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July 10, 2024

Via Email (laura.bisset@toronto.ca; daniel.elmadany@toronto.ca)

Without Prejudice

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To Whom it May Concern:

**Re: Settlement Offer – 2500 Don Mills Road
Ontario Land Tribunal Case No. OLT-23-000093
City of Toronto Planning Application No. 22 135742 NNY 17 OZ**

We represent Donshep Developments Limited (the “**Owner**”), the owner of the lands municipally known as 2500 Don Mills Road (the “**Subject Property**”) in the City of Toronto (the “**City**”). On April 19, 2022, the Owner submitted applications to amend the City’s Official Plan, Zoning By-law No. 569-2013, and former City of North York Zoning By-law No. 7625 (City Application No. 22 135742 NNY 17 OZ – collectively, the “**Applications**”) as it relates to the Subject Property. The Applications were deemed complete by the City on April 28, 2022.

On February 6, 2023, the Owner appealed the Applications to the Ontario Land Tribunal (the “**Tribunal**”), pursuant to subsections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13 (Tribunal Case No. OLT-23-000093 – the “**Appeal**”). In its decision dated August 9, 2023, the Tribunal set a fifteen-day hearing for the Appeal scheduled to commence on October 21, 2024.

Further to our discussions with City staff, we write to make a without prejudice offer to settle the Appeal with the City in its entirety (the “**Settlement Offer**”).

The Settlement Offer terms are as follows:

1. Settlement Plans and Draft OPA

The zoning by-law amendment will permit the proposed mixed-use development subject to the matters expressly set out herein (the “**Development**”), substantially in accordance with the set of plans and drawings and site statistics which is attached hereto as Schedule "A" (the “**Settlement Plans**”), and the official plan amendment shall secure certain matters referenced herein substantially in accordance with the draft form of

official plan amendment attached hereto as Schedule “B” (the “**Draft OPA**”), which collectively include the following:

- (a) two mixed-use buildings (a 44-storey north tower and a 49-storey south tower, excluding mechanical penthouses) attached by a six-storey shared podium, comprised of a maximum of 73,500 square metres of residential gross floor area and a minimum of 1,000 square metres of non-residential gross floor area;
- (b) for the podium and tower portions of the Development, height, massing, and setbacks substantially as depicted in the Settlement Plans;
- (c) amenity space comprising a minimum of 1.5 square metres per unit of indoor amenity space and a minimum of 1.75 square metres per unit of outdoor amenity space (which, for clarity, may include the at-grade green space identified at the northwest corner of the Subject Property), for a minimum total of 3.25 square metres of amenity space per unit;
- (d) bicycle parking to be provided as per the minimum requirements in the Toronto Green Standard Version 3, and visitor’s parking to be provided as per the minimum requirements under City of Toronto By-law No. 89-2022;
- (e) an interim east-west private drive extending from Don Mills Road into the Development (the “**Interim Drive**”) as well as an ultimate north-south private drive that shall replace the Interim Drive upon the opening of Future Street B (the “**Ultimate Drive**”), subject to the following terms and conditions:
 - (i) the design, location, and configuration of the Interim Drive shall be finalized in a revised transportation impact study acceptable to, and to the satisfaction of, the General Manager, Transportation Services, and that the design, location, and configuration of the Interim Drive shall be secured through the site plan approval process;
 - (ii) the Interim Drive shall be the sole vehicular access to the Development until such time that the Future Street B opens as a public highway and as such time as the Ultimate Drive is opened;
 - (iii) prior to the issuance of a final order by the Tribunal, the Owner shall make arrangements with the City, which are satisfactory to the City, to secure the conveyance of a stratified at- and above-grade 0.3 metre wide by 6.0 metre long strip of land to the City directly adjacent to Don Mills Road, running north-south over the Interim Drive in the location depicted on the Settlement Plans (the “**0.3 Metre Strip**”);
 - (iv) the Owner shall convey the 0.3 Metre Strip in accordance with the arrangements made in Section 1(d)(iii) above;
 - (v) immediately upon conveyance of the 0.3 Metre Strip, the City shall grant an easement to the Owner over the 0.3 Metre Strip to permit access over the Interim Drive as well as for construction purposes (the “**Easement**”),

with details further described in a future easement agreement (the “**Easement Agreement**”), which will address such matters as maintenance, liability, and insurance;

- (vi) the City shall grant the Easement to the Owner at no cost to the Owner, and enter into the Easement Agreement at no cost to the Owner;
 - (vii) upon the opening of Future Street B, the City shall notify the Owner or, as the case may be, any successor condominium corporation(s) regarding same, and plans shall be made to close the Interim Drive, and open the Ultimate Drive, with particular details to be set out in the Easement Agreement;
 - (viii) the Owner shall be solely responsible for the cost and construction of the removal and restoration of the Interim Drive, including replacing the access point(s) with appropriate landscaping and a continuously poured raised concrete curb;
 - (ix) the Easement shall terminate no later than 12 months following the opening of the Ultimate Drive, or upon such other time as agreed to between the Owner and the General Manager, Transportation Services;
 - (x) prior to final site plan approval, the Owner shall enter into a municipal infrastructure agreement securing the northerly extension of the median in the Don Mills Road right-of-way, to connect with the existing centre median to the north of the Subject Property, to ensure right-in, right-out access only to and from Don Mills Road, from both the Interim Drive and Future Street B; and,
 - (xi) as part of the site plan approval process, the Owner shall provide a functional road plan for the centre median extension above, which is satisfactory to the General Manager, Transportation Services;
- (f) a 3.51 metre road widening strip (the “**Road Widening Strip**”) at the north end of the Subject Property, with the final design and location of the Road Widening Strip to be secured as part of the site plan approval process, which shall be conveyed to the City in an environmentally-acceptable condition and shall be incorporated into the Future Street B right-of-way, subject to the following terms and conditions and only the following terms and conditions:
- (i) the requirement and timing to convey the Road Widening Strip being secured as a condition in the site plan approval application’s notice of approval conditions for the Development;
 - (ii) the Owner shall post a letter of credit at the time of conveyance covering the above-grade construction costs of the Owner’s portion of the Future Street B construction for the Road Widening Strip, that shall be indexed (the “**Indexed LC**”);

- (iii) the City may demand annual indexing of the Indexed LC in accordance with the Building Construction Price Index for the Toronto Census Metropolitan Area reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01 or its successor, at a rate to ensure the Indexed LC is consistent with market construction costs, and the Owner shall pay such amounts forthwith upon request by the City;
- (iv) the Indexed LC shall be based on an amount calculated at the time of issuance of site plan approval for the Subject Property;
- (v) the Indexed LC shall expire and all of the Owner's obligations shall come to an end upon arrangements satisfactory to the City being made for the construction of Future Street B, or upon the ten-year anniversary of the conveyance of the Road Widening Strip at which point the Owner can exchange the Indexed LC for an equal cash amount; and,
- (vi) in the event Future Street B has been conveyed to the City and constructed as a public highway, then items (i) to (iv) above shall not be necessary, and the Road Widening Strip shall be designed and constructed to connect to the public highway in accordance with City standards;
- (g) an on-site parkland dedication at the south-west corner of the Subject Property with a minimum area of 661 square metres, with the exact size, location, and configuration of the parkland to the satisfaction of the General Manager, Parks, Forestry, and Recreation, subject to the following terms and conditions:
 - (i) the parkland dedication shall be transferred to the City free and clear above and below grade of all physical and title encumbrances; and,
 - (ii) the parkland dedication shall be transferred to the City prior to the issuance of the first above-grade building permit for any portion of the Development in an acceptable environmental condition in base park condition;
- (h) the Owner acknowledges that the site plan approval application for the proposed Development shall be subject to TTC technical review, which review may result in the bus stop platform and shelter being relocated further south along Don Mills Road, at the Owner's expense.

The Settlement Plans included alongside this Settlement Offer, if accepted by City Council, are intended to amend the plans previously submitted to the Tribunal for the Appeal.

2. Affordable Housing Contribution

The Owner offers to provide an in-kind contribution pursuant to subsection 37(6) of the *Planning Act* in the form of affordable rental housing units within the Development for a period of forty (40) years on the following terms:

- (a) the total amount of the affordable rental housing gross floor area shall be two percent (2%) of the total residential gross floor area for the Development (the “**Affordable Housing Contribution**”), with such requirement also included in the Draft OPA for the Development;
- (b) the Owner shall design, construct, finish, and provide affordable rental units on the Subject Property, with a unit mix substantially reflecting the market unit mix of the Development;
- (c) the affordable rental units shall be provided in contiguous groups of at least six (6) rental dwelling units;
- (d) the unit sizes of the affordable rental units will be no less than:
 - (i) 525 square feet, for one bedroom units;
 - (ii) 650 square feet, for two bedroom units; and,
 - (iii) 900 square feet, for three bedroom units;
- (e) the general configuration, location, and layout of the affordable rental units shall be to the satisfaction of the Chief Planner and Executive Director, City Planning;
- (f) the affordable rental units shall include ensuite laundry and air conditioning in each unit at no additional cost to tenants;
- (g) the affordable rental units shall be made available for occupancy at a rate commensurate with the market units being made available for occupancy, or faster;
- (h) the residents of the affordable rental units will have access to all amenities of the Development including indoor and outdoor amenity space, and access to bicycle and visitor vehicle parking, all on the same terms and conditions as any other resident of the Development;
- (i) a requirement that the rents charged for the affordable rental units will meet the City’s currently-defined affordable rental rate formula;
- (j) the Owner shall provide and maintain the affordable rental units as rental dwelling units for a minimum of 40 years, beginning with the date each such affordable rental unit is first occupied;

- (k) during the first 40 years of occupancy, increases to initial rents charged to tenants occupying any of the affordable rental units shall be in accordance with the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, and shall not exceed the Provincial rent guideline;
- (l) no affordable rental unit shall be registered as a condominium or any other form of ownership such as life lease or co-ownership which provide a right to exclusive possession of an affordable rental unit, and no application for conversion for non-rental housing purposes, or application to demolish any affordable rental unit shall be made for at least 40 years from the date of first occupancy; and,
- (m) upon the expiration of the 40 year period, the Owner shall continue to provide and maintain the affordable rental units as rental dwelling units, unless and until such time as the Owner has applied for and obtained all approvals necessary to do otherwise.

3. **Conditions Prior to the Issuance of a Final Order**

The Owner agrees that the following matters will be addressed to the satisfaction of the City prior to the issuance of a final order by the Tribunal allowing the Appeals on the terms set out herein:

- (a) the final form and content of the draft official plan amendment and zoning by-law amendment being to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;
- (b) the Owner providing confirmation of water, sanitary and stormwater capacity through an updated Functional Servicing and Stormwater Management Report to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and that such matters arising from such study be secured if required through the site plan approval process;
- (c) the Owner submitting a wind tunnel study acceptable to, and to the satisfaction of, the Chief Planner and Executive Director, City Planning, and that such matters arising from such study be secured if required through the site plan approval process;
- (d) the Owner submitting a revised transportation impact study acceptable to, and to the satisfaction of, the General Manager, Transportation Services, and that such matters arising from such study be secured if required through the site plan approval process, which shall include the analysis of the following scenarios:
 - (i) the Interim Drive only;
 - (ii) the Interim Drive and the Ultimate Drive; and,
 - (iii) the Ultimate Drive only;

- (e) the Owner submitting a revised Travel Demand Management Plan acceptable to, and to the satisfaction of the Chief Planner and Executive Director, City Planning and the General Manager, Transportation Services and that matters arising from such study be satisfactorily addressed, and secured if required through the site plan approval process;
- (f) the Owner submitting a revised sun/shadow study acceptable to, and to the satisfaction of, the Chief Planner and Executive Director, City Planning; and,
- (g) the Owner and the City entering into a community benefits agreement, pursuant to section 37 of the *Planning Act*.

4. Settlement Offer Conditions

This Settlement Offer is conditional on:

- (a) City Council accepting this Settlement Offer during its meeting scheduled for July 24-26, 2024;
- (b) the affordable rental units being included in the City's Open Door Affordable Housing Program upon receipt of an application for same and receiving the program's financial incentives;
- (c) the City agreeing to the following treatment of the affordable housing gross floor area of the Development within the official plan amendment, substantially in accordance with the form of the Draft OPA, the residential gross floor area will include the affordable housing gross floor area, to ensure the accurate representation of the Affordable Housing Contribution; and,
- (d) the City consenting to the Owner requesting a settlement hearing for the Appeal, to be held during or before the hearing scheduled for the Appeal, for the issuance of an interim order by the Tribunal approving the Development and the Settlement Plans in principle (however, should the conditions outlined in Section 3 herein be cleared prior to the settlement hearing, the City will consent to the

Owner requesting the issuance of a final order by the Tribunal approving the Development at the settlement hearing).

This Settlement Offer is made without prejudice. Should the Settlement Offer be accepted by City Council, it may be released publicly.

Should you require further information please do not hesitate to contact our office.

Sincerely,

McCarthy Tétrault LLP



Michael Foderick*
Partner | Associé

MF/JC/DA
Attachment