands shall be in accordance with heights shown on Schedule "B", attached hereto.

8. Setbacks / Floor Plate Restrictions / Building Envelope

- (a) No building or structure within the Lands shall be located other than within the Building Envelopes shown on Schedule "B" attached hereto;
- (b) Notwithstanding the provisions of this By-law, the maximum Floor Plate Area for each Tower Element of the proposed apartment building shall be where indicated on Schedule "B" attached hereto;
- (c) Any portion of any building or structure which is located below the finished exterior ground level immediately adjoining such building or structure shall not encroach beyond the property lines of the Lands but may be located outside of the Building Envelope for that building or structure, however, in the case of the proposed apartment building fronting on The West Mall such building or structure located below the finished exterior ground level shall also be a minimum depth of 1.5 metres measured from Established Grade;

- (d) Permitted Accessory Buildings/Structures, ground floor canopies, wheelchair and covered ramps, exterior stairs, parapets and railings related to underground parking structures, vents, temporary sales offices, fences, safety railings and other landscape features shall not encroach beyond the property lines of the Lands but shall be permitted outside the Building Envelope, however, a temporary sales office shall not be permitted outside the Building Envelope fronting on Eva Road; and
- (e) Minor projections shall not be permitted to encroach beyond the property lines of the Lands but shall be permitted to project outside the Building Envelope.

9. Parking and Loading Requirements

Notwithstanding the provisions of Section 320–18.B. and 320–18.C. and Sections 320–76.G. of the Etobicoke Zoning Code, the following requirements shall apply to the Lands:

- (a) Vehicle parking for residential apartment uses on Part 1 and Part 3 of the Lands as shown on Schedule “A” attached hereto shall be provided on the following basis:
 - (i) a minimum ratio of 0.8 stalls per dwelling unit for bachelor units;
 - (ii) a minimum ratio of 0.9 stalls per dwelling unit for units with 1 bedroom;
 - (iii) a minimum ratio of 1.0 stalls per dwelling unit for units with 2 bedrooms;
 - (iv) a minimum ratio of 1.1 stalls per dwelling unit for units with 3 or more bedrooms; and
 - (v) a minimum ratio of 0.2 stalls per dwelling unit shall be provided and reserved for the exclusive use of visitors;
- (b) The existing apartment building on Part 2 of the Lands as shown on Schedule “A” attached hereto shall provide parking at a minimum ratio of 1.25 stalls per dwelling unit. Of those spaces 0.15 stalls per dwelling unit shall be provided for the exclusive use of visitors and be clearly signed for that purpose;
- (c) The proposed apartment buildings on Part 1 of the Lands shall provide a minimum of two On-Site Loading Spaces and if the building is constructed in phases not less than 1 such loading space shall be provided per phase;
- (d) The proposed apartment buildings on Part 3 of the Lands shall provide a minimum of one On-Site Loading Space; and
- (e) Long-term bicycle parking will be provided at a ratio of 0.7 spaces per unit for all buildings on Part 1 and Part 3 of the Lands as shown on Schedule “A” attached hereto. Short-term bicycle parking will be provided at a ratio of 0.08 spaces per unit for all buildings on Part 1 and Part 3 of the Lands as shown on Schedule “A” If the buildings are constructed in phases the spaces provided will be in proportion to the number of units built.


10. Area Requirements

The following area requirements apply to the Lands:

- (a) **Landscaped Open Space:** a minimum 45% of the lot area shall be reserved for Landscaped Open Space;
- (b) **Indoor Amenity Space for proposed apartment buildings:** a minimum 2.0 square metres per dwelling unit of Indoor Amenity Space will be provided for the proposed apartment buildings on Part 1, Part 2, and Part 3 of the Lands as shown on Schedule "A" attached hereto for the exclusive use of the residents of the proposed apartment buildings and their guests;
- (c) **Outdoor Amenity Space for existing apartment buildings:** a minimum 2.0 square metres per dwelling unit of Outdoor Amenity Space will be provided for the existing apartment buildings on Part 2 of the Lands as shown on Schedule "A" attached hereto for the exclusive use of the residents of the existing apartment buildings and their guests; and
- (d) **Outdoor Amenity Space for proposed apartment buildings:** a minimum of 2.0 square metres per dwelling unit of Outdoor Amenity Space shall be provided for the proposed apartment buildings on Part 1, Part 2, and Part 3 of the Lands as shown on Schedule "A" attached hereto for the exclusive use of the residents of the proposed apartment buildings and their guests.

11. Section 37

Pursuant to Section 37 of the *Planning Act* and subject to compliance with provisions of this By-law, the increase in height and density of development on the Lands is permitted in return for the provision by the Owner, at its sole expense, of the following facilities, services and matters to the City on the terms set out in an agreement pursuant to Section 37 of the *Planning Act* described in clause (b) below:

- (a) **Prior to the issuance of an above grade building permit, the Owner shall:**
 - (i) 
- (b) **The Owner shall enter into one or more agreements with the City pursuant to Section 37 of the *Planning Act* which shall be registered on title to the Lands by the City to secure:**
 - (i) **Matters provided for in section 11(a);**
 - (ii) **The owner of the Lands shall, in the agreement referred to in section 11(b), acknowledge that if any building or structure, including Minor Projections, are to be located within a 14 metre setback area adjacent to property owned by the Ministry of Transportation, then the owner of the Lands requires a permit from the Minister to construct any building or structure, including Minor Projections, within the 14 metre setback area prior to the issuance of a building permit as defined in the *Building Code***

- (i) permanent closure by the Ministry of Transportation of the ramps connecting Eva Road and Highway 427; or
- (ii) provision of street access to either Civic Centre Court or the West Mall for vehicular traffic generated by the development of the Lands shown on Schedule "A" attached hereto with a zone symbol that possesses an "H" holding symbol prefix; or
- (iii) other road alterations, traffic improvements and/or Transportation Demand Management measures satisfactory to the Executive Director of Engineering and Construction Services.

19. Servicing

No person shall erect or use any building or structure on Part 1 as shown on Schedule "A" unless the following municipal services are provided to the lot line for said Part and the following provisions are complied with:

- (a) all watermains and sanitary sewers, and appropriate appurtenances, have been installed and are operational; and
- (b) all new public roads adjacent to said Part have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway.

No person shall erect or use any building or structure on Part 3 as shown on Schedule "A" unless the following municipal services are provided to the lot line for said Part and the following provisions are complied with:

- (c) all watermains and sanitary sewers, and appropriate appurtenances, have been installed and are operational; and
- (d) all new public roads adjacent to said Part have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway.

20. Chapter 324, Site Specifics, of the Zoning Code, is hereby amended to include reference to this By-law by adding the following to Section 324-1, Table of Site Specific By-laws:

BY-LAW NUMBER ADOPTION DATE	DESCRIPTION OF PROPERTY	PURPOSE OF BY-LAW
XXXX-2013 XX, 2013	Lands municipally known as 361 The West Mall and 24 Eva Road	To rezone the Lands from R4 (Special) to R6 to permit the construction of three new apartment buildings and the retention of approximately 280 existing rental apartment units on the property with a total maximum gross floor area limit of 75,200 square metres.

ENACTED AND PASSED THIS X DAY OF XX, A.D. 2013

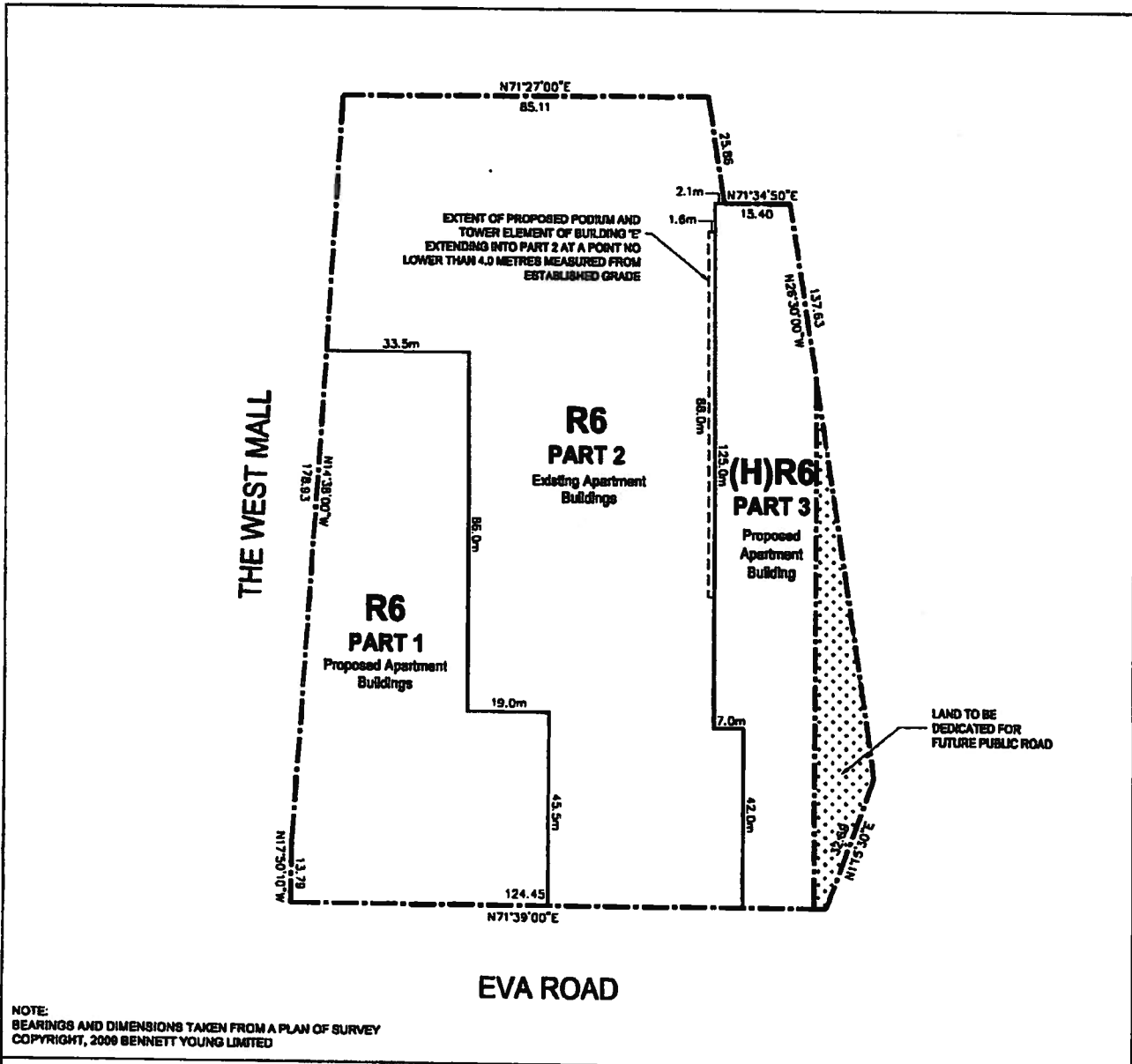
ROBERT FORD
Mayor

ULLI S. WATKISS
City Clerk


(Corporate Seal)



Schedule 'A' BY-LAW



**PART OF BLOCK B PLAN M-865 AND ALL OF BLOCK C PLAN M-887
CITY OF TORONTO (FORMERLY CITY OF ETOBICOKE)**

APPLICANT'S NAME:		
ASSESSMENT MAP:	ZONING CODE:	
		 DRAFT BY TF: DECEMBER 3, 2013

