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November 11, 2019

Our File No.: 192332

Executive Committee
City of Toronto
City Hall, 10th Floor West
100 Queen Street West
Toronto, ON M5H 2N2

Dear Mayor and Members of Executive Committee:

**Re: Development Charges Complaint
1251 Bridletown Circle
Executive Committee Item EX10.6**

We are lawyers for Middlepark Estates Inc. ("Middlepark") with respect to its development charge ("DC") complaint to be considered by the Executive Committee at its meeting of November 14, 2019.

We have reviewed the October 7, 2019 Report to the Committee from the Chief Financial Officer and Treasurer recommending the complaint be dismissed. Our client strongly disagrees with staff's assessment as set out in the Report. We respectfully ask the Committee to grant Middlepark's complaint, and direct the reimbursement of the overpayment of DCs as set out in the complaint.

Middlepark's complaint hinges on whether 92 innovatively designed units within the development are considered to be "Apartment Units" as defined in the City's DC By-law.¹

The definition of "Apartment Unit" in the DC By-law is as follows:

"A residential dwelling unit within a residential building, or the residential portion of a mixed use building, where such unit is accessed through a common principal entrance from the street level and an interior enclosed corridor, and the building contains three or more units with such access, and includes a stacked townhouse."

¹ Municipal Code Chapter 415



To qualify as a Apartment Unit, access to the unit must be provided from an interior enclosed corridor that is accessed by a common principal entrance from the street level.

Access to all 92 units in question is indeed provided by an interior enclosed corridor that is accessed by a common principal entrance from street level. Attachment 1 shows a cross section of a typical building, depicting the principal entrance for the units. The units are all constructed above an underground garage accommodating parking for residents and visitors; however the units are not accessed directly from the parking garage. Instead, an external stairway leads from the garage to the street level, where outdoor access to a interior corridor is located end of each building.

The Staff Report suggests that the subject units do not qualify as “Apartment Units” because each unit contains two entrances. Staff appear to conclude, without explanation, that the entrance they described as “at-grade” is the “principal” entrance and thus conversely the common entrance that is located at the side of each building is not a “principal” entrance because it is below grade. This reasoning, however, has no foundation in the DC By-law.

There is no locational requirement for a “common principal entrance”, only that it be accessible from the “street level”. The common entrance in this case is only partially below grade and is clearly visible and accessible from the “street level”.

There is no defined term in the DC By-law for “principal” or “principal entrance”. The DC Bylaw does not define “principal entrance” in relation to its location relative to grade. We can only conclude that Staff’s reasoning is subjective and is guided by perception rather than fact. The DC By-law definition of “Apartment Unit” does not disqualify the form of residential unit my client has built, merely because it has a second private entrance that is located at grade (more accurately, these entrances are located above the level of finished grade).

If indeed the application of the DC By-law hinges on the word “principal”, and that term is not clearly defined in the By-law itself, then the City’s decision in this matter should fall on the common definition of the word. The word “principal” is understood to mean primary or most important. We submit, that **the primary entrance to the subject buildings, is the entrance that is most frequently used.** This is not a scientific principle. It is just common sense.

The common entrance at the side of each building provides the most direct access to and from the parking area. It would make no sense for the residents of these buildings to bypass the common entry and common corridor in favour of a longer and less sheltered route to their unit. The same applies when residents leave their unit.

Access and egress to and from the units via the underground parking is a daily activity. This project is suburban in nature, and residents rely on their cars to travel to both work and leisure pursuits. Waste is stored in the Underground Facility and locker rooms are located there as well. Most of the Visitor Parking is also found in the underground garage. Common sense dictates that the common corridor is the most frequently used means of gaining access/egress to and from the



residential units in question. While the above grade entrance may read as the “front door” of a unit from a design or aesthetic perspective, and while we acknowledge that this door will be used from time-to-time, **it is not the entrance that will be principally used.**

We would urge the Committee to also consider how this project functions in deciding if the units in question are Apartment Units. Many of the amenities enjoyed by the residents are featured in apartment buildings. Underground parking, elevators to the underground facility, communal waste management, shared locker rooms, communal bike storage and a communal recreational amenity space are indicative of a density and site amenities included in apartment buildings. These amenities are not often available or required of typical townhouse projects.

In summary, in respect of the 92 units in question:

1. The entrance to the common enclosed interior corridor, which is accessed from the street level, is the “principal” entrance for the units, based on a common sense evaluation of how the building functions and the frequency of use of this point of access/egress.
2. The units therefore satisfy the definition of Apartment Units in the DC By-law.
3. The units should have been charged DCs at the Apartment Unit rate.

Accordingly, we believe that Staff erred in the application and calculation of DC rates at the time building permits were issued. We ask that Executive Committee grant Middlepark’s complaint under Section 20 of the Development Charges Act 1997.

Yours truly,

Goodmans LLP

A handwritten signature in black ink, appearing to read "R. Howe", written over a horizontal line.

Robert Howe

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ATTACHMENT 1(

