

NY19.2.1

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**File No. 037175/000001**

November 23, 2020

**DELIVERED BY EMAIL AND COURIER**

John Elvidge  
Acting City Clerk  
City of Toronto  
City Hall, 100 Queen Street West  
10<sup>th</sup> Floor, West Tower  
Toronto, ON M5H 2N2

Dear Mr. Elvidge:

**Re: Item NY19.2 – Request for Direction Report - Zoning By-law Amendment -  
1861 O'Connor Drive**

We are legal counsel to 10285773 Canada Corp. operating as Artlife Developments (together, “**Artlife**”), the owners of the property municipally known as 1861 O'Connor Drive, in the City of Toronto (the “**Subject Property**”). Artlife, through its subsidiaries, is in the business of purchasing lots, rezoning and developing the properties. It has two other lots going through the zoning process with a third project forthcoming.

Artlife plans to develop the Subject Property with a nine-storey mixed use building consisting of 252 residential units, one commercial unit on the ground floor and three levels of underground parking (the “**Proposed Development**”). The Proposed Development will help respond to the need for more housing near transit in the City and is ready to develop now.

On November 4, 2020, North York Community Council (“**NYCC**”) considered a Request for Directions report for the Proposed Development. The report recommends that City Council direct the City Solicitor and appropriate staff to attend the Local Planning Appeal Tribunal hearing to oppose the Zoning By-law Amendment (“**ZBA**”) Application in its current form. It also requests that City Council direct that any approved ZBA for the Subject Property be subject to a Holding Symbol (H) subject to the “substantial completion” of the Municipal Class Environmental Assessment Study for the Golden Mile area, where a preferred alignment of O'Connor Drive has been selected.

We submit this letter to ensure that the record is clear before City Council makes its decision.

### **Artlife Did Not Know About the Road Realignment When It Purchased the Subject Property**

Our client has substantial concerns with NYCC's decision to adopt staff's recommendations notwithstanding the deputation made by our client's planner, Ms. Janice Robinson of Goldberg Group. However, what is more concerning is that no questions were asked of Ms. Robinson, while questions were asked of staff (that were incorrectly answered) and appeared to influence NYCC's decision.

Specifically, the local Councillor, Deputy Mayor Minnan-Wong, asked staff whether our client was aware of the proposed O'Connor Drive realignment when it filed its application in 2018. Staff advised that the road realignment issue was raised at the pre-application meeting and that at this meeting, the potential of the road realignment going "right through their property" was discussed with the applicant.

**This is not correct and mischaracterizes our client's knowledge of the potential realignment of O'Connor Drive.** Our client completed its due diligence and had numerous discussions with City staff prior to purchasing the property and filing development applications where neither the road realignment nor the Golden Mile Secondary Plan were mentioned:

- In February 2017, our client contacted City Planning to discuss the development potential of the Subject Property, noting that it had made a condition offer to purchase;
- Following several discussions and meetings with City staff in 2017, our client was advised that a tall building would not be supported on the Subject Property, but that an eight-storey mid-rise building consistent with the O'Connor Drive Urban Design Guidelines could be supported;
- Based on these representations and review of the planning policies and zoning applicable to the Subject Property at the time, Artlife closed on its purchase of the Subject Property on July 13, 2017;
- City staff continued to meet with Artlife's consultant in 2018, with no mention of the road realignment of O'Connor Drive or the Golden Mile Secondary Plan at the first meeting with Artlife's current planning consultants, Goldberg Group on May 30, 2018;
- **The City's own documents prove that the Golden Mile Secondary Plan did not include the Subject Property within its boundaries until April 2019. Even then, as of June 2019, the conceptual alignment for O'Connor Drive included options that would have no impact on the Subject Property.**

A complete chronology of what our client knew about the road realignment and the Golden Mile Secondary Plan, based on facts and information on the public record to June 2019, is provided at **Attachment 1** to this letter.

### **The Incorrect Information Provided to Community Council May Have Affected Its Decision**

It is clear that the incorrect advice regarding our client's knowledge of the road realignment led to a negative reaction from the local Councillor. The Deputy Mayor noted that he found it "objectionable, some would say offensive" for our client to file an application that they may never build because they

knew that a road may be going through the property, simply to increase the value of the property on expropriation. The motion to adopt staff's recommendations was approved unanimously, with no further questions or comment (see **Attachment 2** for relevant transcript of the NYCC meeting).

**To be clear, Artlife has always intended to, and still intends to develop the Subject Property.** Artlife has expressed through its continued involvement in the development application process, including making a comprehensive resubmission on November 17, 2020 on both its zoning and site plan application to continue to respond to staff's comments. Notwithstanding its LPAT appeal and hearing date, it remains receptive to mediation with staff, but fully objects to any assertion that a Holding Symbol would be appropriate for reasons already provided in its prior submissions.

**Request to City Council**

Given the incorrect facts provided to the local Councillor and NYCC, **we respectfully request that the fourth recommendation related to the Holding Symbol be referred back to NYCC so that it can be considered on the basis of planning merits, rather than on false accusations of our client profiteering from a known expropriation at the time it closed on its property or during pre-application meetings with staff.** If the City intends on acquiring the property due to a potential road realignment, it is entitled to do so under its authority under the *Expropriations Act*.

Our client is extremely distressed with the false information provided to NYCC regarding the Proposed Development and will be separately filing a complaint to the Office of the Integrity Commissioner.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**



Stephen F. Waqué/Isaac Tang

SFW/IT

Cc: Client  
Deputy Mayor Denzil Minnan-Wong  
Councillor Gary Crawford  
Mirian Prejel, Senior Planner, Community Planning, North York District (East Section)  
John Andreevski, Manager, Community Planning, North York District (East Section)

## **Attachment 1**

### **Chronology of Development Activity and Planning Policies for 1861 O'Connor Drive**

| <b>Date</b>       | <b>Action</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| February 2, 2017  | Email from Jake Murray (Biglieri Group, the former planning consultant for Artlife) to Vivian Mihkelson (Administrative Assistant, East Section, North York District) advising that Artlife has conditionally purchased the Subject Property and requesting a meeting with Willie Macrae (Manager, East Section, North York District) and urban design and transportation staff to discuss what can be done with the site.                                                                                                                                             |
| February 8, 2017  | Email from Vivian Mihkelson to Jake Murray advising that Willie Macrae was unavailable the week of February 20, but would be available the week after, and requested that Artlife provide materials at least one week in advance of the meeting. Dates provided included February 28, March 1 and March 2, 2017.                                                                                                                                                                                                                                                       |
| February 8, 2017  | Email from Jake Murray to Vivian Mihkelson advising that he would follow up with Artlife and that a conceptual site plan and model would be provided at least one week before the meeting.                                                                                                                                                                                                                                                                                                                                                                             |
| February 10, 2017 | Email from Jake Murray to Vivian Mihkelson advising that Artlife can meet on February 28, 2017.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| February 2017     | Artlife submitted a concept plan for a 24-storey tall building.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| February 27, 2017 | Call between John Lyon and Jake Murray where the City advised that they would like a new meeting and would cancel the meeting on February 28, 2017, as they would like to see a mid-rise building and will have urban design staff in attendance at the meeting.                                                                                                                                                                                                                                                                                                       |
| March 2017        | Artlife submitted a concept plan for a 14-storey building, which the City accepted for the purposes of attending a meeting.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| March 31, 2017    | Email from John Lyon (Senior Planner, East Section, North York District) to Jake Murray advising that a meeting on April 11 or April 12 would not work for urban design staff but that April 19 or April 20 were available.                                                                                                                                                                                                                                                                                                                                            |
| April 4, 2017,    | Scarborough Community Council received an Information Report from City Planning Staff dated March 7, 2017 regarding the Final Report of the Golden Mile Market Analysis & Economic Strategy. The intent of the Market Analysis and Economic Strategy Study was to provide an understanding of current economic and employment conditions for the Golden Mile Secondary Plan Study Area and suggest an economic strategy to inform and assist in the preparation of a vision and planning framework for the Golden Mile area, in advance of the Eglinton Crosstown LRT. |
| April 19, 2017    | Pre-application meeting with City of Toronto (North York District) attended by Sharon Maron, Martin Ferreira, Jake Murray and John Lyon. At this meeting the                                                                                                                                                                                                                                                                                                                                                                                                           |

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | 14-storey proposal was discussed, but the City advised that it could not support any development taller than eight to nine storeys based on the width of O'Connor Drive as per the O'Connor Drive Urban Design Guidelines. The City encouraged amalgamation of other parcels near the corner of Victoria Park Avenue and O'Connor Drive. Staff did not mention the O'Connor Drive realignment at this meeting or the Golden Mile Secondary Plan as applying to the Subject Property.                                                                                                        |
| April 21, 2017    | Call between Jake Murray and City urban design and John Lyon (City planner), where staff advised that they could not support anything over 8 storeys on the site because of the width of the O'Connor Drive right of way, that there was not much flexibility with the 45 degree angular plane requirement to the south side of the site, and confirmed that the O'Connor Drive Urban Design Guidelines were prepared in anticipation of the O'Connor LRT station. Again, staff did not mention the Golden Mile Secondary Plan or O'Connor Drive realignment at this meeting.               |
| June 28, 2017     | <u>Community Consultation Meeting #1 for Golden Mile Secondary Plan</u><br><br>The Subject Property is not part of the Secondary Plan and there is no proposed realignment of O'Connor Drive.                                                                                                                                                                                                                                                                                                                                                                                               |
| July 13, 2017     | <b>Transfer of Subject Property from former owner to 10285773 Canada Corp. by Instrument No. AT4626821</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| October 14, 2017  | <u>Community Consultation Meeting #2 for Golden Mile Secondary Plan</u><br><br>The Subject Property is not part of the Secondary Plan and there is no proposed realignment of O'Connor Drive.                                                                                                                                                                                                                                                                                                                                                                                               |
| December 2017     | City staff and its consultants completed Phase One of the Golden Mile Secondary Plan Study, which focused on obtaining an understanding of the Golden Mile area and its surrounding context, developing an understanding of the opportunities and constraints within the Golden Mile and identifying the necessary work to be undertaken in other components of the Study.<br><br>The Golden Mile Secondary Plan Study Area did not include to the Subject Property as it is located west of Victoria Park Avenue and did not include any plans indicating a realignment of O'Connor Drive. |
| February 21, 2018 | Scarborough Community Council received an Information Report from City Planning Staff regarding the progress of the Study and the Background Report for the Golden Mile Secondary Plan Study.                                                                                                                                                                                                                                                                                                                                                                                               |
| May 30, 2018      | Michael Goldberg and Janice Robinson (Goldberg Group, the current planning consultant for Artlife) attended a pre-consultation meeting with City planning staff to discuss plans for redevelopment of the Subject Property for a mixed-use mid-rise building. Planning staff provided comments regarding the design and suggested that the owners/consultants attend the Community Consultation                                                                                                                                                                                             |

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          | Meeting for the Golden Mile Secondary Plan scheduled for June 26, 2018, but did not mention that there was a planned realignment of O'Connor Drive.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| June 26, 2018            | <p><u>Community Consultation Meeting #3 for Golden Mile Secondary Plan</u></p> <p>City staff and its consultants introduced three development alternatives for the Golden Mile Secondary Plan area at a conceptual level.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| July 23-30, 2018         | City Council considered a motion from Councillor Michelle Holland, seconded by Councillor Michael Thompson, and directed the Chief Planner and Executive Director, City Planning to retain the boundaries of the Golden Mile Secondary Plan Review Study as approved in Items beginning in January of 2018 and that no alterations be permitted without direction and approval from Scarborough Community Council.                                                                                                                                                                                                                                                                                               |
| <b>December 11, 2018</b> | <b>Submission of a complete rezoning application for the Subject Property</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| January 15, 2019         | <p>Scarborough Community Council considered a report from the Director, Community Planning, Scarborough District, where City Planning staff recommended that the Golden Mile Secondary Plan study area boundaries be extended to include additional lands on the west side of Victoria Park Avenue within Ward 16.</p> <p>Scarborough Community Council referred the item back to City Planning staff to allow the local councillors affected by the outcome of the proposed boundary expansion to have further discussions with City staff and community stakeholders regarding the intent of the boundary expansion. Scarborough Community Council directed City Planning staff to report back in Q1 2019.</p> |
| February 14, 2019        | North York Community Council considers a Preliminary Report for the rezoning application for the Subject Property, with Michael Goldberg providing a deputation on the item.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| April 16, 2019           | City Council considered a Staff Report dated March 8, 2019 from City Planning Staff regarding the progress of the Golden Mile Secondary Plan Study (Alternatives Report) and the recommended expansion of the study area to include additional lands west of Victoria Park Avenue and along the southern boundary (south of Eglinton Avenue East), including the Subject Property.                                                                                                                                                                                                                                                                                                                               |
| June 25, 2019            | <p><u>Community Consultation Meeting #4 for Golden Mile Secondary Plan</u></p> <p>City staff and its consultants introduced a Character Area for the area west of Victoria Park Avenue. Conceptual alignment options for O'Connor Drive were identified on a conceptual basis, with two of the three options having no impact on the Subject Property.</p>                                                                                                                                                                                                                                                                                                                                                       |

## **Attachment 2**

### **Transcript from North York Community Council - November 4, 2020**

**Deputy Mayor Minnan-Wong:** If part of this proposed realignment of roads takes place that will go right through their property, correct?

**John Andreevski:** The municipal class environmental assessment is looking at options, uh ...

**Deputy Mayor Minnan-Wong:** Yes, that's one of the options, yes?

**John Andreevski:** The preferred option is through the site. Another option is a "do-nothing" option where they don't put it through the site, um, so the recommendation of the hold is to figure out exactly the road realignment and how it may or may not impact this property. Um ...

**Deputy Mayor Minnan-Wong:** Right.

**John Andreevski:** Staff have advised me that at the pre-application meeting the road realignment issue was discussed with the applicant as well.

**Deputy Mayor Minnan-Wong:** When did they file the original application?

**John Andreevski:** It was 2018, I believe.

**Deputy Mayor Minnan-Wong:** And did they know at the time the potential road realignment?

**John Andreevski:** I believe that was discussed at the pre-application meeting that there could be a potential for a road realignment.

**Deputy Mayor Minnan-Wong:** Right, but that had already been sort of ... that was, um ... it wasn't a secret that the road realignment could go directly through their property, correct?

**John Andreevski:** I don't believe so.

**Deputy Mayor Minnan-Wong:** Ok good. So the arrangement would be now, you know if I, if someone had owned that property and they knew that um, that was one of the options, to come in with a redevelopment application would significantly increase, if approved, the value of that property, and if the environment ... if that option was chosen, then that land would be expropriated and the City would have to pay that increased value from that application, because there would be additional density on the site, is that correct?

**John Andreevski:** I can't speak to the increase in value. The site itself is designated Mixed Use, uh, so there is an inherent understanding that the Mixed Use designation allows for a variety of development on the site.

**Deputy Mayor Minnan-Wong:** Right. Ok, thank you John.

**John Andreevski:** Thank you.

**Chair Pasternak:** "Thank you Deputy Mayor. Any other questions from staff? No? Um, speakers."

**Deputy Mayor Minnan-Wong:** "I'll speak."

**Chair Pasternak:** "Yup, Mr. Deputy Mayor."

**Deputy Mayor Minnan-Wong:** "I'll move the recommendations in the report Mr. Chair. I don't love this application. I don't love it at all. Um ... just because of what I see as a potential ... you know what they're potentially doing, which is they are taking a property that was previously undervalued and they found out that the City was potentially going to put a road through the property and so they filed an application that they may never build and we'll actually end up paying for it. Which I ... I personally as a local councillor, as a taxpayer, you know, find that objectionable, some would say offensive. Um ... but we are where we are, they're doing what they're doing. Um ... and I support the arrangements that have been recommended by City staff in this report."

**Chair Pasternak:** "Ok. Thank you Mr. Deputy Mayor. You're moving the staff recommendations?"

**Deputy Mayor Minnan-Wong:** "Yes."

**Chair Pasternak:** "All those in favour? Opposed? That is carried."