



**Kagan
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LAWYERS

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File: 12269

WITHOUT PREJUDICE

January 21, 2022

By Email

Mr. Alexander Suriano and Ms. Kasia Czajkowski
City of Toronto Legal Department
55 John Street, 26th Floor, Metro Hall
Toronto, ON., M5V 3C6

Dear Mr. Suriano and Ms. Czajkowski:

**Re: Appeal pursuant to section 34(11) of the Planning Act
Appeal filed on behalf of 2457182 and 1644137 Ontario Inc. ("Times Group")
1913-1951 Yonge Street, 17 & 21 Millwood Road, 22 Davisville Avenue, Toronto
(the "Property")
Ontario Land Tribunal Case Nos. PL171228 & PL210014**

We are legal counsel to Times Group and this letter is supplemental to our client's 'With Prejudice and Public' settlement offer dated January 21, 2022 (attached). That offer included a section 37 payment of \$10,000,000. Times Group hereby enhances the section 37 offer.

At the request of the community and the City, our client re-doubled its efforts to purchase the neighbouring property to the south. That property is 1909 Yonge Street and 2A Davisville Avenue (the "Starbucks Property"). We understand that there is a strong desire for the Starbucks Property to be in City ownership to enhance the long-term protection of the heritage building and to utilize the entire property for community purposes. Times Group agreed and made considerable efforts to purchase that property. We are thrilled to report that these efforts paid off and that, within the last twenty-four hours, Times Group and the current owners of the Starbucks Property signed an Agreement of Purchase and Sale. Times Group now controls the Starbucks Property but closing of that transaction has not occurred. Accordingly, our client's section 37 component in the attached "With Prejudice" offer is enhanced as follows:

1. Times Group hereby offers the City either 1) the \$10,000,000 cash payment referred to in the "With Prejudice" letter or 2) the transfer of the Starbucks Property at no cost to the

City. The choice is the City's to make but it is an either / or choice. The City cannot chose elements of both.

2. The Starbucks Property is subject to one or more leases which might permit the tenants to remain for some time. Times Group will, of course, share the details of those leases with the City.
3. Times Group acknowledges that should the City chose to accept the Starbucks Property, that the details of any transfer of the Starbucks Property will need to be worked out to the satisfaction of the City Solicitor, CREM, and Heritage Planning. There is ample time to work this out since section 37 contributions are made a condition of building permit; and
4. Regardless of which section 37 option the City chooses, the development of the Times Group property will be exempt from making any community benefit payments under any applicable Community Benefits Charge. This respects the relevant Community Benefit Charge provisions of the Planning Act.

We look forward to your reply.

Yours very truly,



Ira T. Kagan
Encl. (With Prejudice and Public Settlement Offer)

cc. Client



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On behalf of our client, Times Group, we are pleased to offer to settle the above-noted Ontario Land Tribunal ("OLT" or "Tribunal") appeals on the terms outlined below. We understand that City staff intend to seek instructions from City Council at the February 2-3, 2022 Council meeting. Please note that this offer is being made on a "With Prejudice" basis and is also being made publicly so that Councillor Matlow can share its details with the community in advance of the Council meeting should he wish to do so.

The terms of settlement refer to a series of documents which have been prepared to assist the City in evaluating the offer. These documents are too large to attach to this letter but can all be downloaded at this link https://188ave-my.sharepoint.com/:f/g/personal/ikagan_ksllp_ca/En7_R3_yKoZFmmRMlnr5mF4BeRPxgwo7EJuu5UPsRbiZNw?e=BdFbq8.

The terms of the proposed settlement are as follows:

1. Times Group will revise its proposed development to reflect the plans included in the share link as "**Attachment 1 - Plans**". Also included in the share link is the shadow study labelled "**Attachment 2 - Shadow Study (30-45)**".

2. The revised development is generally comprised of the following (which is intended to be secured in the Zoning By-law Amendment that City staff and Times Group will prepare together):
- a. A mixed-use residential development comprised of both residential units and non-residential space.
 - b. A podium connecting the two towers. The podium has exposure on all sides of the development but at different heights. Along Yonge Street and the corner at Millwood Road, for example, the podium is six (6) storeys in height. The details for the podium are contained within the attached full set of plans.
 - c. Two towers; 30 and 45 storeys in height.
 - d. A total of 802 residential units (maximum) with the residential unit mix as shown on the attached plans. Although the residential unit mix is subject to modification during the site plan approval process, our client is committing to achieving the unit mix in OPA 405. Accordingly, both the presently as proposed and ultimately as might be revised through the Site Plan Approval process, the unit mix will achieve the requirements in OPA 405 being:
 - i. a minimum of 15 per cent of the total number of units as 2-bedroom units;
 - ii. a minimum of 10 per cent of the total number of units as 3-bedroom units;
 - iii. an additional 15 per cent of the total number of units will be a combination of 2-bedroom and 3-bedroom units, or units that can be converted to 2-bedroom and 3-bedroom units through the use of adaptable design measures.
 - e. The eastern portion of the property will provide both a 6m driveway and 3m pedestrian / cyclist path, both of which will connect Davisville Avenue to Millwood Road and both of which will be subject to a public easement. Times Group commits to work with City staff to finalize the details of the design of this driveway and pedestrian walkway through the Site Plan Approval process. The share link provided earlier includes “**Attachment 3 – Public Easements**” which illustrates the driveway and walkway easement.
 - f. Within the setback along Yonge Street, Times Group will provide a pedestrian walkway easement. To help animate the streetscape, provide a better retail experience for patrons and to assist the retail units proposed along Yonge Street, the area between the building facades and the property line should also be made available, at appropriate times, for outdoor seating, on terms acceptable to the City’s Chief Planner. The outdoor seating will not block pedestrians from traversing this area. Having outdoor seating for patrons of the cafes or restaurants can make a positive contribution by animating the street. The easement will be secured through the Site Plan Approval process and Times Group will work with

City staff on this. This easement also illustrated on “**Attachment 3 – Public Easements**”.

- g. Times Group will provide a POPS space and pedestrian access through the southern portion of the site, behind 1913 Yonge (labeled as Retail Unit K) which will link Yonge Street to Davisville Avenue for pedestrians. This area is shown graphically on “**Attachment 3 – Public Easements**”. The easement size, location and design will be determined to the satisfaction of the Chief Planner and the obligation for this POPS easement will be secured through the Section 37 Agreement to the satisfaction of the City Solicitor and the Chief Planner. The intention is for this courtyard to be animated and act as a gathering place for the community who patronize the retailers in the development. Accordingly, some of the space will be used for outdoor seating for retail units H and K. Such seating will not block pedestrian movement through the courtyard. The exact dimensions and design of the POPS easement will be secured through the Site Plan Approval process and our client will work with City staff on this.
 - h. A minimum outdoor amenity space of 961.89 m² (being below the 1,606 m² typical City minimum required) is being provided and this amount will be secured in the Zoning By-law.
 - i. A minimum Indoor amenity space of 2,594.20 m² is being provided which far exceeds the City’s standard requirement of 1,606 m² for the proposed development.
 - j. The listed heritage property known as 1913 Yonge Street will be altered and preserved as a heritage building.
3. At the request of the Toronto District School Board and with the support of the South Eglinton Ratepayers’ & Residents’ Association (“SERRA”), Times Group proposes that the City impose turning restrictions as described below. Times Group acknowledges that this is a request being made of the City and is not a condition of the settlement.
- a. No turns shall be permitted out of the south exit of Property left onto Davisville Avenue between the following hours:
 - i. (a) 7:30AM-9:30AM, and
 - ii. (b) 3:00PM-6:00PM.
4. Section 37
- a. Times Group will make a section 37 contribution in the amount of \$10,000,000.
 - b. The s.37 contribution will be secured in a Zoning By-law Amendment and in a Section 37 Agreement (which may be registered on title to the Property). The Section 37 Agreement will also secure the above-noted POPS. Times Group

hereby confirms its willingness to enter into a Section 37 Agreement.

- c. If the section 37 benefit referred to herein is included in a Zoning By-law Amendment approved by Decision of the Tribunal prior to the earlier of 1) the City enacting its first Community Charge Bylaw or 2) September 22, 2022, then the City will not subject the proposed development to any Community Benefit Charge.
 - d. If, on the other hand, the above-noted Zoning By-law Amendment is not approved by Decision of the Tribunal within the timeframes described above, then the Zoning By-law Amendment will not include a section 37 benefit and Times Group will be subject to the applicable Community Benefit Charge prior to building permit issuance.
5. The City will accept, as a credit towards Times Group's overall parkland dedication requirement, the prior over-dedication provided by Times Group through the redevelopment of 55-65 Broadway Avenue (being 185.5 m²). Through that redevelopment, Times Group dedicated to the City the lands known municipally as 70, 72, 74 & 76 Soudan Avenue, Toronto. That dedication represented more than the required parkland dedication for that other development and, accordingly, the over-dedication is proposed to be used for the within redevelopment. This possibility was contemplated by Times Group and the City at that time. If there remains an unfulfilled parkland dedication requirement for the redevelopment despite utilizing the above-noted over dedication, then the further parkland dedication requirement will be satisfied through cash-in-lieu in accordance with the City's Parkland Dedication By-law at the time of building permit issuance, or through additional off-site parkland dedication (subject to the City's acceptance of same).
6. As noted above, Times Group will preserve, but alter, the existing heritage listed property at 1913 Yonge Street in accordance with the Heritage Impact Assessment Addendum included in the share link as "**Attachment 4 – HIA Addendum**".¹ We understand that at the time this settlement offer will be considered by City Council, that a Designation Report from Heritage Staff will have been released and is expected to have gone to Toronto Preservation Board. Should this settlement offer be accepted, Times Group will either not object to the designation of 1913 Yonge Street or withdraw any objection it might have filed. The intention is for the designation of 1913 Yonge Street to ultimately be supported by Times Group on the understanding that the property will be altered and maintained in accordance this settlement.
7. Upon receiving conformation from City Legal Services that the proposed Official Plan Amendment is not required because of OPA 405 having come into full force and effect and being applicable to the rezoning application, Times Group will withdraw its private Official Plan Amendment appeal (OLT Case No. PL171228) and application.

¹ Times acknowledges that this HIA Addendum will need to be updated to reflect which development option (grocery store or no grocery store) City Council chooses.

8. Following City Council's acceptance of the settlement, Times Group and City staff will work together to prepare a Zoning By-law Amendment which gives effect to the within settlement.
9. Both parties will support the revised development described above and will request that the Tribunal allow the appeal(s) at the scheduled March 28, 2022 hearing (or such earlier date should the Tribunal be able to accommodate same). For certainty, Times Group will only request that the Tribunal issue a Decision (but withhold its Order) at the scheduled March 28, 2022 Hearing with the issuance of the Order subject to the completion of any standard conditions set out in Council's approval of this settlement offer.
10. Times Group will file a site plan application which reflects and implements the above-noted revised development. The City will process the site plan diligently; and
11. Times Group acknowledges that City staff have determined that an application for Rental Housing Demolition and Conversion under Section 111 of the City of Toronto Act (Chapter 667 of the Municipal Code), is required to permit the demolition of the existing of former residential units on the Property.

If this settlement offer is accepted by the City, Times Group will advise the Tribunal and the other parties of this settlement as soon as possible and will request modifications to the Procedural Order as are warranted under the circumstances. This then represents our client's settlement offer. We wish, however, to deal with one additional matter which we understand is of interest to the community, being the desire for a grocery store to be included in the development.

THE GROCERY STORE OPTION

We are advised that the community wants the development to include a grocery store, preferably perhaps, a discount grocery store. Times Group supports including a grocery store in the redevelopment, being a minimum of 1,858 m² (20,000 ft²), which would be secured in the Zoning By-law). Such a grocery store would need to locate in the podium with frontage on Yonge Street. This creates both opportunity and challenges to the redevelopment. We are advised by the project architect that a grocery store, while only a single storey in height, requires approximately 6.8m floor-to-ceiling height being roughly double the height of a residential storey. The second storey of the podium would represent the logical location for the grocery store. Whether the grocery store occupies all or only a portion of the second floor of the podium, the entire second floor of the podium would need to be the same height (7m floor-to-floor). With the inclusion of the grocery store level, our client nevertheless needs to maintain the 802 proposed residential units (and residential GFA) so accommodation in the design of redevelopment needs to be made.

To illustrate this option our client's architect prepared a 3D view document included in the share link as **"Attachment 5 – 3D Views"**. This document includes the proposed settlement described above (being Option 1) and this second 'grocery store' alternative (as Option 2). The City can chose to accept either option.

OPTION 2 – REPLACE TWO EXISTING RESIDENTIAL FLOORS WITHIN THE PODIUM WITH A GROCERY STORE AND INCREASE THE NORTH TOWER TO 38 STOREYS

- This option is described on pages 6-10 of “**Attachment 5 – 3D Views**”.
- This option keeps the height of podium essentially unchanged from Option 1.
- This option results in the loss of two residential floors in the podium, so those residential units need to be recovered in the towers. Eight (8) residential tower floors are equal to two residential podium floors to achieve essentially the same residential unit count (803 units in this option vs. 802 units in Option 1).
- Since the height of the south tower is being maintained at 45 storeys, eight (8) storeys need to be added to the north tower. [North Tower 38 storeys; South Tower 45 storeys;]

As was the case with Option 1, Option 2 includes all of the same other elements being:

- The same section 37 financial offer.
- The same approximate unit total (about 803) and unit mix, all of which meets OPA 405.
- The same building footprint and areas for POPS, etc.
- The same amount of outdoor amenity space and a clear exceedance of the Zoning By-law requirement for indoor amenity space.
- The same heritage treatment.
- The same driveway and walkway (both subject to a public easement) on the east side of the property.
- The same parkland dedication.

There was insufficient time for our client’s architect to prepare a full set of drawings (including shadow drawings) for Option 2 but they are being prepared presently and will be sent to you very shortly.

We thank the City for its careful consideration of this settlement offer, are pleased to answer any questions you might have, and look forward to the City's response.

Yours very truly,

A handwritten signature in cursive script that reads "Ira Kagan". The signature is written in dark ink and is positioned below the "Yours very truly," text.

Ira T. Kagan

Enclosures by share link [Attachment 1 – Plans; Attachment 2 – Shadow Study (30-45); Attachment 3 – Public Easement; Attachment 4 – HIA Addendum; Attachment 5 – 3D Views]

cc. Client

All parties to the Ontario Land Tribunal hearing.