



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

8817-8825 and 8833 Sheppard Avenue East - Zoning By-law Amendment Application, Draft Plan of Subdivision Application and Site Plan Control Application – Request for Direction Report

Date:	September 28, 2016
To:	City Council
From:	City Solicitor
Wards:	Ward 44 – Scarborough East
Reason for Confidential Information:	This report is about litigation that affects the City and contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	15 153397 ESC 44 OZ, 15 153364 ESC 44 SB and 15 153400 ESC 44 SA

SUMMARY

The Owner of 8817 – 8825 and 8833 Sheppard Avenue East (the "Site") filed applications for a Zoning By-law amendment, Draft Plan of Subdivision, and Site Plan approval in May, 2015. The applications sought permission for the development of 149 stacked townhouse units with vehicular access from a new public road from Sheppard Avenue East.

On March 29, 2016, the Owner appealed its applications to the Ontario Municipal Board (OMB) on account of Council’s failure to issue a decision respecting all three of the applications within the timeframes prescribed under the *Planning Act*, and the *City of Toronto Act, 2006*. A hearing has been scheduled at the OMB for November 17 and 18, 2016 and the City Solicitor requires instructions from Council.

On September 19, 2016, the City received a with prejudice offer to settle and on September 26, 2016 the Owner submitted an email amending the settlement offer (together the “Settlement Offer”). The Settlement Offer is contingent on acceptance by City Council at its meeting commencing October 5, 2016.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1.
2. Council authorize the public release of the confidential instructions to staff, in Attachment 1, if adopted, with the remainder of Attachment 1 to remain confidential at the discretion of the City Solicitor.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

On December 1, 2 and 3, 2008, City Council adopted an amendment to the Employment Districts Zoning By-law No. 24982 to rezone the lands at 8833 Sheppard Avenue East from Industrial (M) and subject to a holding provision (H) to Community Commercial zoning subject to certain performance standards and an exception. The City Council decision removed the holding provision since the applicant had demonstrated that the site and adjacent lands could be serviced to the City's satisfaction and that the development of the site would not preclude the future development of the adjacent lands. The owner at that time did not proceed with the commercial development and the lands were sold. The City Council decision and Final Planning Staff Report can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.SC20.36>

ISSUE BACKGROUND

The new Owner of the Site filed applications for a Zoning By-law amendment, Draft Plan of Subdivision, and Site Plan approval in May, 2015, to permit the development of 149 stacked townhouse units with vehicular access from a new public road from Sheppard Avenue East. On March 29, 2016, the Owner appealed its applications to the OMB on account of Council's failure to issue a decision respecting all three of the applications within the prescribed timeframes and a hearing has been scheduled at the OMB for November 17 and 18, 2016.

Subsequent to the appeal, the Owner has made revisions to the applications in response to comments made by City staff. On September 19, 2016, the City received the Settlement Offer (subsequently amended by an email dated September 26, 2016) for a revised development proposal and the City Solicitor requires direction from Council on the appeals and on the Settlement Offer.

COMMENTS

Attachment 2 contains the offer to settle dated September 19, 2016, and subsequent email dated September 23, 2016, that together form the Settlement Offer. Attachment 3 contains plans illustrating the revised development proposal that consists of 144 stacked townhouses (the "Settlement Plans").

The Settlement Offer proposes a 144-unit stacked townhouse development. The development would consist of six stacked townhouse blocks. Three townhouse blocks would front onto Sheppard Avenue East and the other three townhouse blocks would be located behind the fronting townhouse blocks. The townhouse blocks would each contain from 20 to 28 dwelling units. Four townhouse blocks containing 100 residential units are proposed on the west side of the proposed public road on the site. The remaining 44 townhouse units are contained in two townhouse blocks proposed on the east side of the public road. The maximum height of the townhouse blocks would be 13.4 metres. The total gross floor area of the proposed development is 15,963.1 square metres. The density or relationship between the proposed gross floor area and lot area is 1.51 FSI (Floor Space Index).

Pedestrian access to the proposed townhouse units would be provided from the sidewalk along Sheppard Avenue East and the proposed new public street. Pedestrian walkways would also be located in the courtyards and near the south property line.

Two vehicular accesses for ingress and egress are proposed to the site. A vehicular access is proposed to be located at the west property limit from Sheppard Avenue East. The other vehicular access is through the proposed public street opposite Ecopark Gate, and would terminate in a cul-de-sac near the south property boundary. A two-way vehicular private lane located on the east side of the new public road would enable residents and visitors to enter and leave the proposed easterly townhouse units. The new public road could extend further south should future development occur to the south. A proposed driveway located along the east property line would be limited to right-out only turns onto Sheppard Avenue East. This driveway would be used only by the solid waste vehicle and access to this driveway would be controlled by a lift arm/gate. Passenger vehicles would not be able to access the right-out only driveway.

The proposed townhouses on the west and east sides of the new public road would each have one level of underground parking. Vehicle access to the underground parking for the townhouses located on the west side of the public road would be from the ramp located in the south-west corner of the site adjacent to the west property boundary. Similarly, vehicle access to the underground parking garage for the townhouses located on the east side of the new public road would be from the ramp located at the south-east corner of the site beside the east property boundary. A total of 160 parking spaces are provided for the development proposal, of which 144 parking spaces are resident spaces and 16 parking spaces are for visitors. Only 1 visitor parking space would be located at grade.

The townhouse proposal also provides 98 bicycle parking spaces for residents located in the underground parking garages and 12 bicycle parking spaces for visitors at grade.

Two large loading spaces are proposed for the development. A loading space would service the west and east parts of the townhouse development.

Changes made to the original application in response to staff comments are as follows:

A. Increased Landscaping on the Site

The surface driveways and at-grade parking areas have been significantly reduced from the original submission site plan. This results in:

- almost all the parking spaces to be located in the underground parking garages (excepting one surface visitor parking space located on the east side of the development);
- increased area on the site for more landscaping; and
- a larger and consolidated on-site outdoor amenity space with play area, located between the townhouse blocks west of the proposed north-south public road. Originally the proposed smaller amenity spaces were located at the east edges of the cul-de-sac of the future public road and would only have the ability to be enlarged when the road eventually continued south of the site.

B. Loading/Solid Waste

- The proposed two large loading areas have been relocated from the courtyards between the townhouse blocks to the sides of the proposed townhouse blocks located near the west and east property lines. This would limit any visual and physical impacts upon the residents with respect to garbage pick-up;
- The solid waste bins would be stored in the underground parking garages and moved up to the surface for garbage pick-up;
- The easterly solid waste loading space would be accessed through a lift arm/gate only by the garbage truck. The garbage truck would only be able to turn right onto Sheppard Avenue East;
- Passenger vehicles using the easterly portion of the development would not be able to drive through the right-out only driveway onto Sheppard Avenue East because of the lift-arm/gate. Passenger cars would only be able to use the new north-south public road to get to Sheppard Avenue East from the townhouses proposed on the east side of the site; and

- The proposed two solid waste locations would be designed to ensure that City pick-up in the future would be possible, even though the applicant still proposes private pick-up.

C. Ramps to Underground Parking

- The two vehicular ramps to the underground parking garages servicing the west and east portions of the townhouse development were originally accessed from the cul-de-sac of the proposed north-south public road. The Settlement Plans have relocated the access ramps to the underground garages beside the west and east property boundaries. This would remove the access to the underground garages from the north-south public road and enable the provision of continuous sidewalks and additional street trees along the public road.

D. Fire Route on the West Portion of the Development

- In addition to greater on-site amenity area and play area being achieved between the westerly townhouse blocks, the fire route for the westerly development portion is also proposed to be located between the westerly townhouse blocks. When the fire route is not being used for fire-fighting purposes, this area would complement the outdoor amenity space with additional hard and soft landscaping.

E. The Future Public Road

- The original site plan submitted proposed half a future public road adjacent to the westerly lot line. The Settlement Plans do not include the future half a public road. Instead, a two-way driveway along the west property line has been incorporated to service the westerly portion of the townhouse development;
- As a result of the proposed future north-south public road which ends in a cul-de-sac, an underground parking structure is required on either side of the north-south public road. The future north-south public road is now to be free and clear of any underground parking structures; and
- The offer to settle includes as a condition of draft approval of the Plan of Subdivision that the Owner provide a cash payment for the restoration of the temporary turning circle if the new public road is built through to the lands to the south of the Site.

F. Parking

- The Settlement Plans propose parking ratios of 1 parking space per unit; and 0.1 parking spaces per unit for visitor parking.

G. Built Form

- The design of the townhouse blocks have been revised to eliminate excessive exterior steps;
- The entrances along Sheppard Avenue East have been revised and are designed as prominent features on the facades with projecting features such as canopies and landings; and
- The projecting balconies have been recessed into the building form to limit their impact on the public realm.

The Settlement Offer is based on the confirmation from City staff of the following:

- No additional work is required regarding electromagnetic field (EMF) exposure; and
- No additional work is required regarding archaeology, save and accept if archaeological or human remains are found or the boundary of the Site changes.

This report is about litigation before the OMB and contains advice or communications that are subject to solicitor-client privilege. The attachment to this report contains confidential information and should be considered by Council in camera.

CONTACT

Mark Crawford, Solicitor, Tel. No.: 416-392-8864; Fax No.: 416-397-5624
E-mail: mcrawfol@toronto.ca

SIGNATURE

Brian Haley, Interim City Solicitor

ATTACHMENTS

Attachment No. 1: Confidential Information
Attachment No. 2: With Prejudice offer to settle dated September 19, 2016
Attachment No. 3: Settlement Plans

Goodmans^{LLP}

Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4299
dbronskill@goodmans.ca

September 19, 2016

With Prejudice

Our File No.: 150996

Via E-mail

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

Attention: Mark Crawford, City Solicitor

Dear Sirs/Mesdames:

Re: OMB Case No. MM160022
8817-8825 & 8833 Sheppard Avenue East

As you know, we are solicitors for Actonbridge Holding Corp. ("Actonbridge"), the appellant in respect of approximately 0.11 hectares of land known municipally as 8817-8825 and 8833 Sheppard Avenue East in the City of Toronto (the "Property").

We are writing on a **with prejudice** basis to propose a settlement of our client's appeals. This settlement offer is open until the conclusion of the City Council meeting scheduled to commence on October 5, 2016, after which it should be considered as withdrawn.

Settlement Offer

The settlement offer is based on the attached plans prepared by ICON Architects and dated September 19, 2016, consisting of 144 stacked townhouse units (the "Settlement Plans"). A copy of the Settlement Plans are attached hereto for convenience.

The following matters would form the basis of the comprehensive settlement:

- City Council would instruct the City solicitor to attend at the Ontario Municipal Board hearing scheduled to commence on November 17, 2016, in support of the Settlement Plans.

- These instructions would include direction to support presentation of the zoning by-law amendment, draft plan of subdivision, conditions of draft plan approval and conditions of site plan approval to the Ontario Municipal Board for approval on November 17, 2016.
- The zoning by-law amendment would require vehicle parking based on the following ratios: Residential – 1.0 space per unit; and, Visitors – 0.1 space per unit.
- The zoning by-law amendment would implement the exterior amenity space as shown on the plans, but would contain no minimum requirement for indoor amenity space.
- The zoning by-law amendment would require bicycle parking based on the following ratios: West Block – minimum 68 bicycle parking spaces for residents and minimum 8 bicycle parking spaces for visitors; East Block – minimum 30 bicycle parking spaces for residents and minimum 4 bicycle parking spaces for visitors. Note that the settlement confirms that any visitor bicycle parking spaces would be located at-grade, but that any resident bicycle parking can be located within the parking garage and that bicycle racks may be permitted in vehicle parking spaces.
- The zoning by-law amendment would not include a holding provision because, as noted below, City staff have confirmed there is servicing capacity for the proposal.
- As a condition of draft plan approval, Actonbridge will provide a cash payment for the restoration of the area that would be occupied by the temporary turning circle shown on the Settlement Plan.
- Actonbridge and the City would agree to finalize certain matters through the site plan approval process, including the material for the fire route, the dimensions of the bin storage area and staging pad for the East Block, the species for the 23 large trees, the building elevations and the relocation of the bus stop.

Please note that this with prejudice settlement offer is based on confirmation from City staff that:

- no additional work is required regarding electromagnetic field (EMF) exposure;
- no additional work is required regarding archaeology;
- proposed water, sewer, stormwater and grading plans are acceptable;
- there is capacity within the Sheppard Avenue Storm Sewer to service the development as shown on the Settlement Plans; and,
- the configuration of the service connections from the Property and coordination with 8861 Sheppard Avenue East are acceptable.

Our client is hopeful that this with prejudice proposal will be accepted by City Council. As noted above, however, if City Council does not accept this settlement offer at its meeting on October 5, 2016, this settlement offer should be considered as withdrawn.

Please let us know if any additional information is required.

Yours truly,

Goodmans LLP



David Bronskill
DJB/
6611934

Mark Crawford

From: Bronskill, David <dbronskill@goodmans.ca>
Sent: September-26-16 8:32 AM
To: Mark Crawford
Subject: OMB Case MM160022 - 8817-8825 & 8833 Sheppard Ave East

Mark –

Further to our letter dated September 19, 2016, which set out a with prejudice settlement offer with respect to the above-noted matter, I am writing to amend that offer to indicate the following:

- The City does not need to confirm complete acceptance of the water, sewer, stormwater and grading plans at this time. Instead, these plans will be finalized as part of the site plan approval process in advance of the OMB hearing in November.
- Any potential coordination of service connections with 8861 Sheppard Avenue would be determined as part of the above-noted site plan approval process, although approval of my client's proposed development will not be conditional on 8861 Sheppard Avenue developing or requiring any cooperation from 8861 Sheppard Avenue.
- Additional archaeological work would only be required as outlined in the e-mail from City staff.

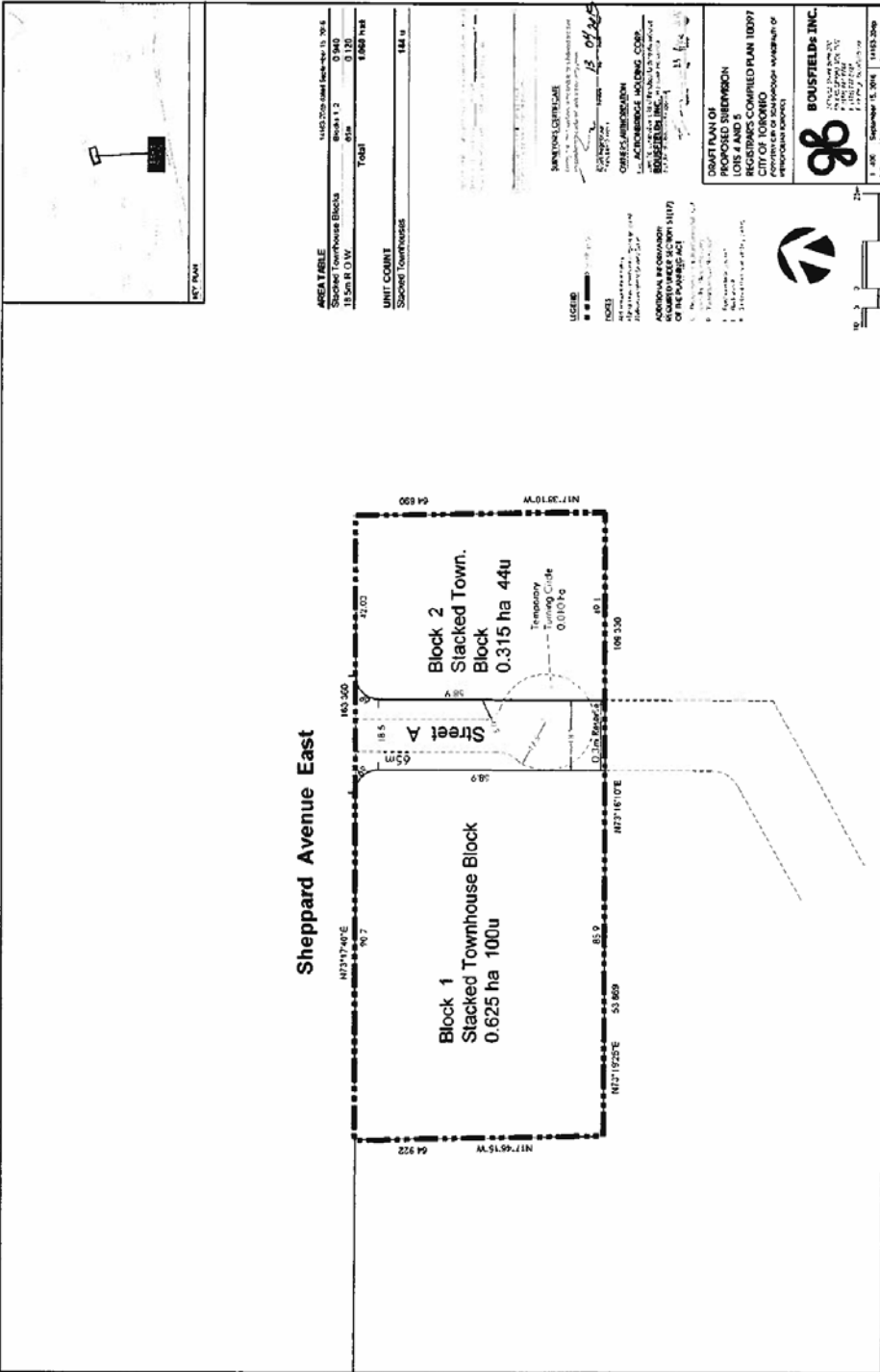
David.

David Bronskill
Goodmans LLP

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dbronskill@goodmans.ca

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333 Bay Street, Suite 3400
Toronto ON M5H 2S7
goodmans.ca

Attachment No. 3: Settlement Plans



AREABLE
 1:450 200' x 100' = 15,000 sq ft
 Stacked Townhouse Block
 Block 1 & 2
 18.5m R.O.W.
 0.940
 0.132
Total
 1.072 ha

UNIT COUNT
 Stacked Townhouses
 144 u

LEGEND

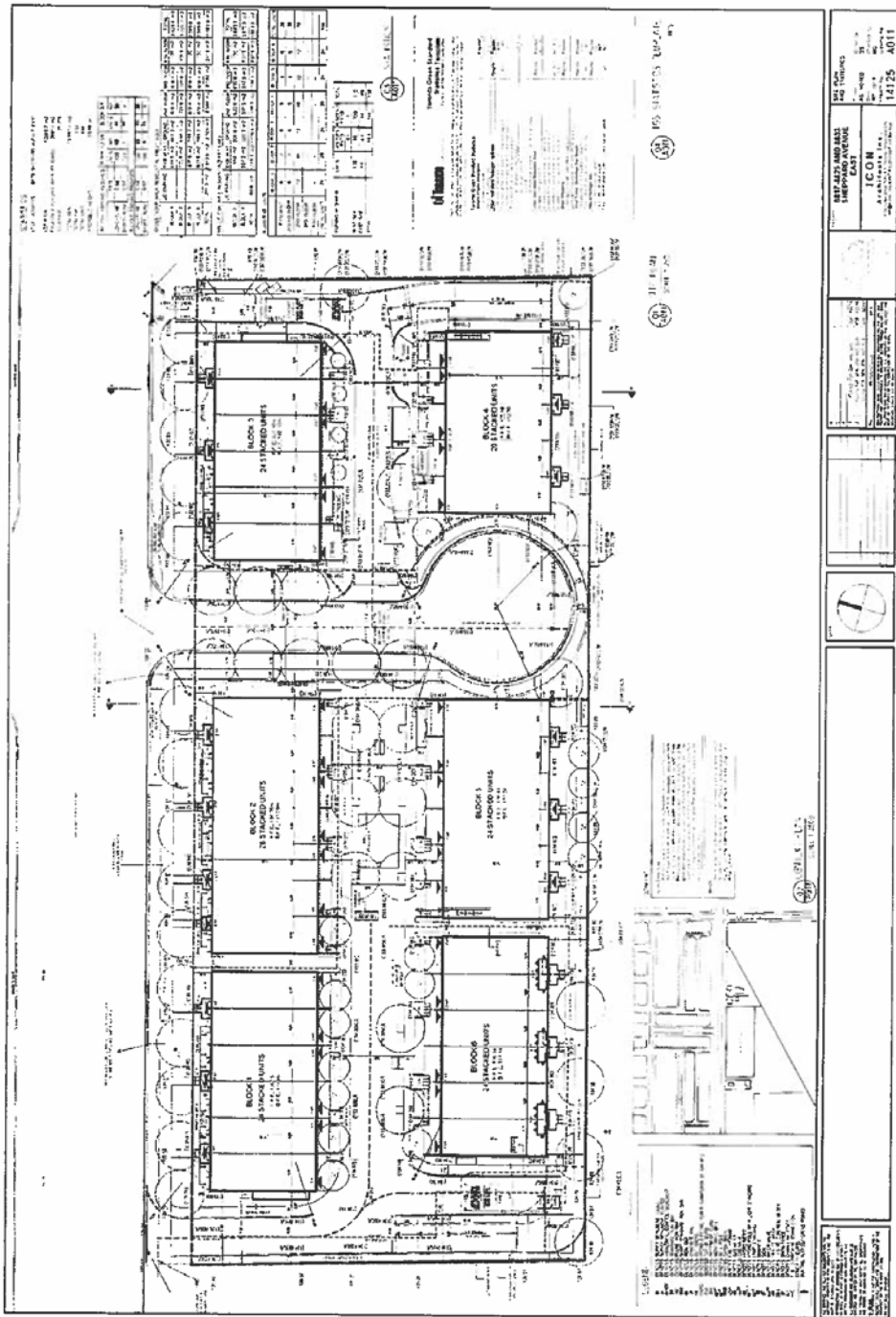
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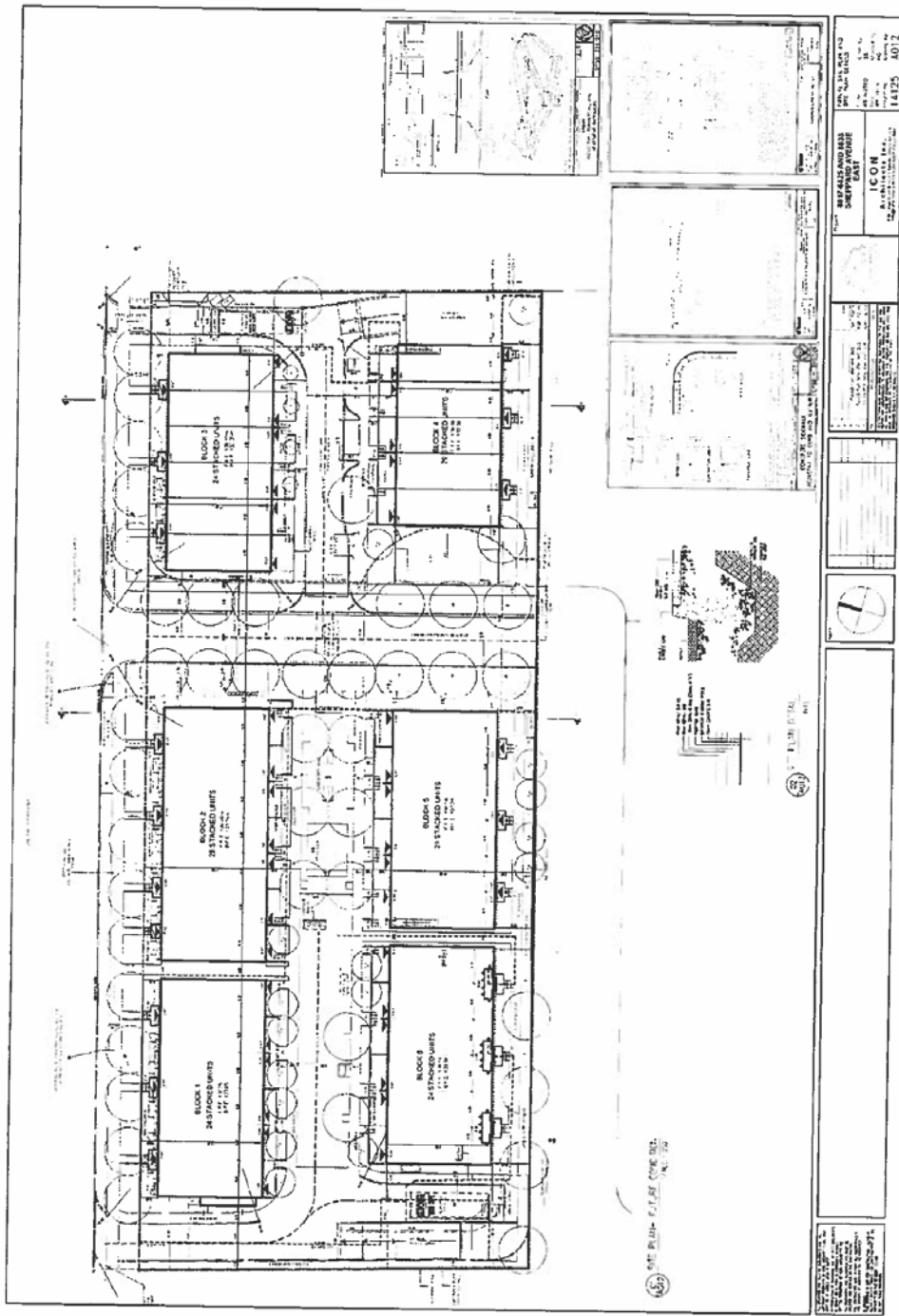
ADDITIONAL INFORMATION
 1. This plan is subject to the provisions of the Planning Act, R.S.O. 1990, Chapter P.22, and the provisions of the City of Toronto Act, R.S.O. 1990, Chapter T.23.
 2. This plan is subject to the provisions of the Planning Act, R.S.O. 1990, Chapter P.22, and the provisions of the City of Toronto Act, R.S.O. 1990, Chapter T.23.
 3. This plan is subject to the provisions of the Planning Act, R.S.O. 1990, Chapter P.22, and the provisions of the City of Toronto Act, R.S.O. 1990, Chapter T.23.

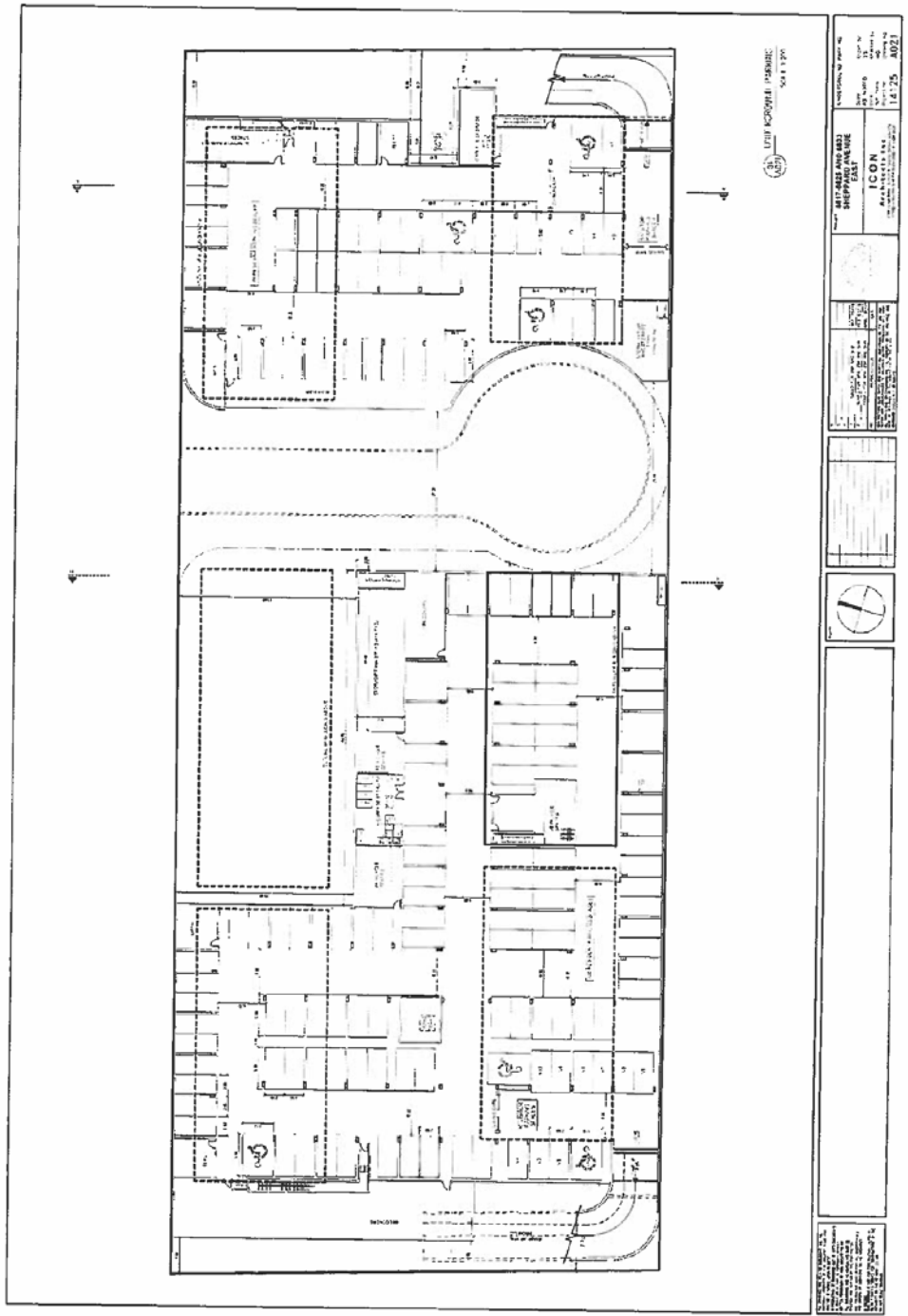
REGISTERED PROFESSIONAL ENGINEER
 BOUSFIELDS INC.
 1000 SHEPPARD AVENUE EAST
 SUITE 1000
 SCARBOROUGH, ONTARIO M1B 3Y5
 TEL: (416) 291-1111
 FAX: (416) 291-1112
 www.bousfields.com

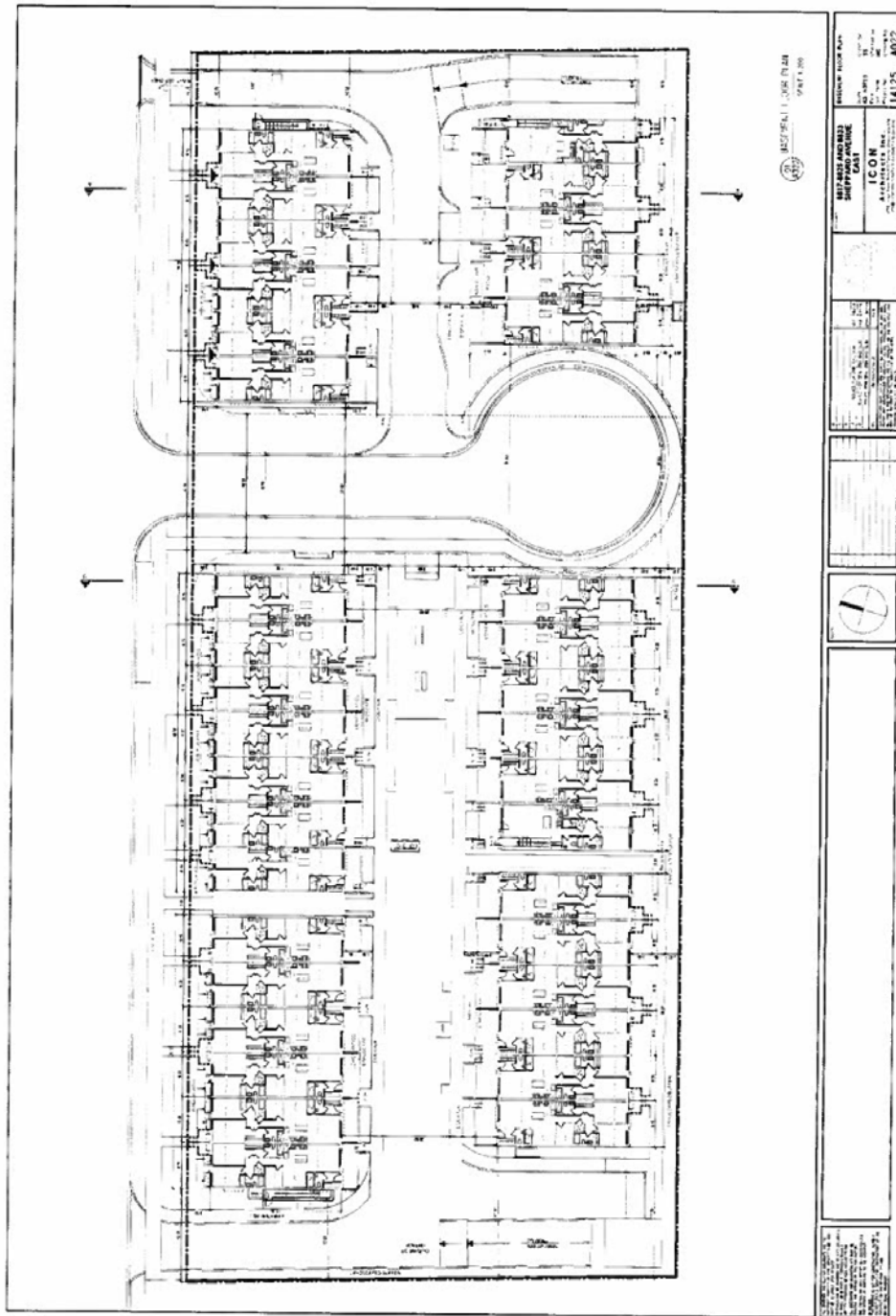
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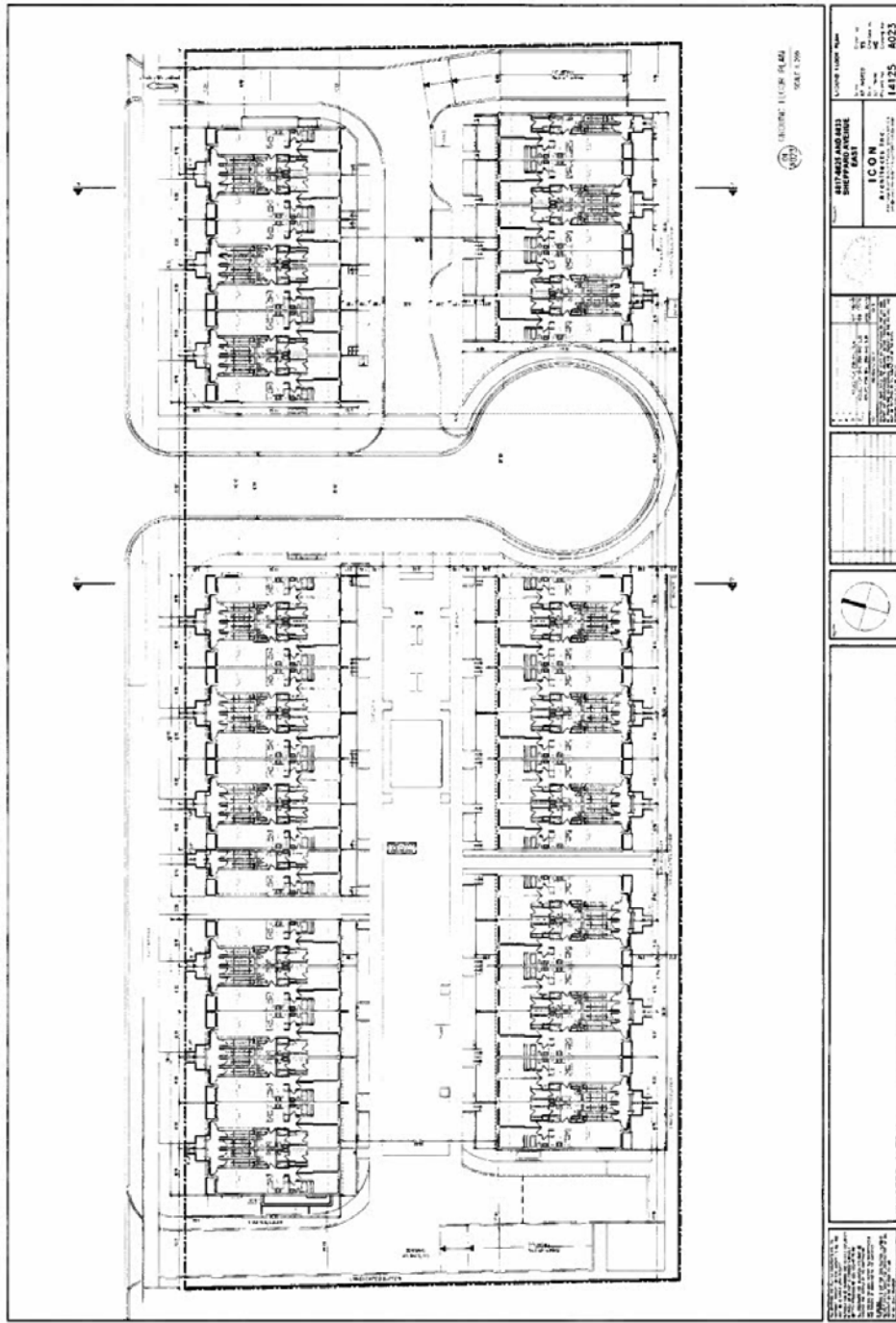
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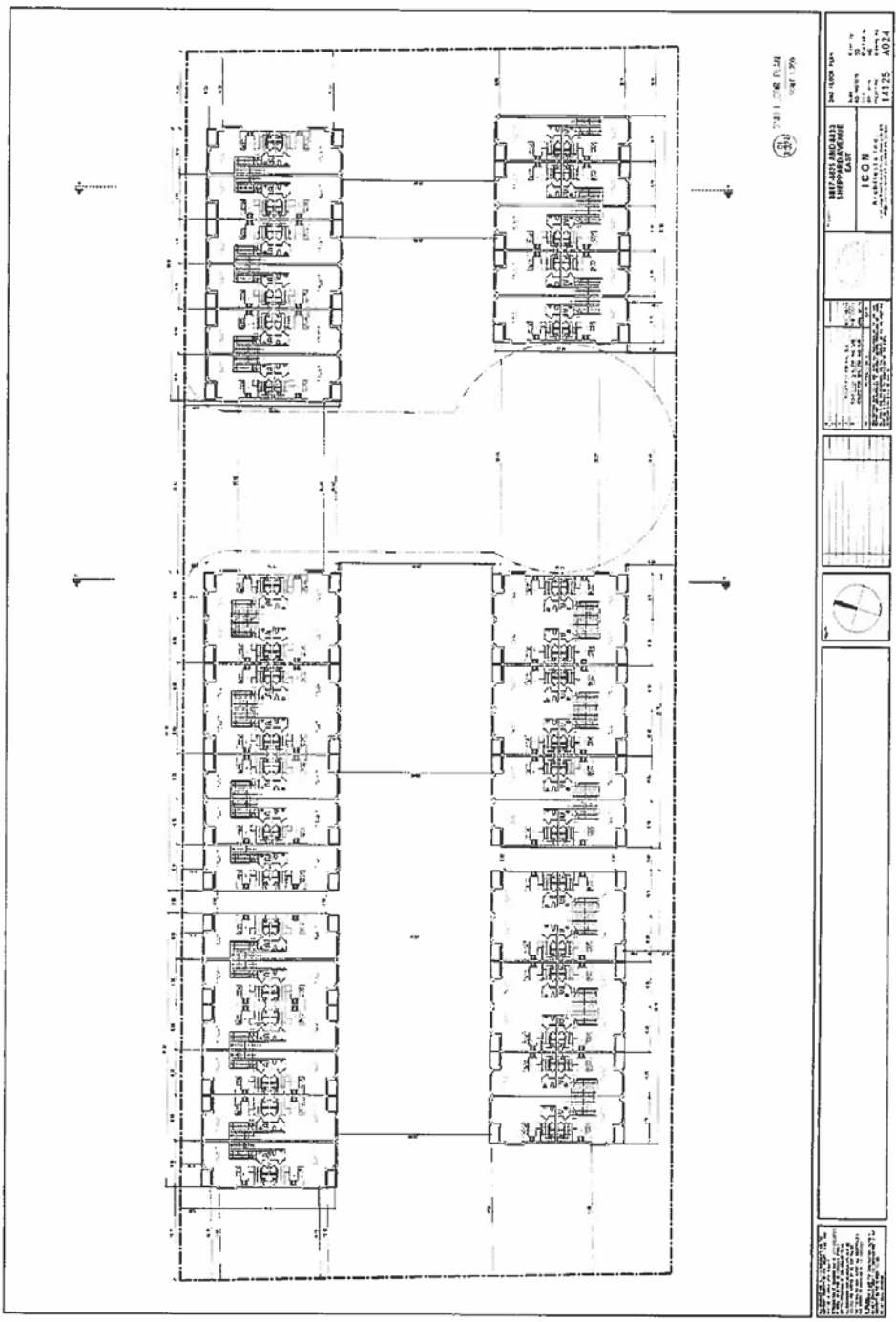


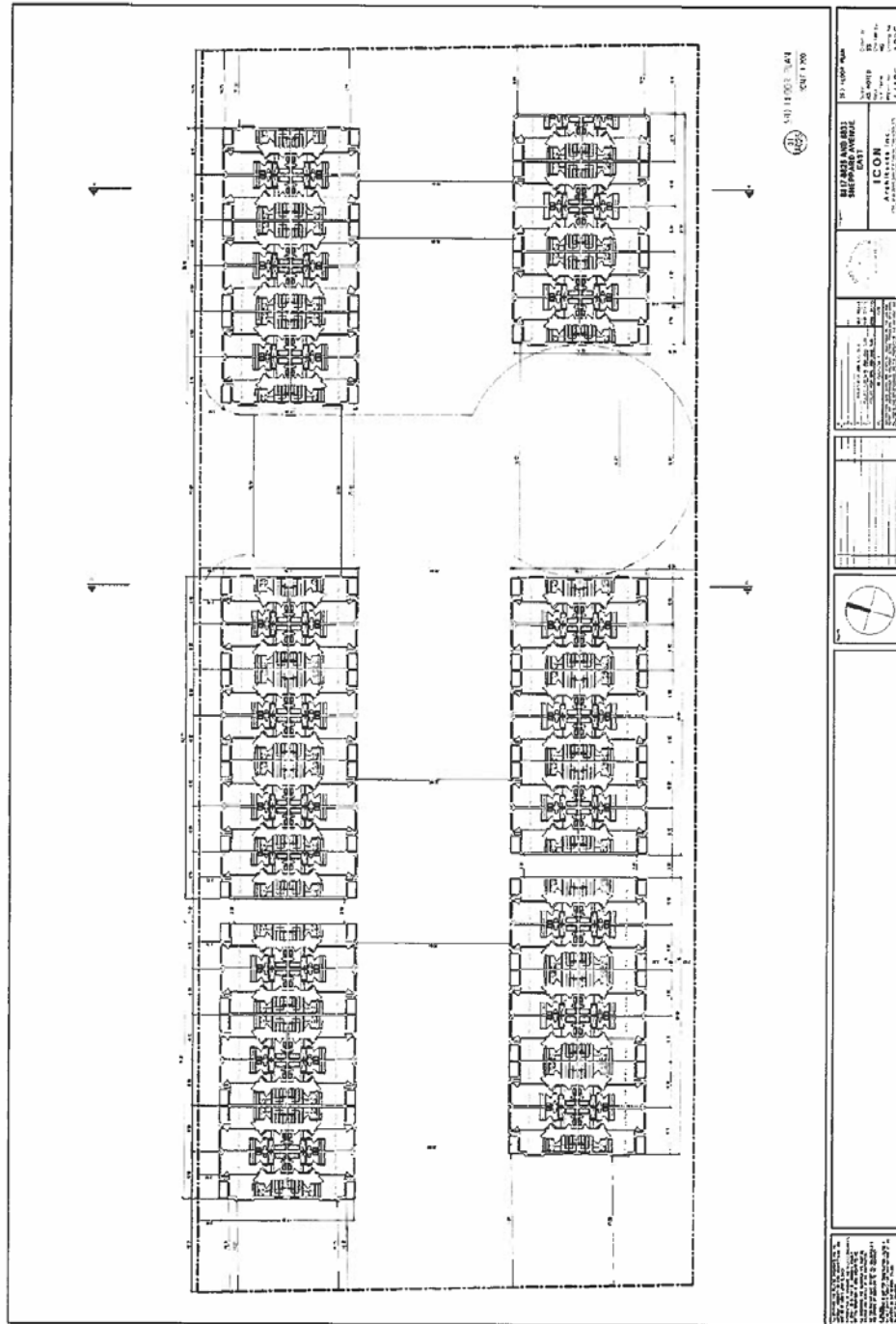


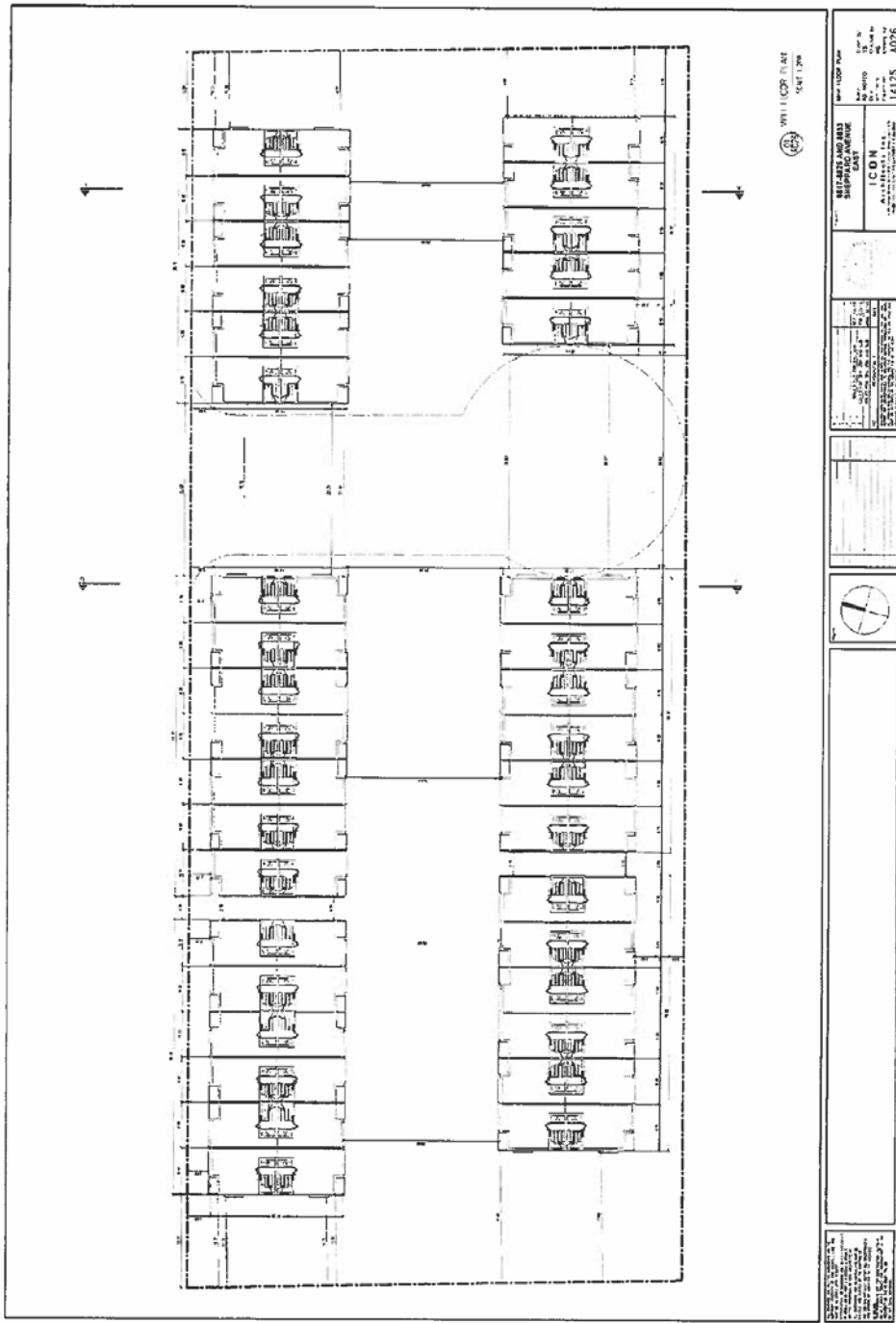








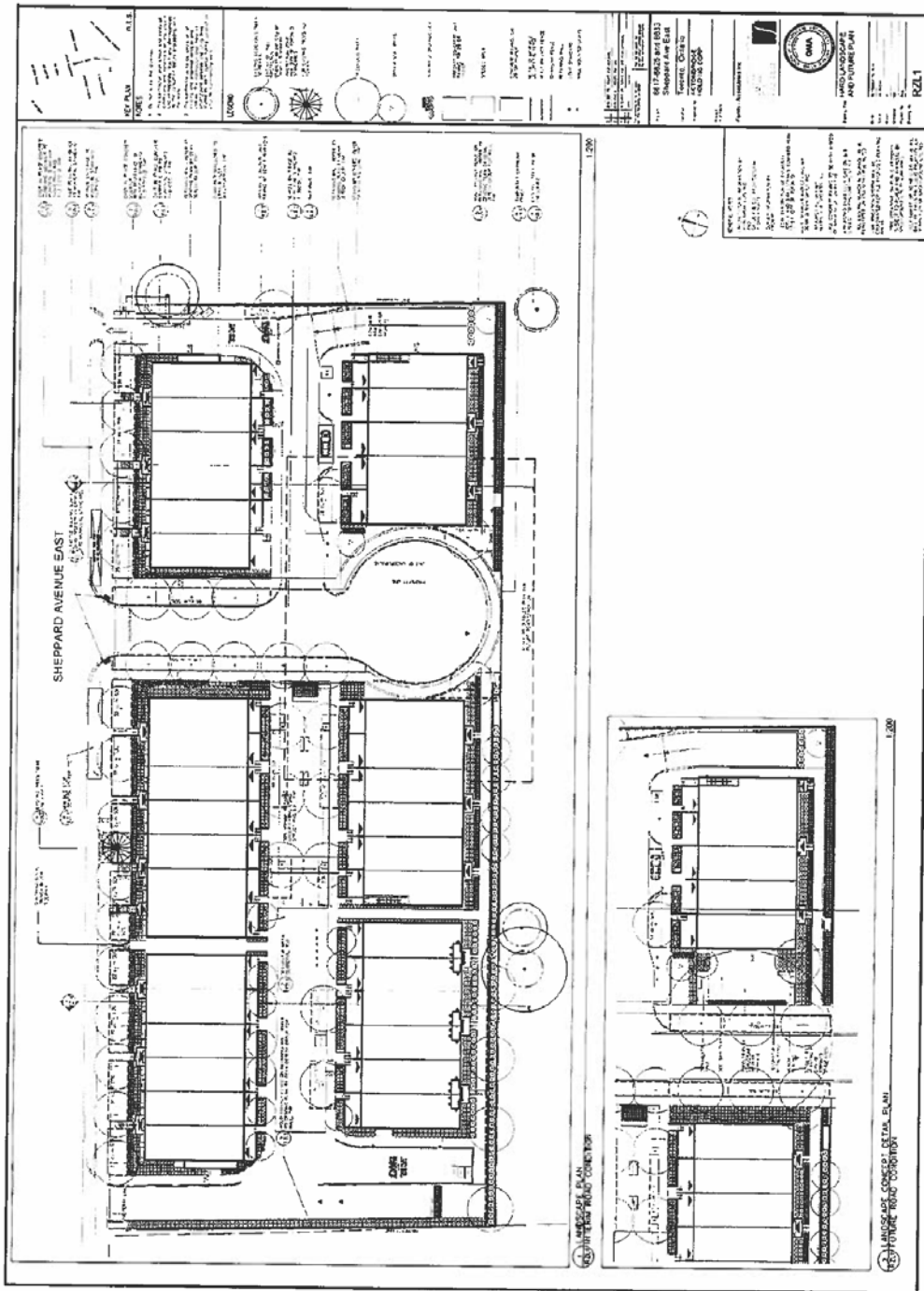


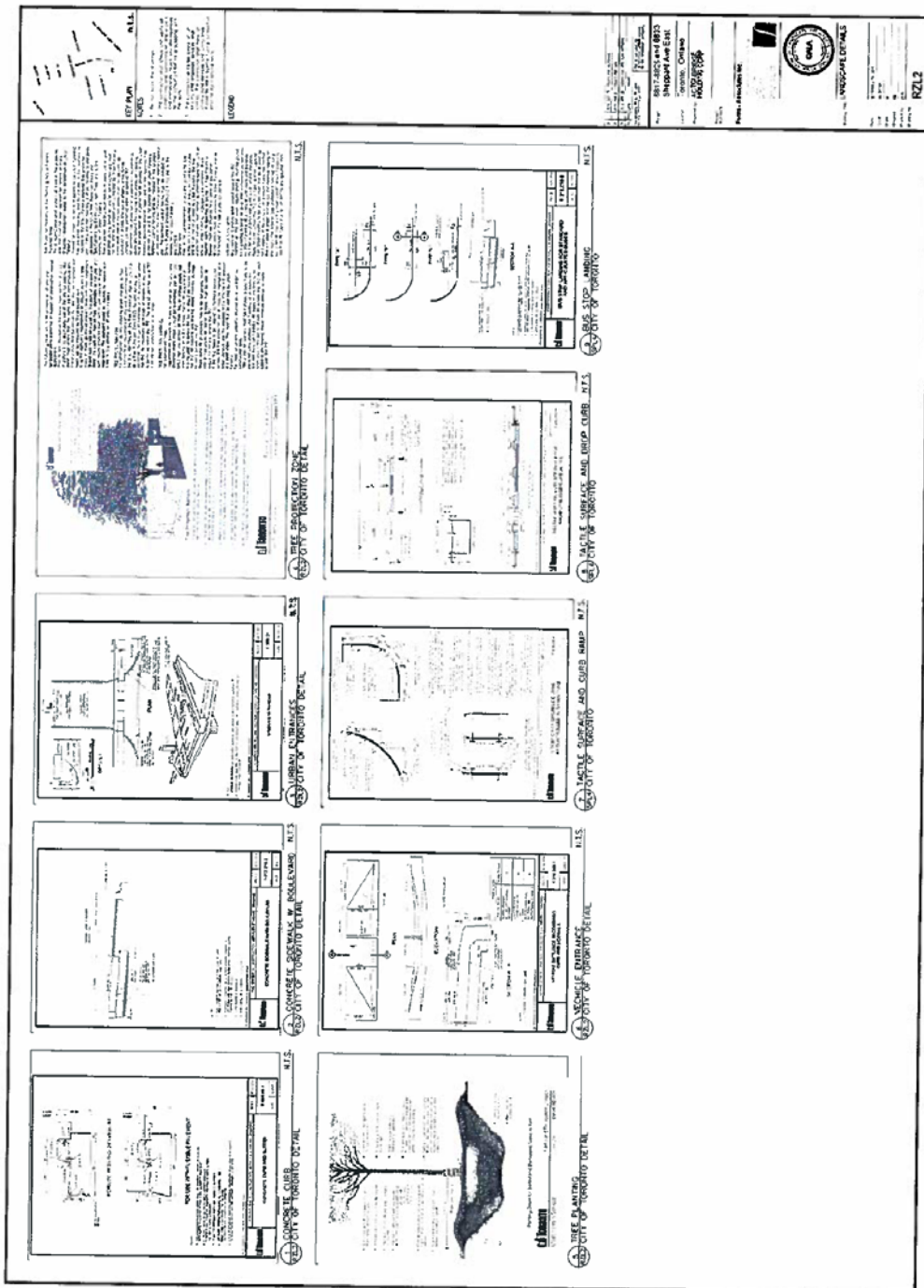












REVISIONS

1. 11/15/11: REVISED PER COMMENTS FROM THE CLIENT AND THE CITY OF OAKLAND.

2. 11/15/11: REVISED PER COMMENTS FROM THE CLIENT AND THE CITY OF OAKLAND.

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10. 11/15/11: REVISED PER COMMENTS FROM THE CLIENT AND THE CITY OF OAKLAND.

PROJECT INFORMATION

Project: 8817-8825 and 8833 Sheppard Ave East

Location: Oakland, CA

Client: [REDACTED]

Architect: [REDACTED]

Date: 11/15/11

Scale: 1/8" = 1'-0"

Sheet: RZL3

1.10 PRECAST CONCRETE PAVING

1/8" = 1'-0"

1.11 BUILT UP

1/8" = 1'-0"

1.12 FINISHING FLOORING

1/8" = 1'-0"

1.20 METAL DECK EDGE

1/8" = 1'-0"

1.21 CHIMNEY EDGE

1/8" = 1'-0"

1.22 WOOD PRIVACY EDGE

1/8" = 1'-0"

1.23 IRON RAILING

1/8" = 1'-0"

1.24 BUILT UP

1/8" = 1'-0"

