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COMMUNICATION
COUNCIL – DECEMBER 13, 2022
CW (2) - Report No. 46, Item 2

December 9, 2022

BY EMAIL

Mayor and Members of City Council
c/o Todd Coles, City Clerk
Vaughan City Hall
2141 Major Mackenzie Dr.
Vaughan, ON L6A 1T1

Dear Mayor and Members of Council:

Re: Proposed Amendment to the Vaughan Official Plan 2010
Policy 10.1.3 and By-law 278-2009, as amended, in Response to Bill 109
(*More Homes for Everyone Act, 2022*)
City File No. 25.7
Agenda Item 6.2
Committee of the Whole Meeting December 12, 2022

Aird & Berlis LLP acts on behalf of 3300 Rutherford Developments Inc. with respect to the development of the lands municipally known as 3300 Rutherford Road in the City of Vaughan (the "**Subject Property**"). Our client is proposing to redevelop the Subject Property with a high density mixed-use development, and has been in consultation with City staff, including a Pre-Application Consultation, to discuss the formal submission of applications for an Official Plan Amendment, Zoning By-law Amendment, and Plan of Subdivision to facilitate the development.

Together with our client and our client's consultants, we have had the opportunity to review the draft amendment to Policy 10.1.3 of the Vaughan Official Plan 2010 (the "**Proposed OPA**"), together with Staff's reports, dated September 13, 2022 and December 12, 2022. Our client, though its consultants, has also been in contact with City staff to ascertain the rationale behind the Proposed OPA.

We appreciate the City's efforts in streamlining the development application review process to help achieve the Provincial goal of increasing housing supply in an expeditious manner. That being said, our client has concerns with the Proposed OPA, as currently drafted. In particular, our client is concerned with new Policies 10.1.3.6 and 10.1.3.9, which would require that where applications for Official Plan and Zoning By-law Amendments are submitted together, the latter application will not be deemed "complete" until the request official plan amendment comes into full force and effect.

We appreciate that City staff have recently made revisions to the draft policy language to provide for an exemption where the City deems an OPA application to be "minor." However, this policy creates more practical issues than it resolves.

In our client's view, this policy is contrary to the letter and the spirit of the *Planning Act* and will hinder, rather than help, the goal of increasing housing supply in a timely manner. City staff have acknowledged in their reports that there has been "considerable change" in the planning context

since the City's Official Plan was adopted in 2010. Growth pressures are greater than ever before. However, as-of-right permissions for development, including updates to the City's zoning by-law, have not kept up in lock step, and do not always help facilitate the goal of increasing the housing supply. That is why it is often necessary to file re-designation and re-zoning applications together to facilitate development.

The *Planning Act* itself contemplates the concurrent submission and concurrent review of OPA and ZBA applications. Subsection 34(11.0.0.01) provides that where a ZBA application is accompanied by an OPA application, the municipality has a period of 120 days to make its decision, as opposed to the ordinary 90 days. This is the statutory direction to the City that it must process such applications together and concurrently, not consecutively.

Further, the concurrent adoption and passage of a related OPA and ZBA is specifically contemplated in the legislation.. All zoning by-laws must conform to the official plan, but subsection 24(4) of the *Planning Act* provides that where both are adopted at the same time, there is deemed conformity. In other words, it is not necessary to halt the processing of a zoning instrument until a related official plan amendment comes into force.

In practice, the consecutive (rather than concurrent) processing of OPA and ZBA applications will result in significant delays in achieving new housing supply. In our experience, despite the efforts of municipal staff and applicants to work expeditiously within the statutory timeframe, many OPA requests take several months if not years to fully resolve. Many end up appealed to the Ontario Land Tribunal, with a process that may span several years. At the same time, many of the supporting studies and analysis are shared as between an OPA and ZBA application, especially where they have been prepared to support of development proposal. Policy 10.1.3.9 would result in unnecessary duplication of processes and time and effort of City staff, and only after delays in the planning process.

Our client acknowledges that certain OPA application require greater levels of study and analysis than others. For example, a Site-and-Area-Specific-Plan, Employment Lands Conversion Request, or Urban Boundary Expansion require more specific studies than OPA application to facilitate a discrete development proposal, which may only entail the redesignation of lands. However, the proposed policy fails to appreciate that there are efficiencies to be gained where both applications are complimentary and can be properly considered on the basis of the same technical supporting studies.

These same concerns apply to the policies regarding site plan applications. Any development by way of a site plan application must comply with the applicable provisions of a zoning by-law in any event. Further, there are many instances where the need for a minor variance only becomes apparent after the complete submission of a site plan application. Again, the consecutive rather than concurrent processing of applications would result in unnecessary duplication and delay that will hinder rather than help the goal of more housing starts.

Our client appreciates the efforts of City staff in revising the Proposed OPA to address comments received since the previous circulation. In particular, we acknowledge that Policy 10.1.3.9 b. was drafted to specifically respond to concerns of industry stakeholders. In our client's view however, this policy present further, more complex issues than the one it seeks to resolve.

First, there is no definition or meaning ascribed to what a "minor" OPA is. The word "minor" has been the subject of significant disputes in the realm of minor variance appeals, and we expect the

same to be the case with this policy. The Proposed OPA provide no criteria or guidance for how this is to be determined. It is left solely to the discretion of the City and provides the public little to know certainty as to how the policy will be applied.

Second, the policy provides an exception where the application is "deemed minor by the City," but there is no indication as to who makes this determination. Will Planning Staff make this determination administratively? Will this determination require a formal Council decision on a site-specific basis? If this is to be a Council determination, what will this decision-making process look like? Will a request from the applicant be required? Will such a decision be subject to appeals to the Tribunal, or judicial review in the courts? These important questions remain unanswered at this time.

Policy 10.1.3.6 also presents concerns about the basis for deeming an application to be complete. Proposed new language in sub-policy e. gives the City broad discretion to refuse to accept materials where the "quality" of the submission is deemed "unsatisfactory." This effectively flips the review process on its head. The scheme of the *Planning Act* clearly provides that staff's subjective views on the quality of a submission is not a basis to deem an application incomplete. Rather, whether or not staff agree with the findings of have issues with particular aspects, City staff have an obligation to commence processing the application. In our client's view, this policy should not contain any subjective or discretionary language.

Lastly, noticeably absent from the Proposed OPA is any meaningful transition provision that would grandparent landowners who current have applications in the approval pipeline, or have already been working diligently with City staff through the Pre-Application Consultation process. It would be manifestly unfair to "change the rules in the middle of the game" for landowners, including our client, who have Pre-Application Consultation Agreements in place.

We also wish to note that since City staff's initial report on the Proposed OPA, the Minister of Municipal Affairs has committed to changing the implementation timeline of Bill 109. In a letter to The Association of Municipalities of Ontario, dated November 30, 2022, the Minister committed to introducing new legislation to push the implementation date from January 1, 2023 to July 1, 2023. In our client's view, this should enable Council to table the adoption of the Proposed OPA and allow for further consultation with the development industry on ways to achieve quality and efficiency in the application review process without needlessly stalling the progress of development application.

On behalf of our client, we respectfully request that Council direct the draft Proposed OPA be referred back to planning staff for further consultation with affected landowners and consideration of further revisions.

If you have any questions, please contact the undersigned. We ask that you please provide us with notice of all upcoming public meetings and any decision of City Council, including Committees of Council, concerning the Proposed OPA.

Thank you for your consideration of this request.

Yours truly,

AIRD & BERLIS LLP

Patrick J. Harrington

PJH/JGP/lm
Encl.

c: Client

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