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BARRISTERS AND SOLICITORS

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COMMUNICATION
COUNCIL – June 28, 2022
CW (2) - Report No. 30, Item 19 &
CW (CS) - Report No. 31, Item 14

Quinto M. Annibale*
***Quinto M. Annibale Professional Corporation**
Direct Line: (416) 748-4757
E-mail: gannibale@loonix.com

By E-Mail

June 24, 2022

Mayor and Members of Council
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Dear Mr. Mayor and Members of Council,

RE: Pristine Homes (Pine Grove) Inc. ("Pristine")
Applications by Pristine for Official Plan and Zoning By-law Amendment
(OP.20.004 and Z.20.011)
8337, 8341, 8345, 8349, 8353 and 8359 Islington Avenue ("Subject Property")
Site Access Requirement

I am the lawyer for Pristine in respect of the above noted matter. Since the Applications were filed, my client has engaged in productive discussions with City staff and has made a number of revisions to address concerns raised with the original proposal. My client is pleased that as a result of those discussions and resulting revisions, staff are now recommending approval of my client's applications.

For the most part, my client does not take issue with the conditions of approval recommended by staff. However, my client has significant concerns with the holding condition in the draft zoning by-law prepared by City staff that would require the Owner to obtain an access easement over the private common element condominium road of the lands located immediately to the south of the Subject Lands ("Neighbouring Lands").

Pursuant to section 17 of the site plan agreement dated July 13th, 2015 entered into between the City and Statesview Homes (S Collection) Inc., the developer of the Neighbouring Lands ("Site Plan Agreement"), the condominium corporation is required to grant an access easement over the proposed condominium road at the time that the Subject Lands develop. The Site Plan Agreement is registered on title to the Neighbouring Lands and notice of this requirement was required to "be included in the Condominium Agreement, Condominium Declaration and all Offers of Purchase and Sale or Lease to ensure that the Condominium Corporation and all future Owners are aware of this requirement."

Pristine is not a party to the Site Plan Agreement and is therefore not able to directly enforce this obligation in court.



Pristine has reached out to the condominium corporation that now owns the driveway access on the Neighbouring Lands on numerous occasions to confirm that it will grant the access easement as it is legally required to but it has refused to cooperate or confirm this. Despite repeated requests, legal and planning staff have also not confirmed that the City will enforce this requirement of the condominium corporation to provide access.

We therefore ask that the existing condition related to the access easement be deleted and replaced with the following:

The Owner shall take all reasonable steps within its control to secure an access easement over the private common element road of the abutting lands to the south in favour of the Subject Lands in order to create a shared access onto Islington Avenue. The City recognizes that the Owner does not have the ability to require the abutting Condominium Corporation to grant such an easement and that the City has the power to do so pursuant to section 17 of the Site Plan Agreement entered into with Statesview Homes (S Collection) Inc. dated July 13th, 2015 and registered on title to the abutting lands as instrument YR2324168. In the event the Owner is unable to secure the access easement the City agrees to take all steps available to it to enforce the obligation in the Site Plan Agreement and to ensure that an access easement is provided to the Owner.

When this matter was discussed in open session at the June 21, 2022 City of Vaughan Committee of the Whole (2) meeting, there was a suggestion that the City may not have the legal authority to enforce the obligation in the Site Plan Agreement to grant an access easement to Pristine.

My client rejects this suggestion in the strongest possible terms.

The City has multiple legal avenues available to it to secure the access easement. It could enforce the obligation directly in court pursuant to section 41(11) of the *Planning Act*, R.S.O. 1990, c. P. 13 and section 446 of the *Municipal Act*, 2001, S.O. 2001, c. 25. The City also has the clear ability, independent of the requirements in the Site Plan Agreement, to secure the access easement through its powers under the *Expropriations Act*, R.S.O. 1990, c. E.26. This means that the City has the power to secure the access easement even if the suggestion is correct that the clause in the Site Plan Agreement and the related clause in the Condominium Agreement are unenforceable.

In our opinion, it is clearly unfair and unreasonable for the City to conclude that a clause and requirement it drafted is not enforceable while making my client entirely suffer the consequences of this.

If the City concludes that it does not have the ability to enforce the obligations in the Site Plan Agreement or Condominium Agreement in this case, this has the potential to seriously jeopardize its ability to enforce similar obligations in any other Site Plan Agreement, Subdivision Agreement, or Condominium Agreement where access to adjacent lands is required to be



protected for. Such requirements are extremely common to ensure appropriate coordination and access between adjacent commercial plazas and subdivisions when they develop. This would set an extremely troubling precedent and would undermine the City's ability to enforce site plan obligations generally throughout the City.

Our client wishes to work cooperatively to resolve this matter but if the City defers its application further and refuses to enforce the obligation of the neighbouring Condominium Corporation to grant the required access easement, Pristine will have no choice but to initiate legal proceedings to compel the City to enforce this obligation and/or seek damages against the City.

We request that the City therefore proceed with this matter at the upcoming June 28th, 2022 meeting of Council and not defer making a decision any further. We also ask that Council pass the following resolution and direction to staff in connection with the Applications:

1. That staff be directed to enforce the Site Plan Agreement registered as instrument number YR2324168 and obtain a vehicular and pedestrian easement over the driveway lands of the adjacent condominium to the south to provide a secondary access to Islington Avenue by court action if necessary, and
2. That in the event that the City is unsuccessful in #1 above, the City Solicitor be instructed to immediately commence proceedings to expropriate a vehicular and pedestrian easement over the driveway lands of the adjacent condominium to the south to provide a secondary access to Islington Avenue and in such event, the developer agrees to pay for the costs of such proceedings.

I trust this is satisfactory, however should you require anything further please don't hesitate to contact the undersigned.

Yours truly,

LOOPSTRA NIXON LLP

Per: Quinto M. Annibale

cc Wendy Law, Deputy City Manager, Legal and Administrative Services and City Solicitor
cc Haiqing Xu, Deputy City Manager, Planning and Growth Management