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VIA EMAIL

February 28, 2022

Office of the City Clerk
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

Attention: Todd Coles, City Clerk

Dear Mr. Mayor and Members of Council:

Re: Committee of the Whole Meeting – March 1, 2022
Item No. 6.1 – CITY-WIDE COMPREHENSIVE ZONING BY-LAW 001-2021:
ZONING BY-LAW AMENDMENT FILE Z.21.052 – REPEAL AND REPLACE
TRANSITION PROVISIONS

We represent West Rutherford Properties Ltd. (“West Rutherford”) is the owner of the property municipally known as 3660 Rutherford Road, City of Vaughan (“Subject Lands”).

On October 20, 2021 the Council of the City of Vaughan passed a new Comprehensive Zoning By-law (“By-law 001-2021”), which applies to all lands, buildings and structures within the City of Vaughan, with exceptions. West Rutherford participated in the public process leading up the passage of By-law 001-2021, and through its submissions, West Rutherford expressed a number of concerns with By-law 001-2021 as drafted. Those concerns were not adequately addressed and as a result, West Rutherford filed an appeal of the passing of By-law 001-2021 to the Ontario Land Tribunal (“OLT”) pursuant to section 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, on November 15, 2021.

Furthermore, West Rutherford currently has an active appeal before the Ontario Land Tribunal (PL130754) in respect of the Subject Lands regarding the failure of the City of Vaughan to adopt the requested Official Plan Amendment (OP.11.012), Zoning By-law Amendment (Z.11.043) and Site Plan (DA.11.114) applications. The outcome of that hearing ought to be directly reflected in By-law 001-2021 and the current transition provisions contained in Section 1.6 of By-law 001-2021 do not appropriately address this situation and are therefore inadequate.

On January 18, 2022 the Committee of the Whole received a report from planning staff that proposes additional amendments to the transition provisions contained in By-law 001-2021. In response to comments received in respect of the January 18, 2022 proposed revisions, we understand that additional changes are now proposed as reflected in the report being considered as agenda item 6.1 at the March 1, 2022 Committee of the Whole meeting.



On behalf of our client we have reviewed the proposed amendments and in our opinion, they do not go far enough to address the fundamental issues our client has with the transition provisions. Our client's concerns include but are not necessarily limited to the following:

1. Notwithstanding the reference in section 15.1 to the transition provisions, By-law 001-2021 continues to effectively operate as a "repeal and replace" by-law which proposes to delete By-law 1-88 for the majority of the lands in the City and replace it, in its entirety, with the new comprehensive by-law. Meanwhile, the language in the transition provisions of section 1.6 including the preamble suggest that for certain classes of planning approvals, such as previously approved zoning by-law amendments or draft plans of subdivision, the provisions of By-law 1-88 would effectively continue to apply in the event of a conflict if certain requirements are met. The transition provisions in section 1.6 had originally been drafted when the comprehensive by-law was proposed to merely *supersede* By-law 1-88 except where otherwise indicated, and are incoherent in the context of the current repeal and replace by-law, again, notwithstanding the reference to the transition provisions in section 15.1. It is not clear legally how By-law 001-2021 can on the one hand be repealed and replaced but on the other, still effectively apply if the criteria in the transition provisions are met.
2. The exemption provided for pursuant to section 1.6.2.1 is worded in such a way that suggests that once a building permit is issued for a particular project, the exemption in that section would no longer apply. This is inappropriately restrictive and does not recognize the reality that building permits are often issued in stages for complex development projects with multiple permits.
3. This wording of section 1.6.2.5 appears to conflict with the exemption in section 1.6.2.1. It is also not entirely clear what this section it intended to accomplish and what specific "amendment" the provision is contemplating.
4. Section 1.6.2.6 states that the requirements of By-law 001-2021 do not apply where an amendment to By-law 1-88 was finally approved and in effect on and after January 1, 2010 and such amendment has not been included in section 14. This exemption is not worded broadly enough and does not address a circumstance where such amendment has been partially or incorrectly reflected in section 14. It is not clear that would happen in this case.
5. Regarding the exemption provided for in section 1.6.2.7, it is not clear legally what happens when the holding symbol is removed given the way the section has been worded and in light of the fact that the by-law purports to delete and replace By-law 1-88. Legally, the removal of a holding symbol is accomplished through an amendment to the zoning by-law. It is not clear how the City can amend By-law 1-88 if it has effectively been repealed or what zoning will be in place for the property once the holding symbol is removed (if it is possible to do so). Will it be the zoning under the comprehensive by-law or that under By-law 1-88?
6. Sections 1.6.2.8 and 1.6.3.3.4 provide that the transition provisions will cease to apply when the "project" is completed. "Project" has not been defined and it is not clear that it



means for a “project” to have been completed. Even if clarity can be provided, it is not clear why it is desirable for the exemption to no longer apply after the “project” is completed which would potentially produce a situation where those uses will be pushed into legal non-conforming status. Similarly, it is not clear why the transition provisions should not continue to apply after the issuance of the building permit or permits referred to in section 1.6.4.1.

7. The automatic repeal of the transition provisions after 10 years through the sunset clause provided for in section 1.6.4.2 is inappropriate. The transition period of 10 years should either be extended, or the provision should be amended such that the transition provisions will be revisited and potentially repealed after 10 years, but not automatically repealed without amendment to the By-law.

We thank you for the opportunity to provide comments and kindly request confirmation of receipt of these submissions, along with notice of all future steps in this matter.

Yours truly,
LOOPSTRA NIXON-LLP

Per: Quinto M. Annibale

QMA/aew