

TE21.13.4

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February 19, 2013

Mayor Ford and Members of Council
Toronto City Hall
100 Queen Street West
Toronto ON M5H 2N2

Attention: City Clerk

**Re: 40 The Esplanade
City Initiated Amendment to Site Specific Zoning By-law (the "Staff Report")
Item TE21.13**

We are writing further to our September 5, 2012 letter to the Toronto and East York Community Council concerning this matter (copy attached). In addition to representing the developer of the property at 38-40 The Esplanade (the "**Property**"), Scott & Esplanade Residences Inc. (the "**Developer**"), we are also writing on behalf of Scott & Esplanade Holdings Inc. (the "**Commercial Owner**").

In our September 5, 2012 letter, we expressed opposition to the proposed Zoning By-law Amendment and changes to the existing Section 37 Agreement detailed in the Staff Report.

We understand that the Staff Report has been forwarded by Toronto and East York Community Council to City Council without recommendations, after the Public Meeting in this matter was postponed on a number of occasions.

At this time, prior to City Council's consideration of the Staff Report, we also note that the Commercial Owner is the successor-in-title (along with others) of the Developer and a current owner of the Property. To date, City Staff have not discussed the proposed Zoning By-law Amendment or the changes to the Section 37 Agreement with the Commercial Owner.

For the reasons set out in our September 5, 2012 letter, the Commercial Owner also opposes the proposed Zoning By-law Amendment and the changes to the Section 37 Agreement.

Yours truly,

McCarthy Tétrault LLP

Per:



Christopher J. Tanzola

c. Scott & Esplanade Holdings Inc./Scott & Esplanade Residences Inc.



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September 5, 2012

City Clerk
Toronto and East York Community Council
100 Queen Street West
Toronto ON M5H 2N2

Attention: Rosalind Dyers, Administrator

**Re: 40 The Esplanade
City Initiated Amendment to Site Specific Zoning By-law
Final Report (the "Staff Report")
Toronto and East York Community Council – Item TE18.10**

We are the solicitors for Scott & Esplanade Residences Inc., the developer of the property at 38-40 The Esplanade (the "**Developer**") and a party to the 2006 Section 37 Agreement with the City of Toronto (Instrument No. AT1168989) (the "**Section 37 Agreement**"), which City of Toronto Staff are recommending be amended

Please be advised that, the Developer does not support the proposal to amend Zoning By-law No. 26-2007 (the "**Site-Specific ZBA**"), nor the proposed amendment to the Section 37 Agreement. To date, City Staff have not contacted our client to discuss this matter.

As required by the Site-Specific ZBA, the Developer entered into the Section 37 Agreement with the City, which required, among other community benefits, a payment of \$700,000 to be used for a new municipal park at 125 The Esplanade. The Developer agreed to provide this contribution, since the creation of a new park at this location would be a benefit to the development at 38-40 The Esplanade.

The allocation of the Developer's contribution of \$700,000 to a new municipal park at 125 The Esplanade was specifically worked out between the City and the Developer through the planning process and negotiations between the parties. As acknowledged in the Staff Report, the City cannot unilaterally redistribute these funds, but is required to go through a similar planning and negotiation process.

The Staff Report refers to physical proximity as the justification for reallocating the Developer's \$700,000 contribution from its original intended purpose towards streetscape improvements on Market Street. However, the Staff Report does not explain why it is necessary to redistribute the Section 37 funds collected from the 38-40 The Esplanade development when there is current development activity occurring on Market Street and in the immediate vicinity. The Staff Report is also unclear on how funding for the municipal park at 125 The Esplanade will be achieved if

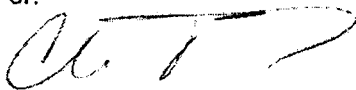
the \$700,000 is redirected to Market Street and other streetscape improvements, except to say that funding for the municipal park may be obtained in the future.

As the Developer has not been a part of the discussions on this matter and in the absence of a clear planning rationale for the proposed Zoning By-law Amendment and amendment to the Section 37 Agreement, the Developer requests that Community Council not approve the recommendations contained in the Staff Report.

Yours truly,

McCarthy Tétrault LLP

Per:



Christopher J. Tanzola

Partner

c. Scott & Esplanade Residences Inc.