

September 4, 2015

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**VIA E-MAIL ([TEYCC@TORONTO.CA](mailto:TEYCC@TORONTO.CA))**

File No. 15667.00001

Toronto and East York Community Council  
2<sup>nd</sup> Floor, West Tower, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Rosalind Dyers, Community Council Secretariat**

Dear Chair Fletcher and Members of Community Council:

**Re: Amendment of Designating By-law and Authority to Amend Existing Heritage  
Easement Agreement – 131 Farnham Avenue  
TEYCC Agenda Item TE10.15 – Meeting of September 8, 2015**

We are solicitors for The Brothers of the Christian Schools of Ontario (the “**Brothers**”) who own and operate De La Salle College Oaklands (“**De La Salle**”) on the property municipally known as 131 Farnham Avenue and 45 Oaklands Avenue.(the “**subject property**”).

At the July 28, 2015 meeting of the Toronto Preservation Board (the “**TPB**”), the TPB considered a staff report dated July 16, 2015 (the “**Staff Report**”) from the Director, Urban Design, City Planning Division wherein Staff sought authority to implement various heritage considerations affecting the subject property, including an amendment to the existing Heritage Easement Agreement. The TPB recommendations, as well as a Supplemental Staff Report dated August 20, 2015, are now before the TEYCC for consideration.

The TEYCC should be aware that the Brothers entered into an agreement of purchase and sale (the “**APS**”) with Conica Glen Homes Corp. (c/o Treasure Hill) regarding approximately 0.46 hectares of land forming part of the lands known municipally as 45 Oaklands and are “L” shaped in nature fronting along the southwest corner of the subject property with frontage both on Avenue Road and Oaklands Avenue. Treasure Hill is separately represented by Mr. David Bronskill, counsel with Goodmans LLP. For clarification purposes, this submission relates to the remaining property owned by the Brothers which excludes the L-shaped portion subject to the APS.

We have reviewed both the Staff Report and the Supplemental Staff Report (which contains no track changes proposed and leaves the reader unable to appreciate the significance or magnitude of the amendments) and wish to provide the following comments setting out our client's concerns identified to date. We may identify further concerns as we continue to review the materials in greater detail.

**For the reasons that follow, we respectfully recommend that the TEYCC defer Agenda Item TE10.15 to permit the parties to continue dialogue.**

1. The information currently before the TYECC is incomplete insofar as the documentation does not fully reflect the discussion before the TPB meeting on July 28, 2015. In particular, it excludes two related correspondence from De La Salle and Treasure Hill. Both letters sought a deferral on the basis that extensive documentation was presented with significant implications without an ability to have those materials reviewed by our respective heritage consultants and without any prior notice.
2. The Brothers and the City successfully negotiated a heritage designation in 1977 that applied to the historic John McDonald house and 20 feet around it. Subsequent to that, the City listed the stone gates in 1984 without any opposition by De La Salle. Eventually, the City and the Brothers negotiated a Heritage Easement Agreement (“**HEA**”), protecting the historic John McDonald house, that was registered on title in 1995. As history has demonstrated, De La Salle has been a champion and steward of the identified heritage resources and has respected all applicable restrictions. The changes the City is now imposing lack full transparency and are being rushed as a substitute to good heritage policy decisions. For example, the implementation of the suggested views require a *Planning Act* foundation. The City recently received approval of OPA 199 and no views of any relative significance were identified that warrant protection in that recent and thorough Planning Act process.
3. The genesis of the current historical considerations resulted from an extensive and transparent consultation process that far exceeds the City's expectations. The Brothers engaged interest in the property by issuing Request for Proposals (the “**RFP**”) in late 2014. The RFP contents was pre-reviewed and screened with the City and the Local Councillor to ensure accuracy of content and inform of the process intended to be engaged. We are also aware that Treasure Hill had a pre-application community consultation meeting on July 22, 2014 with the Local Council (without City Staff). A formal pre-application meeting with Staff was held on July 24, 2014. All these consultation meetings occurred prior to the filing of the development application

(14-263631 STE 22 OZ) with the City on December 12, 2014 (now before the Ontario Municipal Board – Case No. PL150753). Despite these good will and good faith consultation efforts, on December 4, 2014, the TEYCC directed Heritage Preservation Services staff to prepare a report describing the cultural values and attributes of the subject property, including the consideration of additional cultural heritage values and attributes. In our respectful submission, the heritage process that we are now engaged in has been strategically embarked upon by the City as a means to establish *Planning Act* barriers and has all the potential of discouraging the type of excellent dialogue with local neighbours/communities, prior to any applications being filed.

4. From a legal perspective, many of the TPB recommendations are either premature or not able to be implemented. As an example, Section 37(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 provides Council the ability to pass a by-law “providing for the entering into of easements” with owners of real property or interests in real property, for the conservation of property of cultural heritage value or interest. However, Council does not have the authority to unilaterally amend the existing HEA and then proceed to register that against the title of the subject property without the consent of the owner. The Brothers will only consider negotiation of an updated HEA on the remaining lands if the current Treasure Hill applications receive proper review and consideration on the applicable planning merits and are resolved in an acceptable manner.

We expect the Planning Staff to report on these applications shortly.

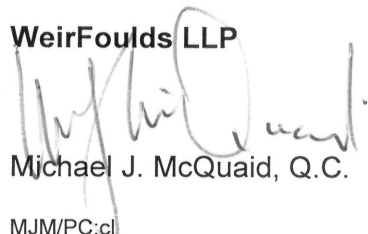
We continue to be optimistic that only through on-going dialogue can the interests of all parties be defined and resolved in a setting which can provide reasonable outcomes for the parties involved. For all of the above reasons, we seek a deferral of consideration of this matter to permit City Planning Staff to report on the planning applications as that will inform decisions related to the heritage updates proposed by the City Heritage Staff. We have instructed our heritage consultant, Mr. P. Goldsmith, to continue discussions with Heritage Preservation Services staff to clarify certain aspects involving the remaining lands.

Please note that this correspondence is not intended to communicate an extension of any statutory limitations or acceding to the contents of the Reports. But rather, we wish for a prudent pause to provide a basis for continued dialogue in the spirit of co-operation.

Thank you for the opportunity to make these written submissions. Mr. Paul Stagl, the Brothers' planning consultant, will be at the TEYCC meeting to speak to the matter. Please advise us of Community Council's recommendation to Council.

Yours truly,

**WeirFoulds LLP**

A handwritten signature in dark ink, appearing to read 'Michael J. McQuaid', is written over the printed name.

Michael J. McQuaid, Q.C.

MJM/PC:cl

c: Client

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