



## STAFF REPORT ACTION REQUIRED

### 51 Drewry Avenue, 8-28 Inez Court – OMB Hearing Proposed Settlement and Request for Direction

<b>Date:</b>	March 25, 2014
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Wards 23 and 24 - Willowdale
<b>Reference Number:</b>	08 145788 NNY 23 OZ

#### SUMMARY

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This report advises City Council of a settlement proposal received from Yolanda Flanders Developments Limited ("Yolanda Flanders") in respect of its outstanding Ontario Municipal Board appeals and pending legal action against the City arising from its applications for approval of 57 townhouses and 483 high-rise apartment units at 51 Drewry and 8-28 Inez Court. The report seeks Council's endorsement of the settlement proposal in principle. Further, it seeks direction for staff with respect to the further processing of this matter.

The settlement proposal requires a general amendment to the policies of the North York Centre Secondary Plan in order to permit the conveyance of parkland to the City (over and above any statutory requirements) to qualify as a Section 37 density incentive. Accordingly, direction is sought for staff to bring forward a preliminary report on a proposed general Official Plan Amendment to amend the Section 37 and Parkland Dedication policies of the North York Centre Secondary Plan for consideration at the next North York Community Council meeting. This report was prepared in consultation with input from Community Planning staff, North York District.

#### RECOMMENDATIONS

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The City Solicitor recommends:

1. That City Council endorse Yolanda Flanders' settlement proposal as set out in Attachments 2, 2a and 2b ("Settlement Proposal") to the report from the City Solicitor (March 25, 2014) in principle.

2. That the Director, Community Planning, North York District be directed to bring forward a preliminary report on the proposed general Official Plan Amendment to amend the Section 37 and Parkland Dedication policies of the North York Centre Secondary Plan to the April 8, 2014 North York Community Council meeting.

### **Implementation Points**

The adoption of the proposed general Official Plan Amendment to the North York Centre Secondary Plan contemplated in Recommendation 2 above (the "Parkland Incentive General Amendment") will involve a community consultation meeting (intended to take place in May, 2014) and will require a further statutory public meeting pursuant to the *Planning Act* prior to enactment.

As part of the proposed settlement, it is intended that once the Parkland Incentive General Amendment has been adopted by Council, Yolanda Flanders will withdraw its outstanding Ontario Municipal Board appeals in respect of 51 Drewry and 8-28 Inez Court.

Yolanda Flanders will submit a revised rezoning application to the City in order to implement the proposed settlement. The revised application will be processed through the normal public process, including a statutory public meeting pursuant to the *Planning Act* prior to enactment of the implementing zoning by-law. As part of the proposed settlement, it is intended that once the revised rezoning application has been processed and Yolanda Flanders has acquired the Inez Court lands east of the future service road, Yolanda Flanders will discontinue its Statement of Claim against the City.

### **Financial Impact**

There are no financial implications resulting from the adoption of this report.

### **DECISION HISTORY**

Applications were first submitted by a previous owner for a portion of the development site in April, 2008 in order to permit a 23-storey apartment building with 274 units at 51 Drewry Avenue and 18, 20-28 Inez Court. North York Community Council considered a preliminary report on the original proposal on October 7, 2008:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.NY19.21>

In March, 2010, the City was advised that Yolanda Flanders had acquired the site, and that a modified proposal would be forthcoming. On November 10, 2011, a revised proposal incorporating additional lands and seeking approval for 57 townhouses and 483 high-rise apartment units on the site was submitted by Yolanda Flanders. (A site plan showing the November, 2011 proposal is attached as Attachment 3.)

On November 11, 2011, Yolanda Flanders filed appeals in respect of its revised proposal to the Ontario Municipal Board.

Both the original application and the November 2011 revised proposal included a portion of the Inez Court road allowance, which is owned by the City. On February 6 and 7,

2012, City Council directed City Planning staff to advise the applicant to remove the City-owned lands from its application and not to continue to process the application: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.NY12.61>

A number of pre-hearing conferences took place throughout 2012 and 2013. At issue in the pre-hearing conferences were the completeness of the applications; the disposition of Inez Court; the prospective phasing of the hearing; and parkland dedication matters.

In September of 2012, a Statement of Claim was filed by Yolanda Flanders against the City, claiming damages for bad faith, abuse of public office, negligent misrepresentation and negligence against the City in connection with the City's refusal to process the application.

On December 3 and 4, 2012, the City brought a Motion to Dismiss the appeals given Council's position with respect to the inclusion of the Inez Court right-of-way. The City's motion was not granted.

At its meeting on June 11, 12 and 13, 2013, City Council authorised City Planning staff to process the applications once the applicant had submitted all outstanding supporting information, for the purposes of participating in the Ontario Municipal Board hearing, and reiterated its position that it does not consent to the inclusion of the City-owned public right-of-way Inez Court as part of the development application: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC36.2>

On August 19, 2013, Yolanda Flanders filed motion materials seeking direction from the Ontario Municipal Board with respect to the minimum quantum and configuration of parkland for the development. The City filed responding materials on August 29, 2013 but the motion was never heard as the parties agreed on consent to adjourn the motion to allow time for the parties to engage in settlement discussions.

## **ISSUE BACKGROUND**

After several Ontario Municipal Board pre-hearing conferences and extensive negotiations between Yolanda Flanders and its team; City staff; and the local Ward Councillor; Yolanda Flanders submitted a without prejudice offer to settle on January 5, 2014. Further discussions between City staff and Yolanda Flanders have resulted in refinements to the proposed settlement. A refined settlement proposal was submitted to the City on March 20, 2014, on a with prejudice basis. It is attached as Attachments 2, 2a and 2b (the "Settlement Proposal") for Council's consideration.

The Settlement Proposal incorporates a number of important improvements and refinements to the proposed project, namely the introduction of a large new proposed public park where the townhouse component was previously proposed. It also sets out a tentative process for the processing and approval of the revised proposal. The purpose of this report is to introduce the Settlement Proposal and to recommend that Council endorse the Settlement Proposal in principle. It also seeks direction with respect to the processing of the Parkland Incentive General Amendment arising from the settlement.

## **SETTLEMENT PROPOSAL**

As per the Settlement Proposal set out in Attachments 2, 2a, and 2b, Yolanda Flanders' development proposal is to be revised to eliminate the townhouse component of the development and to introduce a new public park on the western portion of the site, where townhouses and a smaller park were previously proposed, substantially as shown in Attachment 2a.

The eastern portion of the site is proposed to be developed with two residential towers connected at the base by a 5 storey podium. A total gross floor area of approximately 41,189 square metres is proposed. Parking would be located in a below grade parking structure. Yolanda Flanders proposes to convey the properties municipally known as 51 Drewry Avenue and 18, 19, 20 and 21 Inez Court to the City for the construction of a future service road (Beecroft Road) from Inez Court up to Drewry Avenue. This would provide vehicular access to the site from Drewry Avenue. The density from the proposed new service road would be allocated to the lands east of the service road. Yolanda Flanders is proposing to purchase the City owned cul-de-sac east of the proposed new service road and to incorporate it into the development.

The portion of Yolanda Flanders' lands west of the future service road (known as 8-17 Inez Court) is proposed to be conveyed to the City for a future public park. This conveyance would exceed the parkland dedication required for the proposal pursuant to the *Planning Act* and the City's Official Plan. The applicant is proposing to allocate all of the density from its lands west of the proposed service road to the lands east of the proposed service road.

Yolanda Flanders is proposing to obtain a density incentive for the portion of the parkland conveyance that exceeds the statutory requirements. The density incentive requires a general amendment to the North York Centre Secondary Plan (the Parkland Incentive General Amendment). The revised proposal described above incorporates this proposed incentive.

## **PARKLAND INCENTIVE GENERAL AMENDMENT**

The settlement proposal is contingent upon the enactment of the Parkland Incentive General Amendment, in order to permit the conveyance of land for parkland purposes in excess of the statutory parkland dedication requirements to qualify as an eligible density incentive pursuant to the North York Centre Secondary Plan.

The City's Official Plan, Chapter 5, Policy 6. e) contemplates parkland, and/or parkland improvements as eligible Section 37 community benefits, above and beyond what would otherwise be provided under the *Planning Act* or the *Development Charges Act*. However, the North York Centre Secondary Plan, which contains its own Section 37 policies, does not contemplate the provision of parkland as a community benefit. Staff are of the opinion that it would be appropriate to consider an amendment to the North York Centre Secondary Plan that would permit the conveyance of land to the City for parkland over and above the statutory requirements to be an eligible community benefit.

In the context of the settlement discussions with Yolanda Flanders, and in the context of the Yonge Street North Planning Study, staff and the local Councillor also identified the desirability of including monetary contributions to acquire or improve parkland as appropriate community benefits in the North York Centre Secondary Plan.

It is recommended that Planning staff bring forward a preliminary report on the proposed general official plan amendment to amend the Section 37 and Parkland Dedication policies of the North York Centre Secondary Plan to the April 8, 2014 North York Community Council meeting. The proposed general Official Plan Amendment will involve community consultation and a statutory public meeting via North York Community Council prior to enactment.

## **CONTACT**

Sarah O'Connor

Solicitor, Planning and Administrative Tribunal Law

Tel: 416-397-5378; Fax: 416-397-5624; Email : [soconno2@toronto.ca](mailto:soconno2@toronto.ca)

## **SIGNATURE**

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Anna Kinastowski, City Solicitor

## **ATTACHMENTS**

Attachment 1: Context Map

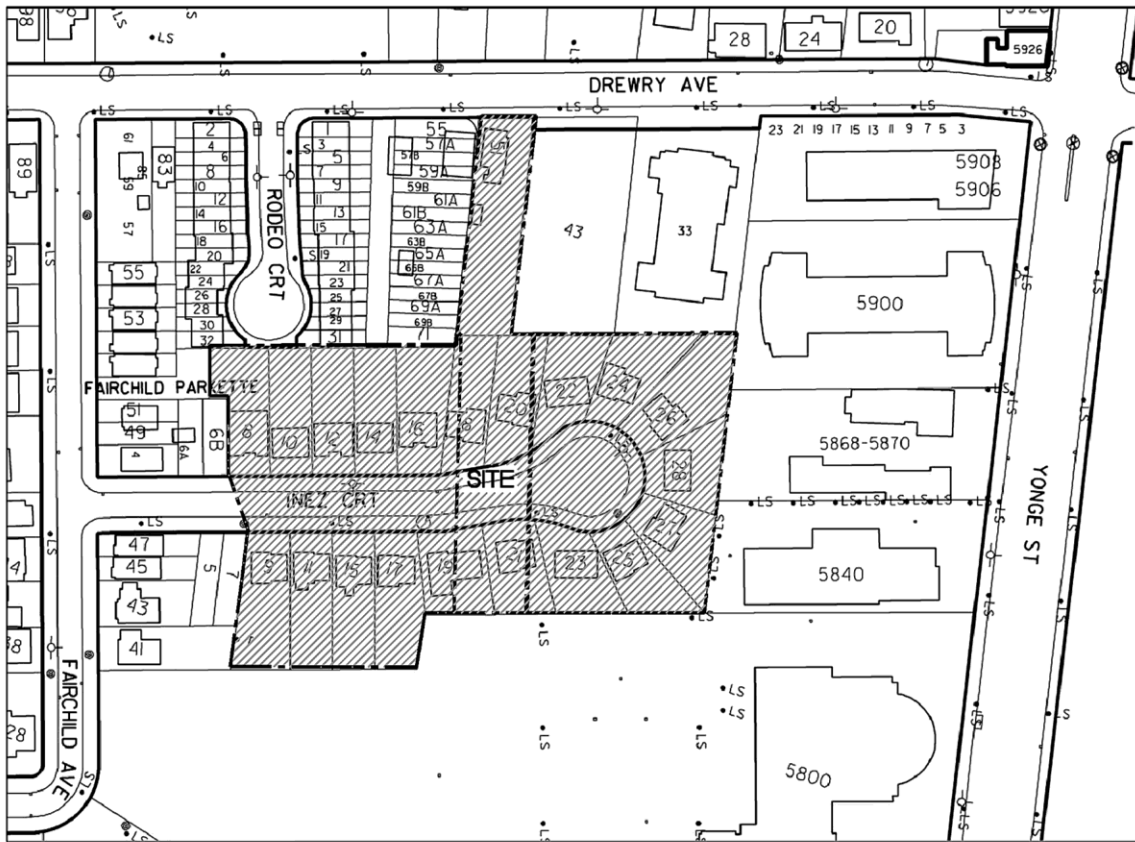
Attachment 2: Settlement Proposal

Attachment 2a: Site Plan (Settlement Proposal)/OVERALL SITE PLAN Dwg A-101a

Attachment 2b: Statistical Summary (Settlement Proposal)

Attachment 3: Site Plan (November 2011 proposal)

# Attachment 1 – Context Map



## Context

## 51 Drewrey Avenue, 8-28 Inez Court

Applicant's Submitted Drawing

Not to Scale  
03/20/2014



File # 08 145788 NNY 23 0Z

## Attachment 2 – Settlement Proposal

Settlement Proposal

### **SETTLEMENT PROPOSAL**

#### **PROPOSED RESOLUTION OF ISSUES**

**Pertaining to Proposed Development at 51 Drewry Avenue and 8-28 Inez Court**

**B E T W E E N:**

**YOLANDA FLANDERS DEVELOPMENTS INC. and  
2242148 ONTARIO LIMITED**

**hereinafter referred to as “Yolanda Flanders”**

**– and –**

**CITY OF TORONTO**

**hereinafter referred to as “the City”**

**OMB File Nos. PL111252 (OPA) & PL111240 (ZBA)**

**Superior Court of Justice File No. CV-12-463072**

**City of Toronto OPA & Re-zoning Application 08 145788 NNY 23 OZ**

- 1.1 Development. Yolanda Flanders’ development proposal is to be revised substantially as shown on the attached site plan concept drawing identified as OVERALL SITE PLAN Dwg A-101a and the associated statistical summary via a complete set of submission materials as specified by the City’s Official Plan, subject to adjudication of any dispute regarding completeness by the Ontario Municipal Board.
- 1.2 All density on Yolanda Flanders’ lands west of and on the future service road is to be allocated to Yolanda Flanders’ lands east of the service road. The lands west of the service road (without density) are intended to then be included in a future public park.
- 1.3 The lands east of the future service road will be subject to any general increases in height and/or density that may be allowed by a potential future comprehensive amendment to the North York Centre Secondary Plan (“the NYCSP”) adopted by Toronto City Council or any site or area specific increase in height that Council decides to allow should Yolanda Flanders elect to take advantage of any such increases, subject to paragraph 3.1 below.
- 2.1 Inez Court West. The Inez Court right-of-way land west of the future service road is to remain in the City’s possession. The City may incorporate all or part of this land into a public park upon approval of Yolanda Flanders’ revised development proposal in accordance with this settlement.

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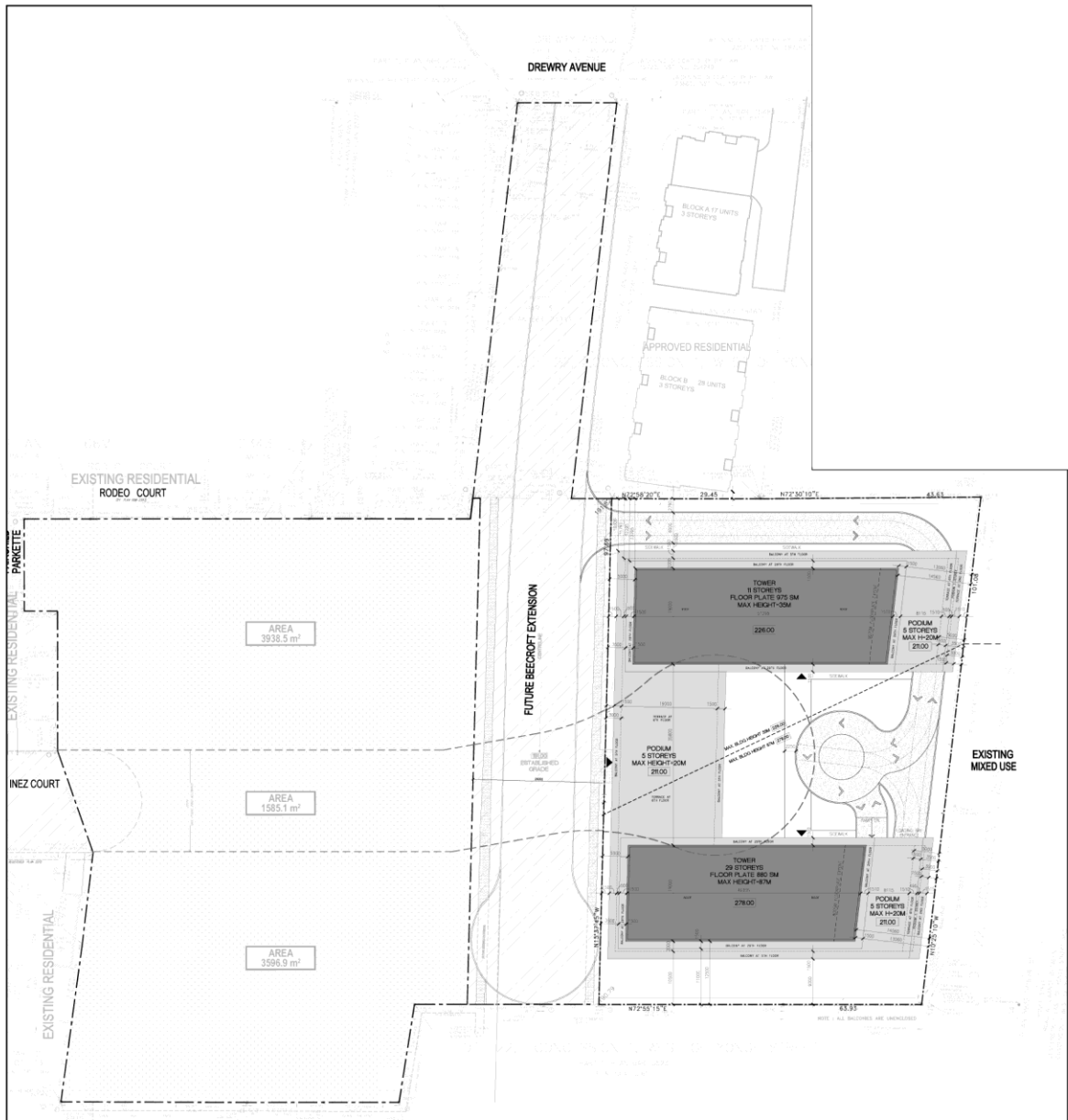
- 3.1 Inez Court East. Without fettering Council's discretion regarding the potential closing and conveyance of Inez Court east of the future service road, the revised development proposal is to be processed by City staff on the basis that the Inez Court right-of-way east of the future service road (with the density thereon) will be closed and conveyed to Yolanda Flanders in accordance with the City's standard terms and conditions on land conveyances for development purposes in Ward 23 (eg, Emerald Park project at Poyntz and Yonge, Development File No. 08 178556 NNY 23 OZ) constraining the height and density of the development to that approved by Council following consideration at a statutory public meeting, should Council at that time decide to close Inez Court east of the service road and to convey that portion of the right-of-way to Yolanda Flanders. The constraints on height and density will recognize the potential for possible increase in the circumstances referred to in paragraph 1.3 above prior to the land transaction taking effect but not otherwise.
- 4.1 Service Road. Pursuant to the NYCSP, the future service road lands (without the density thereon) are to be conveyed to the City by Yolanda Flanders for nominal consideration as a condition of development approval in accordance with the City's standard terms and conditions.
- 5.1 Parkland. Required parkland is to be dedicated on site and additional parkland is to be contributed on site, as indicated on Dwg A-101a and the associated statistical summary. All density attributable to the required parkland to be dedicated and the additional parkland to be contributed is to be included in the density allocated to the Applicant's lands located east of the future service road.
- 5.2 All parkland (both dedicated and contributed) is to be conveyed for nominal consideration in accordance with the City's standard conditions, modified to provide that the resulting enlarged Fairchild Parkette (including the existing portion already owned by the City) is to be designed, landscaped and equipped in accordance with the City's specifications.
- 5.3 The associated expenses to be borne by Yolanda Flanders are to include not only the standard costs related to land conveyance, environmental review and any required remediation, plus base park conditioning, but also the extra costs of additional park improvements to be specified by the City up to a maximum of \$250,000, which amount is to include all design costs associated with the park. Any park improvement costs beyond \$250,000 are to be credited against or taken from the parks component of the development charges applicable to the development, the latter if the City elects to assume responsibility for this task.
- 6.1 Monetary Contribution. Gross floor area equal to the area of the additional parkland contributed is to be effectively credited against the gross floor area otherwise subject to monetary contribution for incentive density, contingent upon adoption by Council of a general amendment modifying the NYCSP so as to permit such crediting.



- 7.1 Approval. Yolanda Flanders and the City will jointly seek adjournment of pending Ontario Municipal Board proceedings in order to provide adequate opportunity for City Council to consider this settlement proposal, adopt the general amendment to the NYCSP alluded to in paragraph 6.1 above, and enact the adopting by-law. After Council has adopted the general amendment and enacted the adopting by-law, Yolanda Flanders will withdraw its OMB Appeals (File Nos. PL111252 and PL111240) before submitting a revised zoning application substantively consistent with the attached site plan and project statistics.
- 7.2 In the project statistics, the incentive density attributable to existing exemptions (indoor bicycle parking room at grade, amenity spaces) permitted by the NYCSP has not been separately identified but instead included in the gross floor area attributable to monetary contribution. Nevertheless, once these exemptions have been sufficiently quantified, Yolanda Flanders will also be entitled to claim them in its revised zoning application, thereby further reducing the gross floor area subject to monetary contribution in accordance with standard practice.
- 7.3 If the City does not accept the settlement proposal, or fails to adopt the aforementioned general amendment and enact the adopting by-law in timely fashion, Yolanda Flanders may proceed with its appeals and related legal action without regard for the settlement proposal, in which case the settlement proposal may not be used in any way to prejudice the City's position in those matters unless it is first demonstrated that the City's actions are arbitrary, capricious, vexatious or without reasonable planning justification. Otherwise, upon zoning approval and acquisition of the Inez Court lands east of the future service road, Yolanda Flanders will discontinue the Statement of Claim submitted to the Ontario Superior Court of Justice (File No. CV-12-463072).
- 7.4 This settlement proposal is intended by the parties as a reasonable compromise of their respective positions in OMB File Nos. PL111252 and PL111240 and Superior Court of Justice File No. CV-12-463072. The fact and content of this settlement proposal are in no way intended to be, or to be construed or used as, an admission of any liability whatsoever with respect to any allegations in Ontario Superior Court of Justice File No. CV-12-463072 (which liability is expressly denied by the City) and are not intended to, or to be construed or used to, otherwise affect in any way the parties' respective positions, facts, and allegations in Ontario Superior Court of Justice File No. CV-12-463072.
- 7.5 None of the provisions of this settlement proposal is intended to operate, nor shall have the effect of operating, in any way to fetter City Council in the exercise of any of Council's legislative, quasi-judicial or discretionary powers. Without limiting the generality of the foregoing, such discretionary powers include the power to pass, amend or repeal by-laws, to adopt, amend or rescind official plan amendments, to close any public highways, to sell any city owned land, and to approve or withhold approval to permit any demolition, relocation, construction, or alteration of any building or structure.

2014.03.20

**Attachment 2a – Site Plan (Settlement Proposal)  
OVERALL SITE PLAN Dwg A-101a**



**Site Plan**

**51 Drewrey Avenue, 8-28 Inez Court**

Applicant's Submitted Drawing

Not to Scale   
03/20/2014

File # 08 145788 NNY 23 OZ

**Attachment 2b – Statistical Summary (Settlement Proposal)**

# ANALOGICA

Project Statistics

**CONSERVATORY GROUP**

YOLANDA FLANDERS DEVELOPMENTS INC & 2242148 ONTARIO LIMITED

**PROPOSED INEZ COURT DEVELOPMENT**

HIGH RISE – EAST OF FUTURE BEECROFT SERVICE ROAD EXTENSION

PARKLAND – WEST OF FUTURE BEECROFT SERVICE ROAD EXTENSION

**STATISTICAL SUMMARY – SITE AREAS & PERMITTED GFA**

Applicant Lands (Pts 1,2,3,4,5,6,8,9,11,12,13,14,15,16,17,18,19,21)	16,652.30m <sup>2</sup>
<i>Plus</i>	
Existing Local Road Surplus Lands to be Acquired (Pt 10)	+ 1,334.10m <sup>2</sup>
<i>Equals</i>	
Gross Site Area (Pts 1,2,3,4,5,6,8,9,10,11,12,13,14,15,16,17,18,19,21)	17,986.40m <sup>2</sup>
<i>Less</i>	
Future Service Road Lands to be Conveyed (Pts 1,2,6,8,9,13,14,18,19,21)	- 3,590.80m <sup>2</sup>
<i>Equals</i>	
Net Site Area before On-Site Parkland Dedication (Pts 3,4,5,10,11,12,15,16,17)	14,395.60m <sup>2</sup>
High Rise Component – east of future service road (Pts 10,11,12)	6,860.20m <sup>2</sup>
Low Rise Component – west of future service road (Pts 3,4,5,15,16,17)	7,535.40m <sup>2</sup>
<i>Less</i>	
On-Site Parkland (Pts 3,4,5,15,16,17)	- 7,535.40m <sup>2</sup>
Required Parkland Dedication	- 2,159.34m <sup>2</sup>
Additional Parkland Contribution	- 5,376.06m <sup>2</sup>
<i>Equals</i>	
Net Site after Proposed Parkland Dedication (Pts 10,11,12)	6,860.20m <sup>2</sup>
High Rise Component	6,860.20m <sup>2</sup>
Low Rise Component	0.00m <sup>2</sup>
Primary GFA*	30,969.45m <sup>2</sup>
Incentives (0.33 x Primary GFA)	10,219.92m <sup>2</sup>
Monetary Contribution (purchased)	4,843.86m <sup>2</sup>
Parkland Contribution (credited)	5,376.06m <sup>2</sup>
Maximum Permitted GFA	41,189.37m <sup>2</sup>

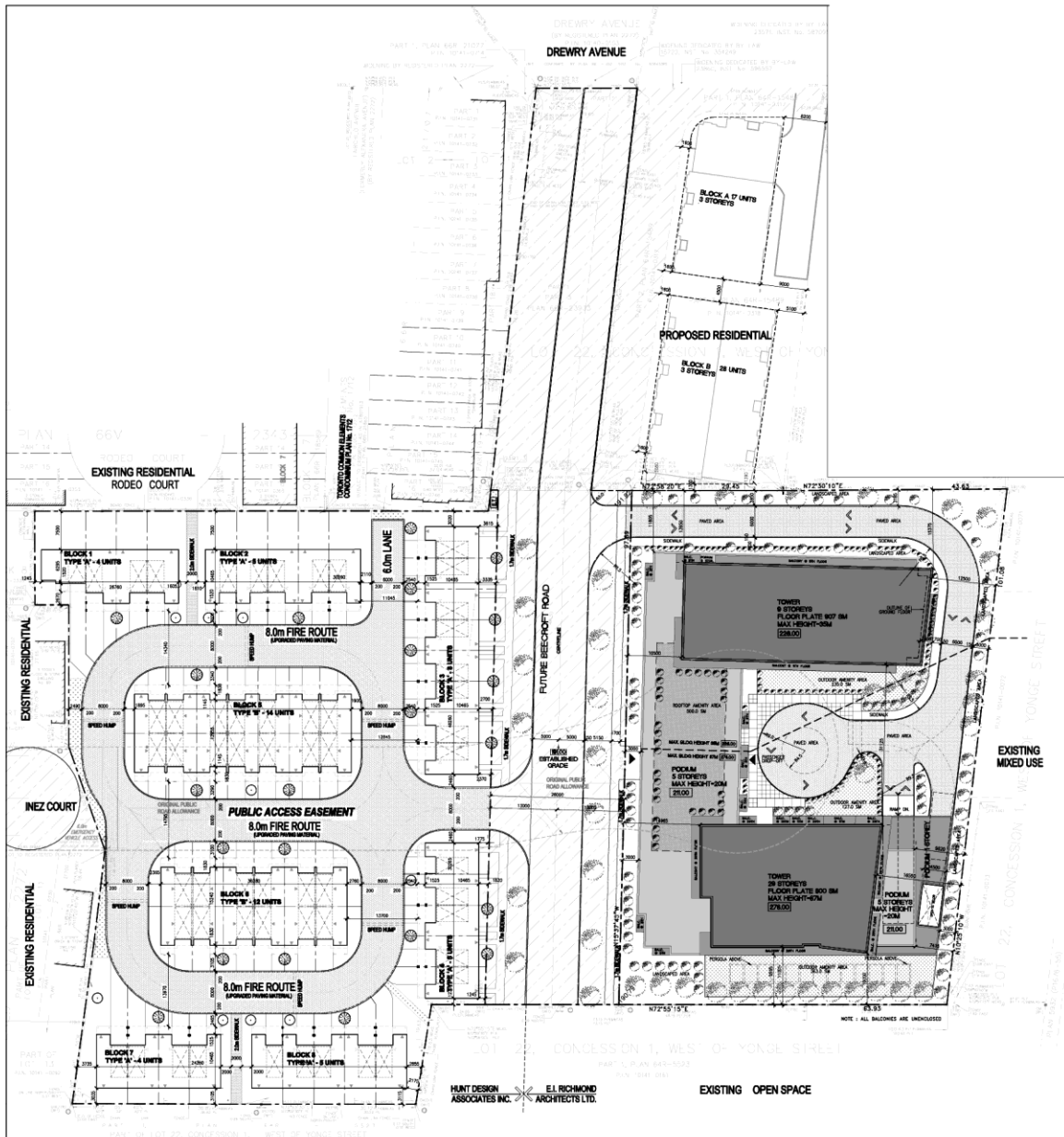
\*Pts 1,2,3,4,5,6,15,16,17,18,19,21 @ 1.5 FSI; Pts 8,9,10,11,12,13,14 @ 2.0 FSI

Y – Pts 1,2,3,4,5,6,8,9,11,12,13,14,21    N – Pts 15,16,17,18,19    C – Pt 10

Draft R-Plan by Rady-Pentek & Edward Surveying Ltd (2011.08.29)

2014.03.20

Attachment 3 - Site Plan (November 2011 proposal)



Site Plan

51 Drewry Avenue, 8-28 Inez Court

Applicant's Submitted Drawing

Not to Scale  
03/20/2014



File # 08 145788 NNY 23 0Z