

September 14, 2021

By E-Mail Only to sara.amini@toronto.ca

WITHOUT PREJUDICE

City of Toronto
Legal Services Division
55 John Street, Station 1260
Metro Hall, 26th Floor
Toronto, ON M5V 3C6

Attention: Sara Amini

Dear Madame:

Re: Settlement Offer
Appeal by Phantom Developments Inc. (“Phantom”) pursuant to s. 22(7)
and 34(11) of the *Planning Act*, as amended
City of Toronto File Nos: 20 192585 NNY 18 OZ
O.M.B. Case No. PL210092
Subject Lands: 2, 4, & 6 Teagarden Court, Toronto (the “Subject Lands”)

After considerable effort and fruitful discussions with members of the City’s staff, I am pleased to transmit this letter to you outlining the terms of Phantom’s offer to settle its above-noted appeals of its applications for Official Plan and Zoning By-law amendments (collectively, the “**Appeals**”).

As you are aware, at the hearing of the Appeals is scheduled to commence on October 20th, 2021. The only parties to the Appeals are the Applicant and the City. Further, there are only two individuals with participant status – the owners of the neighbouring lands to the north.

At this time, the outstanding issues for the Appeals are only those of the City and relate primarily to built form issues, the quantum of any contributions pursuant to Section 37 of the *Planning Act* and any deference to be paid by the Ontario Land Tribunal (the “Tribunal”) to resolutions of Council.

Due to deadlines for reporting a matter to Council prior to the October 20th appearance before the Tribunal, we respectfully request that you seek instructions from your client to resolve the Appeals based on the matters identified in this letter.

This offer to settle will terminate upon the completion of the meeting of Council for the City of Toronto scheduled to commence on October 1, 2020, and which we understand is to conclude on that day or October 4th; provided that if Council's meeting extends beyond October 4th, this offer to settle shall automatically remain open until the conclusion of said meeting.

Background

As you are aware, in August, 2018, the Local Planning Appeal Tribunal (as it then was) issued an Order amending the City's Official Plan and Zoning By-law 7625.

As a result, the City's Official Plan and Zoning By-law 7625 now permit the Subject Lands to be developed as-of-right with a multi-unit residential building with, *inter alia*:

- an 11-storey structure with maximum heights dictated by detailed illustrations contained in the approved zoning by-law amendment;
- a maximum density of 3.99 times the lot area or 8,354 m²; and
- 112 dwelling units.

Our client commenced construction of the building contemplated by said Order in accordance with Building Permits issued by the City's Chief Building Official (the "Proposal").

The Proposal

Over the course of the site plan approval process and the commencement of construction, the Province of Ontario released multiple amendments to paramount Provincial planning instruments including amendments to the Growth Plan for the Greater Golden Horseshoe and the Provincial Policy Statement. Particular emphasis was now placed on securing transit supportive development and ensure the Province's investment in transit infrastructure was supported by development – particularly on sites within 800 metres of a major transit station.

Noting that the Subject Lands are 1.5 blocks from the Bayview T.T.C. subway station and site on an arterial *Avenue* as identified in the Official Plan, our client reviewed the in-force policy of the Official Plan and Secondary Plan and recognized that neither has been updated to conform with *either* of the update Provincial instruments. In particular, the City's Official Plan has yet to be updated to reflect the Province's clear directions regarding *major transit station areas*.

Our client identified that the applicable policies of the Secondary Plan limited the density of the Proposal; however, the Proposal remained *well under* the maximum height contemplated by the Secondary Plan.

As a result, on September 10, 2020 our client filed applications to modestly increase the height and density of the proposal by adding 3 additional storeys and 16 additional units. (collectively, the “**Applications**”). The resulting floor space index would be increased from 3.99 to 4.6. The City confirmed the applications were complete on October 7, 2020.

Based on those discussions with staff, on January 29, 2021, and on June 8, 2021 our client’s land use planning consultant electronically submitted a resubmission package containing updated plans and materials to reflect comments received through City staff (the “**Resubmission Package**”). Amongst those materials were the following drawings which illustrate the form of the Proposal and are the basis for this offer to settle:

1. Site Plan, Project Statistics, Ontario Building Code Matrix, Toronto Green Standards, General Notes – Drawing No. dA1.3, January 20, 2021, and revised on June 8, 2021;
2. Level 8-12 Floor Plan – Drawing No. dA2.4, January 20, 2021, and revised on June 8, 2021;
3. Level 13,14, Mph Floor Plan – Drawing No. dA2.5, January 20, 2021, and revised on June 8, 2021;
4. Cover Sheet – Drawing No. dA0.0, January 20, 2021;
5. Context Plan – Drawing No. dA1.1, dated January 20, 2021;
6. Survey – Drawing No. dA1.2, dated January 20, 2021;
7. Toronto Green Standards (including Green Roof Layout) – Drawing No. dA1.4 & dA1.4A, dated January 20, 2021;
8. Parking Level Floor Plans – dA2.1, dated January 20, 2021;
9. Waste Management Plan – dA2.2, dated January 20, 2021;
10. Level 2 ,3 & 4, 5, 6, 7 Floor Plan – dA2.3, dated January 20, 2021;
11. Elevations – Drawing No. dA4.1, dated January 20, 2021;
12. Building Section – Drawing No. dA5.1, dated January 20, 2021;
13. Perspective Views – Drawing No. dA6.1, dated January 20, 2021; and
14. Sun Shadow Study – Drawing No. dA7.1, dA7.2, dA7.3, dated January 20, 2021.

While all of the above-noted materials have already been submitted to the City, for the sake of convenience, these drawings are available at the following link:

<https://www.dropbox.com/sh/vacg5qs0dglb48j/AABSEdfzfvB9ahlfYkbwwQVPa?dl=0>

It is worth noting that the new proposal will also increase the number of three-bedroom units in the proposal from zero to 13 and the number of two-bedroom units from 50 to 53. The number of one-bedroom units will not change. In addition, the Applications do not contemplate or require any further reduction in the amount of parking spaces (resident or visitor) and the Proposal would continue to provide adequate indoor and outdoor amenity space.

The Appeals

City Staff's Preliminary Staff Recommendation Report was reviewed by North York Community Council ("NYCC") in November, 2020. Although it was noted that the Proposal was already under construction, at its meeting the NYCC adopted a further recommendation that *an on-site parkland dedication* be provided as part of the development. That recommendation was adopted by City Council.

As a result of that position, our client had little choice but to file the Appeals as it was not possible to provide an onsite parkland dedication.

However, notwithstanding the appeals our client has worked with multiple different members and branches of the City's staff to resolve as many outstanding issues as possible.

Section 37 Contribution

As noted above, the applicable zoning by-law currently permits an as-of-right density for the Subject Lands of 8,354 m². The Applications currently contemplate an increase to that density of a modest 1294 m².

In reviewing the City's Official Plan, we note it contains a threshold policy for Section 37 contribution in Policy 5.1.1.4 which provides:

*5.1.1.4 Except as contemplated in Policy 5, Section 37 may be used for development, excepting non-profit developments, with more than 10,000 square metres of gross floor area **where the zoning by-law amendment increases the permitted density by at least 1,500 square metres** and/or significantly increases the permitted height. Where the Zoning By-law measures residential density in units per hectare, the units are to be converted to gross floor area at the rate of 100 square metres per unit in order to determine whether these thresholds are exceeded.*

The Applications contemplate an increase in the permitted density 106m² less than said threshold. Further, there are no policies in the Official Plan or Secondary Plan that conflict with this policy. It is also our client's position that a 3 storey increase in height is not a "significant increase" in the permitted height.

As a result, it is our client's position that the City's Official Plan policy does not require a contribution as the additional density sought is below the stated threshold.

However, in order to settle the Appeals, our client is prepared to offer to the City a contribution pursuant to section 37 of the *Planning Act* in the amount of \$350,000 (the "Contribution").

As the Proposal is already under construction with the OPA and ZBLA allowing only for 3 additional floors, our client proposes that it would provide a cheque to the City Solicitor for the aforementioned sum which would be held in escrow pending release of a final order of the Ontario Land Tribunal approving the OPA and ZBLA.

For greater clarity, the quantum of the Contribution is based on the sum of the Section 37 contribution paid in respect of each additional square metre of gross floor area contemplated by the original approval, prorated to reflect the additional 1294 m² now sought in the ZBLA.

Given the local Councillor's original motion at Community Council, we suggest the funds be allocated to capital improvements for area parks in the general vicinity of the Subject Lands. This also reflect the allocation for the Original Approval. However, if Council has other preferences, our client advises it is willing to entertain same provided the allocation shares an appropriate nexus with the Proposal.

With respect to the above-mentioned section 37 agreement, in the event the City approves of the settlement contemplated by this letter, and should the Tribunal choose to approve the OPA and ZBLA, our client accepts that it will be a joint request of both Phantom and the City that the Board's final order approving the ZBLA *shall be withheld* pending confirmation that a cheque for the Contribution has been delivered to the City's Solicitor's Office.

Parkland

Based on discussions with staff, we understand that our client's obligations vis-à-vis any additional parkland conveyance is to be satisfied through a payment of cash-in-lieu pursuant to section 42 of the *Planning Act*. Our client accepts this approach.

The Instruments

Enclosed with this letter is a copy of the proposed Official Plan and Zoning By-law Amendments that are included in the Witness Statement filed on September 13, 2021 by Ryan Guetter, our client's land use planner.

Of course, if this offer is accepted, additional language would be inserted to reflect the Contribution. We also understand staff may have additional comments for these instruments and the City's Chief Planner may require further revisions to same.

As referenced above, if Council for the City accepts this offer at its meeting commencing October 1, 2021, we will proceed to the Tribunal on the basis of the Proposal as identified in the above-referenced drawings and this letter. It would also be understood that Phantom and City would take reasonable efforts to work together and finalize the draft Official Plan and zoning by-law amendments to reflect the foregoing prior to the appearance before the Tribunal on October 20, 2021.

Should you have *any* questions related to the settlement proposal contemplated by this letter, please do not hesitate to contact me directly.

I look forward to hearing from you with positive news on this subject.

Yours truly,
DAVIES HOWE LLP



Aaron I. Platt

AIP:AIP
encls.:

copy: Guy Matthews, *City of Toronto, Community Planning*
Ryan Guetter & Scott Plante, *Weston Consulting Group*
Client