

July 14, 2016

Legal Services, City of Toronto
Metro Hall
55 John Street, 26th Floor
Toronto ON, M5V 3C6

Attention: Ms. Sharon Haniford, City Solicitor

Dear Ms. Haniford:

Re: REVISED CONFIDENTIAL AND WITHOUT PREJUDICE - OFFER TO SETTLE

1-11 BLOOR STREET WEST, 768-774 YONGE STREET AND 760-762 YONGE STREET

As you are aware, we are the solicitors for Mizrahi Development Group (the ONE) Inc., the owner/applicant with respect to the above-noted matter. Our client and its consulting team have engaged in an extremely comprehensive and cooperative consultative process, where the input of the local councillor, the local community representatives and City Staff have led to significant improvements to our client's original proposal, all of which has resulted in the City's release of a planning report and directions report recommending approval of this iconic and important mixed use development. The public process included numerous community information meetings, public consultation meetings and working group meetings, where many individuals put forward a significant amount of effort to arrive at a design which is representative of the "centre ice" location of this important Site within the City of Toronto.

The only matter which remains to be resolved, is the amount of the community benefits package that will be secured as a condition of the final passage of the bills at Council. From the outset, we wanted to confirm that our client is committed to not only a "world class" design, but to the introduction of globally recognized tenants, where the approvals are predicated on such development proceeding in a timely manner.

Unfortunately, the signed leases that our client has executed with the world class tenants they have succeeded in securing, require that planning approvals be in place by no later than July 15, 2016, with the only exception being an appeal to the Ontario Municipal Board. With the deferral of our client's application by one month at the May 10th Toronto and East York Community Council meeting, the earliest its zoning by-law amendments would be in force and effect would be early August, outside of the terms of our clients' contractual obligations. While our client was hopeful that the application process would culminate in an approval by City Council, our client had no choice but to appeal.

However, in recognition of the cooperative process that has taken place to date, our client has authorized the writer to put forward the following "without prejudice" proposal, which includes

two distinct and separate components:

1. Throughout the public consultation process, while our client has always acknowledged the public desire for an underground path connection, such path connection was never a condition of other tall building approvals in the area, nor has our client and/or its team ever relied upon such path connection as the basis for its approval. Furthermore, none of the executed leases for the retail space in any way relies upon the existence of a path connection. Nevertheless, in response to the community's desire to see a path connection constructed, our client has agreed to a Section 37 contribution well beyond what is typical for the City, in the amount of \$21.9 million. If a portion or all of the \$21.9 million contribution and/or "work in kind" is required earlier in the process (upon issuance of a foundation permit, in advance of the above-grade permit), our client agrees to same. If the City chooses to direct the funds towards a pedestrian tunnel connection, our client is agreeable to proceed "hand in hand" with the City and the local community to pursue the necessary approvals in order to secure the final design and path connection agreements, with a further agreement to construct the path connection, on the condition that such costs and/or "work in kind" associated with same do not exceed \$21.9 million. Please note that our client cannot agree to any condition which "requires" the path connection as a pre-condition to the passage of the zoning by-law given the fact that the ultimate agreement to allow the connection to "connect", is up to a third party owner. In the event that the cost of the design and construction of the path connection is less than \$21.9 million, our client agrees that the excess funds shall be allocated to the City as an additional Section 37 contribution. The amount referred to herein is inclusive of all Section 37 and public art contributions and shall be used by the City for public benefits to be determined by the Chief Planner in consultation with the local Councillor.; and
2. Our client has directed the writer to formally submit this "without prejudice" offer, which results in a cash payment totalling \$21.9 million, as a result of the importance of the proposal, and as a "good faith" offer reflective of our client's gratitude for the effort made by the local councillor, the local community and City Staff in bringing this worthwhile proposal to fruition. Our client's commitment to the \$21.9 million contribution is conditional upon Council's support of the motion attached hereto, which requires City Council to direct City Staff to support the appeals at the Ontario Municipal Board. Please be advised that this offer is made on a "without prejudice" basis, which offer is formally retracted on the day following the July City Council meeting if the offer is not accepted by that time in accordance with the amendments attached hereto.

Attached hereto is a draft of the motion our client seeks to have approved in order for our client to be in agreement with the \$21.9 million contribution noted herein.

Should you have any questions or require any additional information, please do not hesitate to contact the writer.

Yours very truly,

Adam J. Brown

Cc: Councillor Kristyn Wong-Tam
Ms. Amanda Hill, City Legal Services
Mr. Gregg Lintern, Director, Community Planning, Toronto and East York District
Mr. Jamie McEwan, Manager, Community Planning, Toronto and East York District
Mr. Oren Tamir, Senior Planner, Community Planning, Toronto and East York District

“Without Prejudice”

RE: 1-11 BLOOR STREET WEST, 768-784 YONGE STREET AND 760-762 YONGE STREET-

1. City Council adopt the recommendations contained within the Request for Directions Report dated June 13, 2016, with the following amendments:

a) Delete Recommendation 1(e) and replace it with the following:

“The applicant agrees to a financial commitment of \$21.9 million towards community benefits which is to be used for the following:

- i. 10% to be directed to new or existing affordable housing facilities;
- ii. 10% to be directed to new or existing cultural and community facilities;
- iii. 80% to be directed to local streetscape improvements including Yonge Street Revitalization, park improvements and any future PATH connections;

The cash amounts identified above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto for the period from the date of the execution of the Section 37 Agreement to the date of payment.

In the event that the cash contribution has not been used for the intended purpose within three (3) years of the By-law coming into full force and effect, the cash contribution may be redirected for another purpose at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided that the purpose is identified in the Toronto Official Plan and will benefit the community in the vicinity of the lands.

The community benefits shall be secured in one or more agreements with the City pursuant to Section 37 of the *Planning Act*, to be registered on title prior to the issuance of any Board Order approving the final form of zoning by-law amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor.

The financial contribution shall be due and payable as a cash payment to the City prior to the issuance of any foundationbuilding permit.

If the cost of any future path connection is greater than \$21.9 million, the additional cost is not the responsibility of the applicant. Furthermore, the applicant agrees that following the passage of the by-laws it will use its best commercial efforts to work with the local Councillor and the surrounding property owners to try to secure a pedestrian tunnel agreement with an adjoining owner to connect the retail concourse of the lands at 1-11 Bloor Street West and 768-784 Yonge Street to the Toronto Transit Commission (TTC) Yonge/Bloor Subway Station to the satisfaction of the Chief Planner and Executive Director, City Planning Division and the City Solicitor.

If City Council accepts this offer, City Council direct Planning Staff to, amongst other matters, amend the draft zoning by-law to reflect the settlement by deleting Section 3(m) of the draft by-law amending by-law 438-86 and 4(O) of the draft zoning by-law amending By-law 569-2013 and by deleting any requirement relating to the pedestrian tunnel connection from the zoning by-law.

- b) Amend Recommendation 1(a) by adding the following words to the beginning of the recommendation: “Subject to the \$21.9 million cap set out in 1(e) below, and on the further condition that this offer is accepted by the completion of the July 2016 City Council meeting failing which, this requirement shall be no longer be applicable. “
- c) Amend Recommendation 1(o) by adding the words “approving the final form of zoning by-law amendment” after the words “prior to the issuance of a Board Order”
- d) Amend Recommendation 1(p) by adding the words “approving the final form of zoning by-law amendment” after the words “prior to the issuance of a Board Order”
- e) Amend recommendation 3 by deleting the words “until such time as a Site Plan Agreement has been entered into between the City and the Owner, such agreement has been registered to the satisfaction of the City Solicitor and any pre-conditions to Site Plan Approval as recommended by the Chief Planner and Executive Director, City Planning in a Notice of Approval Conditions prepared by the Chief Planner and Executive Director, City Planning in conjunction with other appropriate staff have

been fulfilled” and replace them with the words “until such time as a Section 37 Agreement has been entered into and registered pursuant to Section 37 of the *Planning Act* between the applicant and the City in a form and with content satisfactory to the Chief Planner and Executive Director, City Planning Division and the City Solicitor, to secure the following matters as a legal convenience”

- f) Amend Recommendation 4 by adding the words “the final form of” before the words “Zoning By-law Amendment”
- g) Amend recommendation 8 to replace the word “defer” with the word “adopt”
- h) Amend recommendation 9 to add the words “the final form of” before the words “Zoning By-law Amendment”
- i) Amend recommendation 10 to add the words “the final form of” before the words “Zoning By-law Amendment”
- j) Amend recommendation 11 to add the words “the final form of” before the words “Zoning By-law Amendment”