

February 24, 2014

**VIA EMAIL**

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

North York Community Council  
City Clerk's Office, Ground Floor  
North York Civic Centre  
5100 Yonge Street  
Toronto, ON M2N 5V7

**Attention: City Clerk & North York Community Council**

Your Worship and Members of Council:

**RE: Item NY30.25 – City Initiated Amendment to Site and Area Specific Policy 76 Don Mills Road & Eglinton Avenue East – Final Report (the “Staff Report”)**

We are the solicitors for the Independent Order of Foresters (“**Foresters**”), the owner of the property at 789 Don Mills Road (the “**Foresters Site**”), in the southeast quadrant of the Don Mills Road and Eglinton Avenue East intersection.

We are writing to express our concerns with the proposed Official Plan Amendment that has been initiated by the City (the “**City-Initiated OPA**”) and would affect the Foresters Site, including its potential future redevelopment. We have written previously to the City and Community Council in respect of this and related matters on April 24, 2013, September 4, 2013, and December 4, 2013. We also made a deputation to North York Community Council on September 10, 2013 in respect of the City-Initiated OPA.

In our view, the proposed City-Initiated OPA leaves unanswered questions regarding future redevelopment in this quadrant. The rationale for the proposed reallocation of development density is not sufficiently explained, the Development Concept included with the policies is confusing, and the proposed policies regarding the use of Section 37 of the *Planning Act* are not consistent with the overall City Official Plan. In our view, the City-Initiated OPA should not be adopted in its current form.

**Density Allocation to West Parcel**

The current Area Specific Official Plan Policy 76 assigns an overall density of 1.8 FSI to all the lands north of Rochefort Drive and south of Eglinton Avenue East (with the exception of the City-owned parcel at the southeast corner of Don Mills and Eglinton). The Staff Report breaks this area into three parts: the West Parcel (west of Ferrand Drive), the Central Parcel, and the East Parcel (east of Ferrand Drive).

The Foresters Site is located within the West Parcel. In the City-Initiated OPA, the West Parcel has been re-assigned an overall density of 3.2 FSI. Neither the Staff Report, the Background Study to the City-Initiated OPA, nor the proposed Official Plan Amendment itself explains how the proposed density of 3.2 FSI was derived, what its relationship is to the original density of 1.8 FSI, or what the available density is within the West Parcel based on what is currently built or approved on the lands.

For example, there is no analysis of the 48,500 square metres of density recently approved by the Ontario Municipal Board for 1185 Eglinton Avenue East with the City's support (November 2013). It is not clear how the allocation of that amount of floor area to that development impacts the remaining properties in the West Parcel, including the Foresters Site. As noted below, it is not clear which properties are considered to be candidates for redevelopment, and how the remaining density in the West Parcel is to be distributed among them.

The Background Study to the City-Initiated OPA states that the currently in-force "Area Specific Policy 76 does not provide sufficient guidance concerning appropriate built form and the distribution of density over the [policy area]." In our view, the proposed policy allocating a density of 3.2 FSI to the West Parcel requires more explanation in order to provide better guidance than the current policy.

### **Future Development of the Foresters Site**

Adding to the uncertainty regarding the allocation of density, it is not apparent from the City-Initiated OPA which sites within the study area are considered to be candidates for development or redevelopment. The diagram entitled "Development Concept Site and Area Specific Policy" included with the City-Initiated OPA (the "**Development Concept**") appears to show that within the West Parcel, future development beyond what has already been built (or in the case of 1185 Eglinton Avenue East, approved) will only take place on Foresters surface parking lot on the east side of Foresters Lane. It appears that no changes are contemplated for either the site of Foresters existing office building, the condominium at 797 Don Mills Road, or the place of worship on Ferrand Drive. This leads to uncertainty both with the assignment of the remainder of the 3.2 FSI and with the identification of sites that are contemplated to redevelop within the West Parcel.

In other correspondence to the City (December 4, 2013), we have detailed how emerging Official Plan policies, including those regarding the mandatory replacement of office space, may unduly constrain the future development of the Foresters Site and we had requested that the City-Initiated OPA provide clarity in this regard. The Background Study states that "redevelopment sites which have the potential for new mixed use or residential development were reviewed. These sites are located in the Mixed Use Parcels and include existing office buildings with large surface parking lots, parking structures or vacant open space and an existing Place of Worship." Apart from this statement, however, the policies of the City-Initiated OPA and the Development Concept are ambiguous regarding the future redevelopment of the Foresters Site.

### **Road Network and Public Realm Improvements**

The Development Concept shows a "possible new public road" extending north of the Foresters Site, through the City-owned parcel at the southeast corner of Don Mills Road and Eglinton, between the condominium development at 797 Don Mills Road and the development site at 1185 Eglinton Avenue East. However, in the approvals for 1185 Eglinton Avenue East, a public road was not secured in this location.

The policies in the City-Initiated OPA regarding new streets and driveways (Policy 1) refer to a number of changes and improvements to existing streets which are outside of the area covered by the City-Initiated OPA – for example:

- "re-align the north-west portion of Ferrand Drive at Eglinton Avenue and provide a traffic signal connected to a realigned Gervais Drive"; and

- “provide a new east-west public street at the City owned parcel at the south east corner of Eglinton Avenue and Don Mills Road”.

Similarly, Policy 3 refers to improvements to the public realm outside of the area of the City-Initiated OPA:

- “between the north boundary of the West Mixed Use Parcel and the City owned parcel to enhance access to the future Eglinton Crosstown transit stop”.

These proposed changes to the road network and to the public realm are shown on the Development Concept as well, despite the City-Initiated OPA not being applicable to these areas. It is not clear how these policies are to be applied to development proposals within the area covered by the City-Initiated OPA.

The Development Concept drawing is dated “February 2013”, which is prior to the City’s settlement with the developer of 1185 Eglinton Avenue East at the Ontario Municipal Board. As noted above, no public road was secured on the west side of that development. At minimum, the Development Concept should be updated based on that settlement.

### **Section 37 Policies**

The City-Initiated OPA identifies a number of community services and facilities which might be secured as benefits using Section 37 of the *Planning Act*. Foresters does not have a particular concern with the list of identified benefits.

However, Policy No. 5 of the City-Initiated OPA states that “the density permitted by the Zoning By-law will be used as the base value for the calculation of Section 37 community benefits.” In our view, this is contrary to Policy 5.1.1.3 of the City’s Official Plan which states that “if the applicable zoning has not been updated to implement this Plan or where a change of use is proposed, then the City will consider whether additional height and/or density beyond that which is permitted by the Zoning By-law for the use is warranted without recourse to Section 37 of the *Planning Act*.”

The existing base zoning on the Foresters Site is industrial. However, the lands have been designated as *Mixed Use Areas* (an intensification designation) for some time under the City’s Official Plan. In our view, it is not appropriate to rely solely on the existing zoning as a benchmark for the determination of benefits under Section 37 of the *Planning Act* because the Zoning By-law for the Foresters Site has not been updated to implement the *Mixed Use Areas* designation in the Official Plan.

While it is true that Policy 5.1.1.3 of the Official Plan makes an exception for area specific policies that refer to a specific base density, any specific density values in the City-Initiated OPA should recognize that these lands are planned as a location where intensification is anticipated, and should not look backward to historical zoning as the basis for determining Section 37 benefits.

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In our view, and as outlined above, the City-Initiated OPA should not be adopted in its current form. We intend to be present at the February 25, 2014 North York Community Council meeting to make a deputation.

On behalf of Foresters, we hereby request notice of Council's decision in this matter and of any resulting Official Plan Amendment, as well as notice of the consideration of this matter by Community Council, City Council, and any other committee of Council.

Yours truly,

**Overland LLP**



Per: Christopher J. Tanzola  
Partner

c. I. Collins/D. Eagleson (Foresters)  
Councillor J. Parker (Ward 26)  
L. Poole (City Planning)