

October 16, 2023

VIA EMAIL

North York Community Council
North York Civic Centre
5100 Yonge Street
Toronto ON M2N 5V7

Dear Members of Council Committee:

Re: Agenda Item – 2023.NY8.9
155 St. Dennis Drive
Planning Application Number: 23 118421 NNY 16 OZ
Related Application Number: 23 118484 NNY 16 SA
Official Plan Amendment, Zoning By-law Amendment Applications
Decision Report - Refusal

Aird Berlis LLP is counsel to Don Valley Trails Park Holdings Inc. (“Don Valley Trails”) which has filed applications for an Official Plan Amendment (OPA), Zoning By-Law Amendment (ZBA) and Site Plan Control (SPC) Application for the lands located at 155 St. Dennis Drive.

Don Valley Trails has engaged a multi-disciplinary team comprised of leading urban planning, architectural, natural heritage and engineering professions to advance an ambitious, city building proposal on lands which are ideally and uniquely situated to be the location of a vibrant new community.

This proposal delivers environmentally restored 16 hectares of the currently compromised, privately-owned Flemingdon Park Golf Club to public ownership; engages in a partnership opportunity with Traditional Territory and Rights Holders and Indigenous organizations; provides 2,100 housing units, including allocating 5% of the total residential gross floor area as affordable units which equates to approximately 100 units based on the current configuration; and a purpose-built Indigenous interpretation and community space to serve as a gateway to the restored ravine. All this is provided for in an artfully designed development which responds to and enhances its location, steps from major transit, and beside what will be one of the City’s largest open spaces.

It is disappointing that this report is coming to North York Community Council (“NYCC”) without City staff either having met with our client and its consultant team to discuss the contents of the application or providing comments on the volumes of expert reports submitted. In our view, this is a failure of the City’s process. The report, if accepted by NYCC and ultimately City Council, will result in an appeal to the Ontario Land Tribunal and remove the City from a role in shaping the exciting future which is envisioned in the applications before you.

On behalf of our client, **we reject the recommendation put forward by City staff** to refuse the applications outright. This can only be characterized as a lost opportunity by City staff who have,

from the outset, refused to meaningfully engage with our client and its consultant team on the application, including actively delaying its processing.

A Project with Unprecedented City-Building Benefits

Today, the private Flemington Park Golf Club occupies a 16.94-hectare (41.85 acre) site, located approximately 300 metres from the Wynford Stop on the Eglinton Crosstown LRT line. This private golf course, which has operated on the site for over 5 decades, is situated along the East Don River valley, and interrupts public access and ecosystem continuity through one of Toronto's most ecologically important ravine systems.

The proposal before you will transform these lands to vitally needed public space in an area targeted to receive over 24,000 persons, while achieving important Council-adopted priorities, including addressing the housing shortage, committing to delivering affordable housing and engaging with Traditional Territory and Rights Holders and Indigenous organizations.

Housing and Affordable Housing

Over 2,100 new residential units will be achieved in an inventive and inspiring architectural form by the award winning firm of Hariri Pontarini Architects. The units are proposed in 4 buildings ranging from 42 to 56 storeys in height, within walking distance of the Eglinton Crosstown LRT. From the outset, our client committed to deliver 5% of the residential gross floor area as affordable housing which, in the current configuration, could achieve as many as 100 affordable units. Since that original submission, our client has taken active steps to engage in discussions with Habitat for Humanity to explore delivering these affordable units.

The Staff Report states that the site is not within the Wynford Protected Major Transit Station Area ("PMTSA"), or another area identified for growth or intensification. The Subject Site is, however, within 300 metres of Wynford Station, and affords the opportunity to provide housing near higher order transit. We note that, while other significant valleylands in the Don Valley have been identified within PMTSAs, including for example Sunnybrook Park, these lands were excluded from the proposed PMTSA despite this proximity.

Indigenous Partnerships

Given the location of the site, and the vast history of Indigenous people on these lands, Don Valley Trails engaged early in its process with several Traditional Territory and Rights Holders and Indigenous organizations. As a result, the development proposal includes integration of an Indigenous Education and Learning Centre and a plan for Indigenous land stewardship, eco-cultural restoration, and place keeping on the 16 hectares to be restored to public ownership. Our client is presently drafting a memorandum of understanding with these Traditional Territory and Rights Holders to formally establish this important partnership.

16 Hectares/40 Acres of Open Space in Public Ownership

The proposal will restore approximately 16 hectares of private lands into public ownership. This is not a mere land transfer. Our client has committed to a robust plan, in partnership with Traditional Territory and Rights Holders, to collaboratively re-naturalize these lands to achieve ecological integrity of the site and the broader Don River Valley system.

Our client's proposed interventions include measures such as planting along the riparian corridor, in the form of a 30-metre vegetated corridor along each side of the Don River, Tyler Creek, and Bartley Tributary (covering approximately 6.5 hectares of land), which will establish a river buffer and mitigate the loss of vegetation and trees resulting from the existing golf course. Additional detailed restoration strategies will be co-developed with various public agencies, stakeholders, and Indigenous communities in support of an Eco-cultural Restoration Plan and Ravine Stewardship Plan, which could include new wetlands, meadows, and woodlands. This proposal further allows for the completion of the East Don Trail missing link in the location identified by the Conservation Authority as the preferred location, on the west side of the river.

This new public open space will also dramatically enhance public access to the City's trail network and give local residents access to trails connecting down to Lake Ontario, and up to the north end of the City. This will link formerly separated areas to the Meadoway Parks Project, and the site will serve as a transit adjacent gateway to the City's ravine system. The significant re-naturalization of lands to be restored to public ownership will be accelerated by this proposal.

Location of Proposed Development

The Staff Report cites the location of the site within the Toronto and Region Conservation Authority ("TRCA") Regulated Area, identified hazardous lands and lands that are designated Natural Areas and Other Open Space Areas in the Official Plan. Specifically, the Staff Report states that key reasons for refusal are the need to protect natural features and areas for the long-term, and the prohibition of development within erosion hazard lands.

City staff have erred in this analysis, as the detailed engineering and natural heritage reports filed with the application clearly demonstrate.

Contrary to the Staff Report, the Proposal will ensure the long-term protection of natural features and Areas

The Staff Report states that Provincial and City policies require that natural features and areas are to be protected for the long-term, and that residential development is to be directed away from open spaces. While the Flemingdon Park Golf Club may be identified as a Natural Area and Other Open Space Area in Official Plan policy, it does not function in the manner intended by the policies. It is a private, manicured open space, cleared of most of its native vegetation and heavily reliant on pesticides and other chemicals. It does not allow for public access and enjoyment.

The proposal will significantly enhance the designated Natural Area along the Don River as well as the vast majority of the Other Open Space designated area on the site. In total, 95% of the site area would be restored and re-naturalized and be transferred to public ownership in perpetuity. In this way, the proposal repairs the natural function of these lands that has been stripped away by golf course operations, completes the critical missing link in the City's East Don Trail and Loop Trail, and supports the City's Ravine Strategy and Reconciliation Action Plan. This provides certainty that these restored and repaired lands will in fact serve a natural function and be protected for the long-term.

Contrary to the Staff Report, the Proposal is located on a safe development site

The Staff Report states that 'hazardous lands', as defined by the Provincial Policy Statement ("PPS"), cannot be developed as they may pose a risk to public health or safety or property damage. The Staff Report acknowledges that the proposed development site (approximately 5% of the overall Subject Site area) is not within the flood hazard area but relies on the assertion that it is within an erosion hazard area, based on TRCA comments. There is no analysis provided by the City to substantiate the concern about safety, and the City and TRCA are wrong in the assertion that the site is within an erosion hazard area.

Our client's proposal specifically addressed issues of safety through the Geotechnical Investigation (Soil Engineers Ltd), Slope Stability Study (Soil Engineers Ltd), Hydrogeological Assessment (Soil Engineers Inc), Servicing and Stormwater Management Report (SCS Consulting Group Ltd) and Fluvial Geomorphological Assessment (Palmer Environmental Consulting Group).

These studies demonstrate that the site is not in fact on 'hazardous lands'. Instead, the location of the proposed development is on a stable paleo terrace land formation (a plateau) that is not at risk of flooding, slope instability, and erosion. The submitted studies have demonstrated that there are no "naturally occurring processes" – i.e., flooding, slope instability or riverine erosion – that could make the identified location "unsafe for development."

The Staff Report references TRCA comments that disagree with our findings that the specific development site is not subject to an erosion hazard. While we have received this comment from the TRCA, we have not received any comments from the City, nor have we been shown any detailed or technical study refuting the findings of our experts.

Further, I note that key policies of the PPS anticipate and enable opportunities for site alteration and development in significant valley lands if proposals:

- Are located outside of 'hazardous lands' adjacent to river systems which are impacted by flooding hazards and/or erosion hazards (3.1.1 b); and
- Demonstrate no negative impacts on natural features or their ecological functions (2.1.5 c)

In conclusion, based on the extensive study and site-specific work, the opinion of our highly regarded subject matter experts, is that the development site is located on a stable paleo terrace

land formation and is therefore not on hazardous lands and the project presents a significant opportunity to restore and improve natural features and ecological functions of a site that is currently highly manicured and treated.

A Challenging Process

The Staff Report acknowledges that the Official Plan and Zoning By-Law Amendment and Site Plan Control Applications were received in February, 2023 and application fees were paid in full on March 6, 2023. City staff took a month to process the applications and our client received a Notice of Incomplete Application on April 6, 2023. After multiple requests for a meeting to understand the alleged deficiencies in the applications, a meeting finally occurred with City staff on April 17, 2023 which resulted in additional materials being submitted but not reviewed by City staff for several weeks.

On July 6, 2023, a second Notice of Incomplete Application was issued based on information which historically would not be required for an application to be processed by the City and, in some instances, were not included on the application checklist previously issued by the City in the context of applications for Official Plan Amendment and Zoning By-law Amendment. City staff deemed the application for Site Plan Control “premature” from the outset and ultimately failed to process the application – a fact which is evidenced by the lack of any reference to it in the report which is before NYCC. A Notice of Complete Application was finally issued on August 1, 2023 only after our office filed a Notice of Motion with the Ontario Land Tribunal in respect of the July 6, 2023 Notice of Incomplete Application.

Through this application review process, City staff have refused repeated requests to meet with our client and its consultant team, whether it was to provide direction on the information they alleged was required for the applications to be deemed complete or, more importantly, on the merits of the application. Ultimately, a refusal report is before NYCC today (October 17, 2023), though we have not been given the opportunity to discuss the project with staff, nor have we received any City comments on the application itself, with which we could begin a discussion.

A Lost Opportunity for Discussion and Collaboration

On behalf of our client, we ask that NYCC reject the recommendation of staff and instead direct staff to meaningfully engage with our client and its consultant team. To-date, staff have not undertaken any kind of dialogue on this project, have not provided any comments on the detailed submissions, and have made a recommendation seemingly without doing their due diligence in reviewing the submitted materials.

With a refusal decision, Don Valley Trails will have no choice but to appeal to the Ontario Land Tribunal, and Council will no longer have the chance to engage with our client and its partners on the proposal. This is a lost opportunity for the City to balance the public interest and secure the major benefits of this proposal for the City at-large.

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On behalf of our client, we thank you in advance for the opportunity to depute on this matter.

Yours truly,

AIRD & BERLIS LLP



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