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File No. 23304

February 26, 2024

CONFIDENTIAL
WITHOUT PREJUDICE

VIA EMAIL: Abbie.Moscovich@toronto.ca; Cameron.McKeich@toronto.ca

Ms. Abbie Moscovich and Mr. Cameron McKeich
City of Toronto Legal Services
Metro Hall, 26th Floor
55 John Street
Toronto, ON M5V 3C6

Dear Ms. Moscovich and Mr. McKeich:

Re: 411 Victoria Park Avenue, City of Toronto
Appeal of Official Plan Amendment No. 536
OLT Case No. OLT-22-003472 (Appeal No. 13) - DK Victoria Park Inc.

As you know, we are the solicitors for DK Victoria Park Inc., the owner of the lands known municipally as 411 Victoria Park Avenue in the City of Toronto (the "Site"), and an appellant with respect to the above-noted appeal.

It should be noted that there are existing zoning approvals for the Site as set out in City of Toronto Site Specific Zoning By-law 959-2021 ("By-law 959-2021") which requires the provision of a berm and a minimum 30 metre separation from the rail corridor to the proposed residential units.

Further to our settlement discussions with respect to the above-noted appeal, we are pleased to provide the following settlement offer on a without prejudice basis in full settlement of this appeal:

- (1) The City and our client agree to the revised wording of OPA 536 as set out in Attachment A to this letter;
- (2) The City and our client agree that the Site would be exempt from the requirements from OPA 536 for the development of the Site in accordance with

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By-law 959-2021. This exemption would apply to any development applications which proposes to develop the Site in accordance with By-law 959-2021;

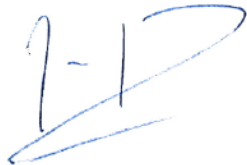
- (3) The City and our client further agree that if there are future rezoning and/or minor variance applications for the Site which proposes to move any building (save and except any accessory buildings that do not include any residential units) closer to the rail corridor than the approved building setbacks to the rail corridor as set out in Diagrams 4 to 7 of By-law 959-2021, then the City may require a new rail safety study to be provided as part of such future rezoning and/or minor variance applications which may be subject to a peer review. For the purposes of clarity, if any future rezoning and/or minor variance applications for the Site does not propose to move any building closer to the rail corridor than the approved building setbacks to the rail corridor as set out in Diagrams 4 to 7 of By-law 959-2021, then the exemption outlined in paragraph 2 above would continue to apply.

The City and our client would agree to jointly advise the Tribunal that the Site would be exempt from OPA 536 subject to the condition outlined in item (3) above and to jointly request that the Tribunal note this exemption in its written disposition which addresses the resolution of the above noted appeal.

If you have any questions regarding the above, please do not hesitate to contact me at 416.645.4572 or via email at jpark@ksllp.ca.

Yours truly,

KAGAN SHASTRI DeMELO WINER PARK LLP



Jason Park
JIP/ss

Please reply to the: Downtown Office

Attachment

cc: DK Victoria Park Inc.

**Attachment A
Modified OPA 536**

CITY OF TORONTO

BY-LAW No. 209-2022

To adopt Amendment 536 to the Official Plan of the City of Toronto with respect to Rail Infrastructure and Public Safety.

Whereas authority is given to Council under the Planning Act, R.S.O. 1990, c.P.13, as amended, to pass this By-law; and

Whereas Council of the City of Toronto has provided information to the public, held a public meeting in accordance with Section 17 of the Planning Act;

The Council of the City of Toronto enacts:

The attached Amendment No. 536 to the Official Plan of the City of Toronto is hereby adopted.

Enacted and passed on March 9, 2022

Frances Nunziata
Speaker

City Clerk

(Seal of the City)

AMENDMENT NO. 536 TO THE OFFICIAL PLAN OF THE CITY OF TORONTO

The following unshaded text, policies and schedule constitute Amendment No. 536 to the Official Plan for the City of Toronto:

1. Section 3, BUILDING A SUCCESSFUL CITY, is amended by adding a new section 3.6, Rail Infrastructure, Mitigating Derailment and Public Safety as follows:

3.6 Rail Facilities, Mitigating Derailment and Public Safety (*unshaded text*)

Transportation of people and goods by rail continues to be an important component of the transportation network that supports Toronto's economic health. It is the City's responsibility to balance the interests of protecting public health, transportation corridors, and the viability of transportation corridors, while supporting intensification. In particular, this section 3.6 addresses physical rail safety and mitigation associated with the potential for derailment.

When new development proposes to introduce new or intensified land uses in proximity to rail facilities, risk is introduced to both the users of the development and the rail facilities. For the purpose of this Plan, rail facilities are rail corridors, rail sidings, train stations, inter-modal facilities, rail yards and associated uses, including designated lands for future rail facilities.

Because development sites near rail facilities can vary in size, orientation to rail facilities and/or proposed land uses, proponents shall design solutions tailored to the applicable unique local context, which may include the appropriate separation of uses from rail facilities and the provision and construction of risk mitigation design solutions on site such as crash walls or structures, as proposed through a Rail Safety and Risk Mitigation Report for Derailments (RSRM). Terms of reference prepared by the City will inform the content of these reports.

Policies

1. For the purposes of this section 3.6 and Schedule 3, the area of influence of rail (for the purpose of mitigating physical risk arising from potential derailments) means the area within 30 metres of the property line of a rail facility. These policies will apply where any portion of a development site subject to the planning application falls within this area of influence.

Sidebar note: Nothing in these policies will preclude the City from raising rail safety concerns in response to an application.

2. Subject to policies 3.6.4 and 3.6.5, an application for a zoning bylaw amendment, subdivision or site plan application seeking to introduce, develop or intensify land

uses within the area of influence of rail will include a RSRM prepared, signed and stamped by a qualified engineer, which will be subject to a third party peer review retained on behalf of the City at the applicant's expense.

3. If the RSRM is accepted by the City and reviewed by the applicable rail operator, and the application is approved:
 - (a) construction, ongoing maintenance, and replacement of the approved rail safety mitigation measures will be secured through an agreement between the City and the landowner;
 - (b) warning clauses in all relevant documents will be registered on title to provide notice for future purchasers; and
 - (c) as part of an agreement between the landowner and the City to be registered on title, the landowner will be required to assume responsibility for the construction and maintenance of the approved rail safety mitigation measures, and will be required to indemnify the City from claims relating to damages incurred on the property arising from a failure to construct and/or maintain the approved rail safety mitigation measures in accordance with the aforesaid agreement, where such damage is caused by a derailment.

4. If an RSRM report was submitted, peer reviewed and accepted by the City in conjunction with a planning application:
 - (a) a revised RSRM report will not be required for a subsequent application if a professional engineer has confirmed in writing to the City that the subsequent application does not propose to do any of the following within the area of influence:
 - i. change the location of land uses;
 - ii. remove or alter buildings or structures that would have acted as a rail safety protection feature;
 - iii. reduce the rail setback distances of building(s); or
 - iv. change the proposed site grading;from what was identified in the accepted RSRM report, in a manner that would adversely impact the effectiveness of the risk mitigation measures.

 - (b) If a revision to the accepted RSRM report is required because the confirmation in policy 3.6.4(a) is not provided, the revised RSRM report will demonstrate how the adverse impacts referenced in policy 3.6.4(a) will be mitigated as necessary to ensure the required level of rail safety is achieved in accordance with the rail safety standards applied in the accepted RSRM report.

- (c) Notwithstanding the foregoing, the construction specifications for approved rail safety mitigation measures shall be revised at the time of a complete application for site plan control, if applicable, to reflect current engineering standards.
5. If a change to the zoning permissions has been approved or approved in principle, or a draft plan of subdivision has been approved or approved in principle, as a result of a decision by the Ontario Land Tribunal or the Province, then:
- (a) Where the RSRM report was accepted by a City peer reviewer through that process, then policy 3.6.4 will apply; or
 - (b) Where the approval occurred in the absence of the acceptance of an RSRM report by a City peer reviewer, then:
 - i. Any rail safety mitigation measures required as part of the approval will be integrated and secured in subsequent applications as necessary, and no RSRM report will be required in connection with subsequent applications;

Sidebar note: A Provincial approval that addresses rail safety mitigation measures, as referred to in Policy 3.6.5, includes circumstances where the Province addresses rail safety mitigation through contractual arrangements in connection with the approval. An applicant will provide details respecting the manner in which rail safety mitigation measures have been addressed as a part of the Provincial approval and the City will require that any required rail safety mitigation measures be reflected and secured through the site plan process.

- ii. If, as part of the approval, it is determined that the development does not require rail safety mitigation measures, no RSRM report will be required in connection with subsequent applications; and
 - iii. If, as part of the approval, there is no determination as to whether rail safety mitigation measures are required, an RSRM report will be required in connection with subsequent applications.
6. If an application has been deemed complete for a development prior to section 3.6 coming into effect, and:
- (a) an RSRM report is peer reviewed and accepted by the City in relation to that application, then policies 3.6.1 to 3.6.5 and the portion of Schedule 3 relating

to RSRMs will not apply to that application and any related subsequent application will be processed in accordance with policy 3.6.4; or

- (b) the application is approved or approved in principle as a result of a decision of the Ontario Land Tribunal, then policies 3.6.1 to 3.6.5 and the portion of Schedule 3 relating to RSRMs will not apply to that application and any related subsequent application will be processed in accordance with policy 3.6.5.

2. Schedule 3, Application Requirements is amended by adding the following additional requirement of the Official Plan:

ADDITIONAL REQUIREMENTS of the OFFICIAL PLAN	Official Plan	Zoning By-law	Plan of Subdivision	Plan of Condominium	Consent to Sever	Site Plan Control Approval
<p>Rail Safety and Risk Mitigation Report: for all properties within the area of influence of rail, a Rail Safety and Risk Mitigation Report (RSRM) and peer review is required where indicated in Section 3.6 of this Plan. The RSRM Report will be evaluated against the criteria established in the Rail Association of Canada/Federation of Canadian Municipalities Guidelines for New Development in Proximity to Railway Operations, and as set out in Section 3.6 of this Plan.</p>		●	●			●