

June 23, 2021

Our File: 164599

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

Dear Chair Pasternak and Members of North York Community Council:

**Re: City-Initiated Zoning By-law Amendment - Holding (H) Symbol By-law
Planning Application Number: 19 254260 NNY 17 OZ**

Aird & Berlis LLP has been retained by 625 Sheppard Avenue East Partnership Limited (“625 Sheppard”) the owner of lands known municipally as 625-627 Sheppard Avenue East and 6 - 12 Greenbriar Road (the “Lands”).

The purpose of our correspondence is to provide comments on 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 our client’s lands (the “H-By-law”) as identified on Diagram 1 of the Draft H-Bylaw and as shown in Map 1 to the Staff Report.

More specifically, and on behalf of 625 Sheppard, we are requesting that North York Community Council (“NYCC”) not accept the staff recommendation to impose the H-By-law at this time and to instead direct staff to undertake further consultation with the landowners, including but not limited to our client, who will be directly and immediately prejudice by the imposition of the H Bylaw on their respective lands. In the alternative, we request that the H-By-law not be imposed on our clients lands specifically.

We make this request as (1) the imposition of the H-By-law on lands which are already zoned and, in most instances, site plan approved for development is retroactive and severely punitive to owners who have relied on their approvals from the City and (2) unnecessary given the other tools available to City staff to regulate demands on sanitary sewer capacity in the interim. Our client remains committed to continuing to work with City staff to identify measures to ensure the construction and occupancy of its approved development, which occupancy is anticipated to commence in Q3 of 2023, is not unduly delayed by and in turn addresses the City’s concerns with respect to sanitary sewer capacity.

Development Approvals for the Lands

The Lands were approved by the (then) LPAT in January 2020 for mixed use development via site specific zoning by-laws amending City of Toronto By-laws 438-86 and 569-2013, respectively (the “625 Sheppard By-laws”). The 625 Sheppard By-laws permit a total of 16,250m² of

residential and 500m² of non-residential gross floor area in a 10 storey building and 4 storey townhomes on the south end of the Lands.

As a result of the approval of the 625 Sheppard By-laws, the City will receive \$1,250,000 in Section 37 funds and an on-site parkland dedication. The City identified streetscaping improvements and improvements to community facilities as the subject of those funds which it will receive from our client. The City did not request any H on the By-laws to address servicing constraints at the time of the approvals.

Reliance on the City's Approval of Site Plan for the Lands

Having secured the necessary rezoning approvals, 625 Sheppard worked with City staff to obtain site plan approval to implement those approvals. Our client received Notice of Approval Conditions on March 2, 2020 from the City of Toronto. The NOACs did not require any pre or post approval conditions related to sanitary sewer capacity. To the contrary, the NOACs contain specific reference to site servicing drawings and reports which had been reviewed by City staff and require our client to construct its development in accordance with those approved drawings and reports.

In reliance upon the 625 Sheppard By-laws and the City approved NOACs our client has proceeded to commence construction work on the Lands, including demolition of previously existing structures, and has engaged a full construction team. Additionally, our client has proceeded to market the approved development.

Inconsistencies in Staff Report and Outstanding Matters to be Addressed

In addition to the above concerns with the imposition of the H By-law in a retroactive manner to sites which have previously been approved for development, our review of the Staff Report has given rise to additional concerns as they relate to inconsistent statements in the report itself and/or questions arising from statements in the report:

1. On page 14 of the Staff Report there is an indication that the upgrades being proposed will address demands anticipated from the expected population up to 2041; however, on that same page there is reference to the potential need for additional capacity even for those sites which are subject to the specific H provision. It is therefore unclear if the H By-law will in fact address the capacity constraint identified by staff as the rationale for its unprecedented and retroactive application and if the sites which are subject to the H By-law may not be further delayed and therefore prejudiced. Clarification from staff on this matter would be appreciated.
2. We understand from our review of the Staff Report and discussions with staff that the works to be undertaken are subject to permits to be issued by the Ministry of Natural Resources and Forestry ("MNR") to facilitate works associated within the Don River shed; no details have been provided in the Staff Report as to the timing of those permits or indeed whether they have been applied for by the City to date. Clarification as to the status and timing of these permits would be of assistance to our client in assessing the likelihood of works commencing this year.

3. We further understand from discussions with staff that the actual “work” to be completed in order for staff to be able to consider lifting the H provision on certain sites is the upgrade of the sanitary pipe improvements and not all the construction work which will follow and anticipated to take until 2023 to be completed. Can staff provide clear direction non timing for the owners affected by the H By-law as to timing in order to permit our client, and others, to assess the nature and extent of impacts on their interests?
4. The H By-law prohibits the “use of land or buildings that increase the demand for capacity” without providing clarification as to what use the lands may be put in the interim. For example, our client’s Lands are currently vacant save for a sales centre use. It would assist if staff could provide certainty with respect to the extent to which our client can proceed to implement the City approvals it has relied upon in order to advance construction. For example, will below site preparation and below grade permits be issued? Will the City permit above grade permits to be issued with conditions?
5. Finally, the H By-law speaks to the possibility of “alternative” approaches which would presumably enable development to continue in accordance with City approvals for sites such as our client’s. Again, little direction or guidance is provided in the Staff Report to enable our client to assess what such alternatives may be. For example, would the City accept, as a condition of site plan approval or building permit issuance, a requirement that owners not commence the occupancy process with the City until such time as additional sanitary capacity has been secured?

Conclusion & Request

It remains our client’s position that the application of the H By-law, while an appropriate planning tool for municipalities, is one which should be applied at the time of approval and not in a retroactive manner. That is particularly the case when development approvals have been advance through the site planning process, as is the case for our client, and approvals given by the City without conditions related to the matter which now gives rise to the H By-law.

As is illustrated by the above questions, there remains much which is uncertain in terms of the application of the H By-law by the City and unfortunately the Staff Report raises more questions than it answers. For all these reasons, including perhaps most importantly that there is no risk of additional demand on the services at this time, there is very good reason for the NYCC to defer this item and return it to staff for consultation over the summer months.

Our client remains committed to work with City staff, who have been engaged and responsive since the staff report was issued to our questions and concerns, in an effort to determine an “acceptable alternative solution” to the imposition of the H By-law for the Lands. There is no prejudice to the City in providing for that opportunity over the summer months, particularly as there will be no use on the Lands in the interim which creates an increased demand for servicing capacity.

We therefore request that the NYCC not accept the staff recommendation to impose the H-By-law at this time and to instead direct staff to undertake further consultation with the landowners, including but not limited to our client, who will be directly and immediately prejudice by the imposition of the H Bylaw on their respective lands. In the alternative, we request that the H-By-law not be imposed on our clients lands specifically.

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We respectfully request notice of a decision by Council or its Committees with respect to this matter and thank the NYCC in advance for its consideration of our client's request.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in cursive script, appearing to read "Eileen P. K. Costello".

Eileen P. K. Costello
EPKC

cc Client
Sasha Lauzon, Bousfields Inc.

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AIRD BERLIS