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WITHOUT PREJUDICE

July 13, 2018

By E-Mail

Wendy Walberg, City Solicitor
Att: Sharon Haniford and Daniel Elmadany, Solicitors for the City of Toronto
City of Toronto, Legal Services Division
Metro Hall, 26th Floor
55 John Street
Toronto, Ontario
M5V 3C6

Dear Ms. Wendy Walberg, City Solicitor:

**Re: "Without Prejudice" Settlement Offer
Zoning Amendment Application No. 15 261823 NNY 26 OZ
25 St. Dennis Drive, Toronto
LPAT Case No. PL161311**

We are counsel to 25 St. Dennis Inc. ("Preston"), the owner of lands municipally known as 25 St. Dennis Drive in the City of Toronto (the "Lands") and the applicant/appellant in the above matter.

Background

On December 4, 2015, Preston filed a Zoning By-law Amendment Application (Application No. 15 261823 NNY 26 OZ) (the "ZBLA Application") and Site Plan Application (Application No. 15 261828 NNY 26 SA) (the "SPA Application") with the City to permit a redevelopment of the Lands, consisting of a new residential building on the northern portion of the Lands and a mixed-use building on the southern portion of the Lands, while retaining the existing residential apartment building in the central portion of the Lands (collectively, the "Applications").

Preston subsequently appealed the ZBLA Application to the Ontario Municipal Board, herein referred to as the Local Planning Appeal Tribunal (the "Tribunal"), on December 19, 2016. Preston also referred the SPA Application to the Tribunal on June 27, 2017.

On July 18, 2017, the Tribunal convened an initial prehearing conference for the appeals and scheduled a three week Hearing to commence on April 30, 2018. The City subsequently requested an adjournment of the Hearing following Preston's resubmission of the Applications between January 31, 2018 and February 22, 2018. On March 7, 2018 the Tribunal ordered that the Hearing be adjourned.

On March 29, 2018, the Tribunal scheduled a two day mediation for May 2 and 3, 2018, which continued on July 5, 2018. The confidential and without prejudice discussions that took place during the mediation concluded in a settlement, in principle, to be followed by a formal settlement offer to the City.

"Without Prejudice" Settlement Offer

Preston proposes to settle the appeal of its ZBLA Application on the following terms:

Site Configuration and Built Form

Preston is presenting the City with three alternative built form options, reflected in the attached plans prepared by Kirkor Architects, each dated July 13, 2018 (collectively, the "Revised Plans"), which includes an updated shadow study. The intention of Preston and the City is that Preston shall present the Tribunal with only one of these three options that have been prepared, substantially in accordance with that specific option, pending discussions with Toronto District School Board ("TDSB"). Preston agrees and acknowledges that these three options are not interchangeable with each other.

Although there are a number of common features among each of the three alternative built form options, the primary difference is the potential use and built form for the northwest portion of the Lands; namely, among other matters, either a two-storey school (Option 1); three-storey townhouses (Option 2A); or a one-storey daycare (Option 2B), which are more particularly detailed on each set of these plans. Moreover, for Option 1, the maximum height of the south building is 110.5 metres (excluding a 5 metre mechanical penthouse), whereas for Options 2A and 2B, the maximum height of the south building is reduced to 107.7 metres (excluding a 5 metre mechanical penthouse).

Each of the Revised Plans includes, among other matters, the following elements:

- The conveyance to the City and construction by the Owner of a north-south 14 m wide public road along the western boundary of the Lands, connecting St. Dennis Drive and Grenoble Drive.
- A minimum of 1,115.52 square metres of public park, in the southeast portion of the Lands, shall be dedicated to the City free and clear, above and below grade, of all easements, encumbrances and encroachments prior to the issuance of the first above grade building permit, pursuant to section 42 of the *Planning Act*.

- Should excavation, shoring and/or construction staging be required after the first above grade building permit, as it relates to the lands that have been conveyed for the section 42 parkland identified above, the Owner shall be required to enter into an agreement with the City to the satisfaction of the General Manager, Parks, Forestry and Recreation.
- Prior to the issuance of the first above grade building permit for any building, the Owner shall pay the full value of cash-in-lieu of parkland to make up the shortfall in on-site parkland dedication in accordance with Chapter 415-23B of the Toronto Municipal Code, as amended, for the residential component and, if applicable, the non-residential component would be subject to a 2% parkland dedication rate.
- A minimum of 95 square metres of privately-owned publicly accessible space (“POPS”) shall be provided and maintained on the Lands by the Owner, and the Owner shall convey at no cost to the City a public access easement for such area, including provision for a plaque identifying such, prior to the issuance of the first above grade building permit for all or any part of the Lands, but public access to the POPS shall not be permitted until residential use is granted of the residential tower building located on Parcel 3 as identified in the Revised Plans, with such easement to be additionally secured through the Section 37 Agreement and Zoning By-law provisions.

Preston is currently engaged in confidential discussions with the TDSB regarding the potential to locate a “satellite” school building for Grenoble Public School in the northwest portion of the Lands (Option 1). However, if, for whatever reason, those discussions do not result in an agreement between Preston and TDSB to locate such school building on the Lands, Preston intends to proceed with the proposed redevelopment, and present to the Tribunal one of the two remaining options, by locating either three-storey townhouses (Option 2A) or a one-storey daycare (Option 2B) in the northwest portion of the Lands.

In the context of a settlement with the City, Preston would be prepared to seek approval from the Tribunal of a Zoning By-law Amendment to permit a redevelopment of the Lands based on a final set of plans substantially in accordance with one of the three options provided, subject to the following:

1. The final plans being substantially in accordance with the overall site layout and building envelopes reflected in one of the three options provided, to the satisfaction of the Chief Planner and Executive Director, City Planning;
2. The resolution of the use and built form for the building in the northwest portion of the Lands, be it a school, townhouses or a daycare, recognizing the changes that

will result to the final plans depending on which of the three options is selected, to the satisfaction of the Chief Planner and Executive Director, City Planning; and

3. Determination of grade for measuring height in Canadian Geodetic Datum, such that the building heights do not increase beyond a maximum of 0.5 metres above 127.0 MASL and only if required due to grade changes related to connecting and rationalizing the existing underground parking garage with the new underground parking garage, to the satisfaction of the Chief Planner and Executive Director, City Planning.

Preston acknowledges that further work is required to address outstanding site plan matters, including those associated with the final plans for whichever one of the three options is ultimately selected, including, among other matters, building materials and landscaping. Accordingly, Preston acknowledges that the attached plans are only being considered for a potential resolution of the ZBLA Application, and not the SPA Application.

Section 37 - Financial Contribution and Rental Tenure of Existing Residential Units

Preston is prepared to make a Section 37 contribution to the City in the amount of \$2,400,000, subject to indexing as set out by Statistics Canada commencing from the date of the Section 37 agreement, with such payment to be made prior to the issuance of the first above grade building permit for a new residential building on the Lands, and with such funds to be used for parkland improvements within the Flemingdon Park community and/or such other capital purposes as may be agreed to between Preston and the City, in consultation with the local Councillor.

For clarity, there will be no requirement for Preston to provide a public art component as a Section 37 community benefit.

If the Section 37 contribution is not used for its intended purpose within three (3) years of the implementing Zoning By-law Amendment coming into full force and effect, Preston agrees that 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 local Councillor, provided that the purposes are identified in Toronto's Official Plan and will benefit the local community.

Preston has agreed to secure the rental tenure of the existing residential units on the Lands for a minimum of twenty (20) years. Preston has further agreed to provide a Construction Mitigation Plan and Tenant Communication Strategy to the satisfaction of the Chief Planner and Executive Director, City Planning, the Chief Building Official, Toronto Building, and the General Manager, Transportation Services, prior to the first building permit, including a permit for excavation or shoring and any conditional permit, and thereafter the Owner shall implement such Plan and Strategy.

Construction of New Public Park and Development Charge Credits

The Owner agrees to design and construct the Above Base Park Improvements to the new park for a development charge credit against the Parks and Recreation component of the Development Charges to the satisfaction of the General Manager, Parks, Forestry and Recreation (PFR). The development charge credit shall be in an amount that is the lesser of the cost to the Owner of installing the Above Base Park Improvements, as approved by the General Manager, PFR, and the Parks and Recreation component of development charges payable for the development in accordance with the City's Development Charges By-law, as may be amended from time to time. The Owner is required to submit a design and cost estimate to be approved by the General Manager, PFR, and a letter of credit equal to 120% of the Parks and Recreation Development Charges payable for the development. The letter of credit will be required prior to the issuance of the first above grade building permit to the satisfaction of the General Manager, PFR.

New Public Road and Widening of St. Dennis Drive

The proposed conveyances to the City of land for the new public road and a widening of St. Dennis Drive would be subject to the following terms, to be incorporated, as appropriate, into a future Subdivision Agreement, arising from a Plan of Subdivision Application for the Lands that Preston will submit:

Phase One:

1. Prior to the issuance of the final building permit (including if such final building permit is conditional), for any building or structure as generally shown on Parcel 3 on the Revised Plans for any portion of the Lands, the Owner shall provide the following municipal services to the lot line and the following provisions shall be complied with and be subject to paragraph 2 below, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services:

(a) the Owner shall, at its own cost, design, build and convey, to the City, free of encumbrances, a new public road on the western portion of the Lands that is 14.0 metres in width and connects St. Dennis Drive and Grenoble Drive, generally shown as Parcel 6 on the Revised Plans, including intersection improvements and any identified new signals and pedestrian/cycling infrastructure, should they be required, all to the City's applicable standards for public roads, the precise location and specifications of which are to be secured in conjunction with site plan approval for the first phase of the development, including any required environmental assessments, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services, and the new public road is to be constructed to a minimum of base curb and base asphalt and connect to St. Dennis Drive and Grenoble Drive;

(b) the Owner shall, at its own cost, ensure that all water mains and sanitary sewers, and appropriate appurtenances, if identified as required, have been installed and are operational, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;

(c) prior to the issuance of the first above grade building permit for any part of the Lands, the Owner shall convey the required road widening of 1.44 metres along St. Dennis Drive to the City, including any required environmental assessments, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;

(d) prior to the issuance of the first above grade building permit for any portion of the Lands, the Owner shall provide securities and a satisfactory irrevocable letter of credit of 120 percent of the value required to secure the design, construction and conveyance of the new public road identified in 1(a) above, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services;

(e) all of the requirements in paragraphs 1 (a) to (d) above shall be secured through a Plan of Subdivision process to the satisfaction of the Chief Planner and Executive Director, City Planning, the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services, and additionally identified in the implementing zoning by-law amendments and a Section 37 agreement; and

(f) in any event, no new residential use shall be permitted on the Lands until the new public road has been completed and is operational and has been conveyed to and accepted by the City.

Phase Two:

2. There shall be no issuance of the any above grade building permit for Parcel 2 as generally shown on the Revised Plans if paragraph 1 above has not been satisfied in its entirety to the satisfaction of the Chief Planner and Executive Director, City Planning, the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services.

Further Transportation Assessments

Preston agrees to have its transportation consultant undertake the following additional assessments and to provide the results of such assessments to the City as soon as reasonably possible:

1. Preston's transportation consultant will undertake an all-way stop control warrant analysis for the intersection of the proposed new north-south public road and Grenoble

Drive, including existing, new, diverted trips and potential other future trips for all modes. It is to be assumed that inbound left-turns from Grenoble Drive to the Lands will not be restricted.

2. Preston's transportation consultant will undertake an assessment of the need for a pedestrian crosswalk on St. Dennis Drive at the intersection with the proposed north-south public road. The warrant analysis will require a busiest 8 hours vehicle and pedestrian counts at this location and, for the future conditions, relevant traffic projections will be provided.

Preston agrees that should it be determined, by the General Manager, Transportation Services, that a warrant is met and certain measures are required, the Owner shall, at its sole expense, pay for and install such measures as required to the satisfaction of the General Manager, Transportation Services.

Tribunal Final Order Withheld

The Owner agrees that the Tribunal's final Order be withheld on the ZBLA Application until such a time as:

- Final form and content of the Zoning By-law Amendments are satisfactory to appropriate City divisions;
- A Section 37 agreement is executed and registered on title to the satisfaction of appropriate City Divisions;
- The Owner provides Functional Servicing Report, Stormwater Management Report, Hydrogeological Review, including a Foundational Drainage Report, to the satisfaction of appropriate City divisions;
 - Should it be determined that upgrades or improvements are required arising from these above noted reports, the Owner agrees to design and provide financial securities for any upgrades or required improvements to the existing municipal infrastructure to the satisfaction of appropriate City divisions;
 - And should these matters or services arising from the above be required, they shall have been identified in the Zoning By-law and secured in appropriate agreements and those agreements registered on title to the Lands.

Matters to be Addressed and Secured, if Necessary, at Site Plan Approval

Preston agrees that the following matters, among other matters, will be addressed, and if necessary, secured at Site Plan Approval:

1. the school bus bay configuration on Grenoble Drive, in consultation with the TDSB, whereby the Owner, at its sole cost, shall pay for and construct any changes to the school bus bay on Grenoble Drive all to the satisfaction of the General Manager, Transportation Services;
2. the on-street parking and/or bus bay on Grenoble Drive directly adjacent to Grenoble Public School (municipally known as 9 Grenoble Drive), in consultation with the TDSB, whereby the Owner, at its sole cost, shall pay for and construct any changes to such on-street parking and/or bus bay, all to the satisfaction of the General Manager, Transportation Services;
3. the bicycle lane and school zone safety plan as set out in Vision Zero, in coordination with the Vision Zero team, whereby the Owner, at its sole cost, shall pay for and construct any changes to the cycling lanes on Grenoble Drive to accommodate the new public street, all to the satisfaction of the General Manager, Transportation Services; and
4. the Owner shall pay for and construct the on-street drop-off facility on the new north-south public street and appropriate landscape and tree planting treatments to the southeast corner of this intersection to address the future land uses of that area, all to the satisfaction of the General Manager, Transportation Services.

Conclusion

We look forward to receiving the City's response to this settlement proposal following the City Council meeting currently scheduled for July 23, 24, and 25, 2018. In the meantime, please do not hesitate to contact us if you have any questions regarding this settlement proposal, or if you require anything further in advance of presenting this settlement offer to City Council.

If City Council accepts this settlement proposal, Preston will file a Plan of Subdivision Application and a revised Site Plan Application for consideration by the Chief Planner and Executive Director, City Planning.

Please note that this settlement offer is conditional upon City Council's acceptance of the proposal at its meeting that is currently scheduled for July 23, 24 and 25, 2018. Should the July Council meeting be extended beyond those three days, the offer is not intended to expire until the conclusion of the July City Council meeting.

We appreciate the hard work of City staff over the last few weeks and months working with our client's consultant team and we believe that this without prejudice settlement offer represents an appropriate resolution to our client's appeal of its ZBLA Application. Accordingly, we are hopeful that this without prejudice proposal will be accepted by City Council.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

encl.: As above

copy: Client