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DELIVERED

January 12, 2015

Chair and Members of
Etobicoke/York Community Council
City of Toronto
Etobicoke Civic Centre, Main Floor
399 The West Mall
Toronto, Ontario M9C 2Y2

Dear Sir/Madam:

RE: Response to Request for Direction Report Regarding 4780 Eglinton Avenue West – Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan Control Applications / Agenda Item EY3.5 to be Considered at Meeting of Etobicoke York Community Council Scheduled for January 13th, 2015

Introduction

My firm acts as as counsel for Fernbrook Homes (Widdicombe) Ltd. ("Fernbrook") the owner and developer of the lands that are the subject of the above-captioned staff report. My client has reviewed the recommendations set out in the report regarding the proposed settlement of the Fernbrook appeals filed with the Ontario Municipal Board involving this property. While Fernbrook is generally supportive of the advice given by your staff that these appeals should be settled, they continue to have concerns with two aspects of the staff recommendations namely:

1. the proposed timing by staff for resolution of various technical aspects of the development as listed in Recommendations 3 and 4 of the report; and

2. Recommendation 3e which proposes that my client enter into a Section 37 agreement with the City as a pre-condition to the OMB approving the Fernbrook zoning appeal.

Timing For Approvals

With respect to the timing concern, planning staff in Recomondations 3 and 4 have recommended that as part of the settlement of the appeals that the City Solicitor be instructed to request the OMB to withhold its orders implementing the settlement

pending finalization of the final form of the zoning by-law, approval of listed technical reports, finalization of the NOAC and execution/registration of a site plan agreement. The hearing by the OMB of the Fernbrook appeals is scheduled to commence on March 23rd, 2015, and there should be no reason why all of the matters referred to in the Recommendations cannot be resolved and completed for submission to the Board prior to the commencement of the hearing.

You should be aware that Fernbook's applications for the subject property were filed with the City in April 2014 and the applications have been the subject of extensive discussions and reviews between my client's consultants and City staff. My client has provided all of the requisite studies, plans and supporting materials requested by staff (including both the Vehicle Trip Generation Summary and Functional Servicing Report referred to in Recommendation 3b) and I am advised that all technical matters related to the design and servicing of the development have been substantially resolved. I also understand that the last submission by my client to staff, which has now been recommended for acceptance, did not involve any matters related to engineering or servicing but involved fairly minor modifications related to the extent of rear yard setbacks for certain units, the provision of some public walkways and clarification regarding the status of a private driveway accessible to six units.

Given the foregoing Fernbrook would respectfully request Community Council to amend the proposed Recommendations in accordance with the revised text attached to this letter. The amendments would direct staff and the City solicitor to finalize in consultation with my client all matters required to implement the settlement during the nine week period leading to the commencement of the March 23rd OMB hearing. The matters to be completed would include the form of the zoning by-law, the Site Plan Drawings and related NOAC and the Draft Plan and related Conditions of Draft Plan Approval. Given the period of time, my client believes all of these matters can and should be resolved prior to the hearing and they seek your support and agreement by acceptance of the amendments to the Recommendations that this should be done.

Entitlement to Section 37 Contributions

My client's second concern relates to Recommendation 3e which proposes that the Board's order approving the Zoning By-law amendment should be withheld pending Fernbrook executing a Section 37 agreement with the City. This recommendation should be deleted as there is no legal basis or entitlement in the circumstances of this development for the City to require the payment for or provision of Section 37 Community benefits. In order to establish such a requirement, it would be necessary for the development as proposed to exceed either the maximum permitted height or density that would otherwise be allowed in accordance with the existing zoning applied to the property. In this case, Fernbrook's applications in fact propose less height and less density than what would otherwise be permitted under the City's as of right Zoning By-law. This is summarized below.

Fernbrook through its re-zoning application seeks approval for the development of 89 three-storey townhouse units. The property, which is situated at an Avenue location shown in the City's Official Plan, is designated as Apartment Neighbourhoods and currently zoned Fourth Density Residential ("R4"). This designation and zoning permits a range of residential uses including apartment buildings with a height of up to 14 metres and a density based on a minimum lot area of 116 square metres permit (which equates to a density of 86 units per hectare). Fernbrook's re-zoning is required not because it seeks to increase either the maximum height or density for residential development on the property but because the use of the property for townhouses is a not listed as a permitted form of residential development under the R4 zoning.

With respect to the Fernbrook development, the heights of the proposed units are 9 metres, or 12.7 metres if measured to the absolute top of the mezzanine; these heights are well below the 14 metre height limit stipulated under the R4 zoning. In terms of density, the 89 units proposed by Fernbrook produce a net site density of 44 units per hectare, again well below the maximum density of 86 units per hectare possible under the R4 zoning on this site.

Given the foregoing, my client does not accept and would oppose any position by the City that it should be required to provide a Section 37 contribution. I would also note that this request for Section 37 contributions has only recently been made and there have been no discussions with my client as to the quantum or type of community contributions that are being proposed. In any event, my client opposes this Recommendation and if necessary will oppose this request before the OMB if the Recommendation is adopted.

We will be in attendance when this item is considered to respond to any questions or comments that you may have.

Yours very truly,

RITCHIE KETCHESON
HART & BIGGART LLP

Bruce C. Ketcheson
BCK/es
cc: Client
EGF Associates

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council authorize the City Solicitor and other appropriate staff to attend the Ontario Municipal Board hearing for the lands at 4780 Eglinton Avenue West as necessary in support of the settlement of the appeals as outlined in this report and to take the appropriate actions to implement the settlement.

2. City Council direct the City Solicitor to seek instruction from the Chief Planner and Executive Director, City Planning pursuant to Chapter 415-18.1 of the Municipal Code, as amended, for the purpose of attendance at the Ontario Municipal Board with respect to related modifications to the proposed Draft Plan of Subdivision and appropriate conditions of subdivision approval, including conditions relating to site servicing.

3. ~~In the event the Ontario Municipal Board (OMB) allows the appeals, in whole or in part,~~ City Council direct the City Solicitor and staff to finalize the following matters in consultation with the applicant prior to the commencement of the Ontario Municipal Board hearing March 23, 2015: ~~to request the OMB to withhold its Order on the Zoning By-law Amendment pending:~~

a) ~~Receipt of confirmation from the City Solicitor that the final form of the~~ Site Specific Zoning By-law amending the former City of Etobicoke Zoning Code ~~is~~ to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;

b) The submission of a Vehicle Trip Generation Summary to the satisfaction of the General Manager, Transportation Services;

c) The submission of a Functional Servicing Report to the satisfaction of the Executive Director of Engineering and Construction Services;

d) The Owner making satisfactory arrangements with Engineering and Construction Services for the construction of any improvements to the municipal infrastructure, should it be determined that upgrades are required to the infrastructure to support this development, according to the Functional Servicing Report to be accepted by the Executive Director of Engineering and Construction Services; and

~~e) The Owner entering into a Section 37 Agreement with the City for the purpose of securing community benefits as determined by the Owner, City Planning staff and the Ward Councillor.~~

4. ~~In the event the Ontario Municipal Board (OMB) allows the appeals, in whole or in part,~~ City Council direct the City Solicitor and staff to finalize the Conditions of Site Plan Approval ~~following matters~~ in consultation with the applicant prior to the commencement of the Ontario Municipal Board hearing March 23, 2015~~to request that the OMB withhold its Order on the Site Plan Control application pending the following matters being addressed~~: said conditions to include the entering into and registering a Site Plan Agreement pursuant to Section 114 of the *City of Toronto Act, 2006*

~~a) The Conditions of Site Plan Approval being finalized to the satisfaction of the Chief Planner and Executive Director, City Planning; and~~including ~~entering into and registering a Site Plan Agreement pursuant to Section 114 of the *City of Toronto Act, 2006* with such Agreement to include the Conditions of Site Plan Approval.~~

~~b) The applicant entering into and registering a Site Plan Agreement pursuant to Section 114 of the *City of Toronto Act, 2006* with such Agreement to include the Conditions of Site Plan Approval.~~

5. ~~In the event the Ontario Municipal Board (OMB) allows the appeals, in whole or in part,~~ City Council direct the City Solicitor and staff to ~~to request that the OMB~~ include standard Draft Plan of Subdivision Conditions in any approval of the Draft Plan of Subdivision application to address the technical requirements of the development including among other matters, the construction of streets and services, tree protection and planting, and grading as determined by the Chief Planner and Executive Director, City Planning.

6. City Council authorize the City Solicitor and any other City staff to take such actions as necessary to give effect to the Recommendations of this report.