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James Pasternak, Chair, North York Community Council
North York Civic Centre
Main floor, 5100 Yonge St.
Toronto, ON M2N 5V7

Our File: 98766

Dear Members of North York Community Council:

Re: NY25.1 (9:45 AM) Final Report – City Initiated Zoning By-law Amendment – Holding (H) Symbol By-law – 625 to 627 Sheppard Avenue East, 6 to 12 Greenbriar Road, 1001 Sheppard Avenue East, 1200 to 1220 Sheppard Avenue East, 35 McMahon Drive, and 40 Esther Shiner Boulevard (Ward 17 – Statutory: Planning Act, RSO, 1990)

Aird & Berlis LLP acts for Concord Adex Investments Limited. As Council is aware, Concord is the owner of lands known as 1001 Sheppard Avenue East (Block 7), 40 Esther Shiner Boulevard (Block 15) and 35 McMahon Drive (Block 11) (collectively the “**Concord Lands**”).

We are writing in response to the Community Planning/Engineering Construction Services Staff Report, dated May 28, 2021, which recommends the imposition of a Holding (H) by-law pursuant to Section 36 of the *Planning Act* on certain parcels of lands in the Sheppard Avenue East area, including the Concord Lands.

Should Council proceed to approve the staff recommendation to adopt a Holding (H) by-law on the Concord Lands, it will have the effect of completely freezing construction for development projects already in progress; developments which were endorsed by Council in 2012 and approved by, the then, Ontario Municipal Board in 2013.

On behalf of Concord, we urge Council not to adopt the staff recommendation on the Concord Lands. The proposed Holding (H) by-law is deeply unfair to Concord. It is highly inappropriate to retroactively apply a Holding (H) by-law to lands that were redesignated, rezoned, and subdivided 8 years ago. This is irresponsible land use planning, and will significantly prejudice Concord both from a financial and more importantly, reputational perspective. The impacts suffered from such a drastic measure will also have irreparable damage on purchasers, construction trades, lending institutions and the general public.

If the proposed Holding (H) by-law is approved by Council and applied to the Concord Lands, Concord will have no alternative but to avail itself of every possible avenue of legal recourse, including an action for damages from the City.

Development of the Concord Lands Was Approved in 2013

On July 23, 2010, Concord made an application to the City of Toronto for an Official Plan Amendment, Zoning By-law Amendments, and a Draft Plan of Subdivision to permit the

development of a complete community on the site of the former Canadian Tire warehouse, then known municipally as 1001-1019 Sheppard Avenue East, in the City of Toronto.

The development proposed consisted of a total of 3,458 residential units on seven development blocks, in addition to park land, a community centre, a public library, a daycare facility and a school. The application was supported by extensive supporting studies and documents, including Functional Servicing and Stormwater Management Reports.

Council failed to make a decision on these applications within the prescribed statutory timelines, and Concord appealed to the Ontario Municipal Board in November 2011.

A settlement was reached between Concord and the City, including for the payment of \$5,600,000.00 in community benefits provided in exchange for an increase in height and density on the Concord Lands.

In a Report dated May 28, 2012, Staff recommended that City Council authorize the City Solicitor and appropriate City staff to attend the Ontario Municipal Board in support of the proposed development. This detailed Staff Report concluded that the proposal is consistent with and conformed with all governing policy documents at the time. The Report concluded that:

The proximity of the site to the Bessarion and Leslie Subway stations makes it an appropriate site for intensification, subject to the recommendations contained in this report. The proposal provides an opportunity to take advantage of the Sheppard Subway, create additional housing, improve the street, block and park layout of the development and secure community benefits to serve residents of the development and the neighbourhood.

Engineering and Construction Services, and all other applicable City Divisions, reviewed the proposed development, and presumably would have been alive to the fact that such a major mixed-use development would have some impact on the existing municipal sanitary sewer capacity. No objections were noted by Engineering and Construction Services, or any other City Division, as it related to sanitary sewer capacity.

Moreover, at that time, Staff expressly considered whether the development satisfied the exact same matters of provincial interest pursuant to the *Planning Act*¹, which Staff now suggest support the imposition of the Holding (H) by-law, including:

- Adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
- Orderly development of safe and healthy communities;
- Resolution of planning conflicts involving public and private interests; Protection of public health and safety; and
- Appropriate location of growth and development.

¹ Planning Act, R.S.O. 1990, c. P.13 (Last amendment: 2011, c. 6, Sched. 2.)

The Staff Recommendation was approved by Council on July 11, 2012 (Item NY17.47).

In March 2013, the Ontario Municipal Board allowed Concord's appeals, and approved the requested Official Plan Amendment, Zoning By-law Amendments, and a Draft Plan of Subdivision to permit the proposed development, in accordance with the Council authorized settlement. The official plan, zoning and plan of subdivision approvals were not conditional on the Sheppard Avenue East sanitary sewer system upgrades being completed.

Following the official plan, zoning and plan of subdivision approvals in 2013, our client sought further increases in density through minor variances before the Committee of Adjustment. At a Public Hearing held on March 11, 2021, the Committee of Adjustment approved, subject to conditions, 18 variances for Block 15, which included an increase in the height of the 3 towers, gross floor area and number of dwelling units (File No. A0670/20NY). Furthermore, at a Public Hearing held on September 17, 2020, the Committee of Adjustment approved, subject to conditions, 10 variances for Block 11, which also included increases in the height of the 2 towers, gross floor area and number of dwelling units (File No. A0695/19NY). Issues respecting sanitary capacity were not made known by City Staff in the context of their review of these minor variance applications. Similarly, the Committee's approval of the subject applications were not conditional on the subject sanitary sewer system upgrades being completed.

Site Plan applications have been filed in respect of Blocks 11 and 15. In respect of Block 11, the City has issued Notice of Approval Conditions on February 7, 2021, and construction has already begun pursuant to a conditional below-grade structural permit issued by Toronto Building. This development is currently at-grade.

With respect to Block 15, a soil remediation permit has been issued.

A site plan application with respect to Block 7 will be filed in due course, though we acknowledge that the status of development approvals for this Block is not as far advanced as Blocks 11 and 15.

The Holding (H) by-law Causes Extreme Prejudice to Concord

In complete reliance on the *Planning Act* approvals obtained, Concord has, over the last 8 years, taken all reasonable steps, and incurred all associated costs, to execute upon the development concept that was recommended for approval by Staff, and endorsed by Council and finally approved by the Board.

Having secured the necessary, and City-supported *Planning Act* approvals to facilitate the proposed development, Concord has already constructed required infrastructure, registered a plan of subdivision on title, paid community benefits contributions and development charges to the City. Prior to notice of the Holding (H) by-law in June 2021, at no time has the City given any indication that construction could not proceed. In reliance on the *Planning Act* approvals, and the City's non-objection (including the issuance of a conditional foundation permit), Concord reasonably expected to receive building permits in due course to facilitate construction of the approved development.

Concord was therefore astounded to receive notice that Staff have now, in a completely unprecedented manner, concluded that a Holding (H) by-law must be applied to the Concord

Lands as a result of the lack of municipal sanitary sewer infrastructure capacity for the current approved (but not yet built) development.

Concord has, over the last several years, marketed the sale of, and entered into binding agreements of purchase and sale, respecting residential units in the proposed development, secured financing with 6 lenders on the basis that the applicable official plan, zoning and subdivision approval had been approved, as well as entered into binding agreements with construction trades. Given the status of Concord's contractual relationships with the aforementioned parties, the impact from the proposed Holding (H) by-law will result in irreparable harm to others beyond Concord.

Approximately 70% of the 990 residential units in Block 15, and 667 residential units in Block 11, have been sold. Occupancy for Block 11 was indicated to commence by May 2023 and by November 2023 for Block 15. Each sale of a Concord dwelling unit represents a family counting on moving into their new homes in a reasonable timeframe. The effect of the proposed Holding (H) by-law on these families will be devastating and will find them without a home at a time when housing vacancies and affordability in the City of Toronto are at an all time low.

With respect to contracts secured with the various construction trades, those contracts were secured based on an assumed construction schedule. Those agreements and the associated contract fee amounts do not account for a temporary freeze on development. Significant changes to the timing for the delivery of any such work by trades and suppliers could result in the cancellation of contracts, and consequently, impacts on individually employees. Any delays or suspension in construction, will have a direct impact on the approximately 1500 individual workers who are currently, or scheduled to, work on the development site. The impacts of such a delay will also extend to a loss of jobs by employees of suppliers and fabricators of construction materials.

Moreover, delays in construction will prolong the length of time which surrounding area residents and businesses experience during the life span of a construction cycle for a development of this magnitude. This includes, the prolonged impact of living or working next to a construction site whether it be the disruption of noise, the impact on air quality, the views of a construction site or the interruptions to traffic circulation. Given the prominent location of the Concord Lands, and the highly visible location of this development site, the views of a seemingly abandoned construction sites will not go unnoticed.

Finally, Concord will suffer direct financial repercussions by the Holding (H) by-law. Concord has secured lending with 6 institutions who have released construction financing funding on the basis that any required zoning approvals were in full force and effect. The imposition of a Holding by-law at this time will threaten any such financing. Furthermore, construction costs will likely increase if the issuance of final above grade permits is delayed, in particular if existing contracts with trades and suppliers are cancelled. Moreover and most critically, Concord will undoubtedly suffer serious reputational harm if any of the affected projects are delayed after units have already been sold to individuals and families. The loss of business goodwill that Concord will suffer with its purchasers, its lenders and its trades/suppliers should Concord not be able to deliver the dwelling units or proceed with construction in accordance with its contractual terms is virtually unquantifiable.

Conclusion

Concord is a sophisticated and seasoned developer of residential, mixed use, and commercial projects in the City of Toronto, and is well acquainted with the use of the Holding (H) by-law.

However, like everything else, there is a time and a place; in the case of a Holding (H) by-law, it should be imposed *at the time of development approval*, and not 8 years after approval and after Concord has already incurred significant costs, and risks further, major financial and reputational damage if it cannot proceed with its development. We submit that the imposition of the Holding (H) by-law at this time, being after Concord's site specific zoning by-laws have been approved and are in full force and effect, is an improper use of section 36 of the *Planning Act*.

It should be stressed again that Concord's development that was endorsed by Council and approved by the Board was not a small project. It was a major development to create a complete community, and Staff and Council chose not to avail itself of an Holding (H) by-law, or any other mechanism which would have made construction of the proposed development conditional on sanitary upgrades that are now deemed so urgent and necessary that Concord's approved development must be stopped in its tracks. Concord should not bear the burden of such a change in course - nor should its purchasers, trades, suppliers, and area neighbours.

For the reasons stated above, we therefore strongly urge that Council not adopt the recommendation to impose the highly prejudicial Holding (H) by-law to Block 11 and Block 15.

In the alternative, we request that Council defer consideration of this matter until further discussions can occur with staff of Toronto Water and Engineering and Construction Services. In our submission, it is not necessary for construction to be stopped on Block 11 and Block 15 at this time as there is no harm to the City to allow construction to proceed while details of capacity and the associated timing are discussed with staff together with Concord's consultant engineers. Our client, together with its consultant team, remain available and willing to meet and work with staff to find a resolution to this matter.

We kindly request that the undersigned be notified of any decision of City Council or its Committees with respect to this matter.

Yours truly,

AIRD & BERLIS LLP



Sidonia J. Tomasella
Partner

SJT:MH
CC: Client