C 27
COMMUNICATION
CW - June 4/2019
ITEM - 5

donnelly law
BARRISTER & SOLICITOR
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June 3, 2019

Committee of the Whole
The Mayor and City Council
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

Your Worship and Members of the Committee of the Whole,

Re: 4433, 4455 & 4477 Major Mackenzie Drive
Valley Major Developments Limited
Official Plan Amendment File OP.17.005
Zoning By-law Amendment File Z.17.013

Donnelly Law ("we" or the "Firm) represents Mr. Richard Rodaro, residing at 50 Woodend Place, Vaughan, Ontario, in respect of the above-noted matters.

This letter supplements the September 19, 2017 letter to the Committee of the Whole ("COW") that also objected to the development and a follow-up letter to Council dated September 26, 2017. The purpose of this letter is to advise that the re-submission under consideration by this COW is unacceptable to our client.

In response to the detailed submission to Council previously, Staff has recommended a mere reduction of nine lots. Staff makes a specious argument by saying the Vaughan Official Plan (VOP 2010) does not contain a "maximum density (uph or FSI)" for the Low Rise Residential designation because the Official Plan protects residents from incompatible density intensification development by the Urban Design and Built Form policy requirements of the Official Plan intended to ensure that new development in established neighbourhoods both respect and reinforce the physical character of the surrounding area with particular attention to specific design elements that cumulatively determine land use density. These policy requirements were confirmed, clarified and enhanced in Official Plan Amendment No. 15, approved by Council in September 2018 and represented to conform with the *Growth Plan for the Greater Golden Horseshoe* (2017).

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The staff report before the COW fails to address the significance of, or to satisfy, any of the comments and concerns raised by our client in his submissions to the COW and to Council during the public hearing process. Furthermore, several of the community comments provided through the public hearing process either mis-characterize the comment or concern or fail to address its substance, for example:

(a) Appropriateness of Development.

The response fails completely to address any of the requirements of the referenced policies: 2.2.3, 9.1.2.2 or 9.1.2.3. In describing the amendments to the proposed application plan and the built forms in the greater Block 39 area it fails to distinguish – and worse, blurs the distinction – between the requirements of new development applications adjacent to an established neighbourhood and the requirements of proposed development or redevelopment *within* an established neighbourhood – a clear distinction in the Official Plan, which the aforementioned policies specifically address in terms of intent and the provisions to achieve them.

The City's response is at best tangential to the issues. The response further references the recent CountryWide LPAT decision approval for 113 townhouses; that decision has not to date been approved pursuant to the decision, and the decision is – as stated – subject to a Section 35 Request for Review. It is premature at this time to justify approval of this application as appropriate for the neighbourhood based either in whole or in part upon that LPAT hearing.

(b) Proposed Density of the Development.

The response states that VOP2010 does not contain a maximum density for Low Rise Residential designation, but it fails to disclose that the requirements of Policies 9.1.2.2.and 9.1.2.3 serve that very function: in creating the requirement that new development respect and reinforce the existing physical character and uses of the surrounding area in established neighbourhoods, by paying particular attention to the following elements:(a) the local pattern of lots, streets and blocks; (b) the size and configuration of lots; (c) the building type of nearby residential properties; (d) the heights and scale of nearby residential properties; (e) the setback of buildings from the street; and (f) the pattern of rear and side-yard setbacks.

For this application, Policy 9.1.2.3 requires additional requirements. These are the Urban Design and Built Form elements that determine density. These are also the elements the staff report recommends exemption from to approve this application.

(d)Traffic Impacts and congestion resulting from the Development and Width of the Common Element Private Road

Our client advises that further to the Public Hearing comments, traffic concerns were discussed at a private meeting at City Hall among a handful of local residents, the applicant and their consultants, and Councillor DeFrancesca. No members of City Staff were present. The developer's consultants agreed that the majority of traffic entering the subdivision will be coming westbound on Major Mackenzie from Highway 400. The proposed design will require them to make U-Turns at Pine Valley because there is no entrance permitted - for Regional safety requirements - from south-bound Pine Valley Drive. The regular requirement of U-turns at this intersection for the majority of 90-plus families daily raised additional congestion objections for existing residents as well as serious safety concerns, particularly given the less than optimal lines of sight concerning the curve immediately west of the intersection correcting the old concession road jog and eastbound traffic emerging into that curve out of a hill before potentially confronting U-turns head on.

This was not acceptable to either the residents or the Councillor, and was acknowledged as a problem requiring a solution beyond what was then proposed, despite the traffic report already filed. The Councillor tabled this among other matters, undertook to look into them further and arrange a further meeting, including Staff if necessary. Residents have received no further information, were not consulted further nor was there a further meeting arranged by the Councillor. Residents are not aware of anything done to resolve this problem other than reduce the number of family units from 99 to 91, which my client does not consider a responsible solution.

(g) Impact on the abutting Natural Heritage Network.

Residents' concerns are not limited simply to how the significant Natural Heritage features are protected on and abutting the proposed development lands, as might be inferred by the report, but also about unnecessary and excessive impact on the ecology of the Natural Heritage lands by approving this degree of intensified density, urban form and infrastructure immediately abutting such environmentally sensitive lands.

At the public hearing my client requested that an analysis of change in land from permeable to impermeable land surface (from current day to proposed development) be undertaken. The previous Council declined to give such direction to Staff. This staff report discloses that a 2.32 ha provincially significant designated wetland of the east Humber River Wetland Complex will have to be "removed" - whether in part or entirely is not clear but makes little difference – in order to accommodate the proposed application design and unit count. This should be *prima facie* evidence that this intensification in not appropriate for these lands whether a negotiated compensation for the destroyed wetlands be settled or not. It is not

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enough for Council to simply have faith in the TRCA's acceptance of incursions of development into environmentally sensitive lands. At a recent LPAT hearing, the tribunal did not accept either TRCA's acquiescence to reduced setbacks from protected lands to accommodate the development plan, nor TRCA's agreement to allow substituted buffer lands to be provided in a more convenient location for the developer, but instead enforced the environmental protection standard required.

Provincially significant wetlands particularly when connected to other environmentally sensitive and significant lands should not be sacrificed for urban development and intensification

(i) VOP2010, Volume 2 – Policy 13.15 – South East Corner of Major Mackenzie Drive and Pine Valley Drive.

Staff characterizes our client's comments as a concern that City Staff would not provide Council with an independent or unbiased review of the application as a result of the adopted recommendation proposed to Committee by planning staff.

The process by which the previous Council directed staff to review this application was arguably fatally flawed from the outset. By deeming – at the request of Planning Staff without apparent explanation or justification - the subject applications as appropriate to satisfy the land use, urban design, environmental and heritage potential consideration pursuant to VOP2010 Site Specific Policy Section 13.15, Council in effect set the framework for reviewing the appropriateness of redevelopment applications for these lands in terms of:

- land use;
- density;
- urban design (building heights, massing, visual impact study);
- traffic impact;
- heritage; and
- impacts on nearby sensitive uses.

Independent and unbiased reviewing of the application is irrelevant when the terms of reference for reviewing (independently, unbiasedly or otherwise) have been fixed by the reports supporting the application prepared by the applicant. It has not been suggested to our client that the applicant's consultants were retained to prepare the study envisioned by Policy 13.15, whereby it could be argued the applicant simply funded the study on behalf of the City. It is clear from the recommendation that no study has been done. There is no information to suggest that the applications and

supporting reports provided to the City were prepared for any other reason than to support approval by the City of the applications themselves.

Furthermore, Policy 9.1.2.3, which applies to these lands - and from which the staff report recommends exemption for the development of these lands - clearly requires that the aforementioned Urban Design and Built Form elements that determine the ultimate land use designation densities and requirements for lot frontage, area and configuration; front, rear and exterior side yards; lot coverage; and building heights and massing, including any City urban design guidelines prepared for the Community Areas – that the requirement for these elements guide the preparation of any future City-initiated area specific or comprehensive zoning by-laws affecting the applicable lands, both based on the current zoning and applying to all developments within the areas to which policy 9.1.2.3 applies.

By not undertaking the study provided for in Policy 13.15, and by instead deeming the developer's application and reports to satisfy the study requirements, it appears that the City has effectively attempted to exempt a review of a redevelopment application from these requirements otherwise provided for as policy in the Official Plan to ensure its intent for appropriate compatibility, on which residents rely.

By the City's own admission, Site Specific Policy 13.15 was approved in response to community concerns to ensure comprehensive planning for the area (CW Report 21-19, Item 21, page 20). Our client was among those community members who presented those concerns. The City has denied my client and other residents of this established, large lot community of the protection and rights for compatibility it approved as policies of Council and requirements for approval of this application.

(j) The Applicability of the Community Area Policy Review for Low-Rise Residential Designations

Our client's and other residents' concerns and comments regarding the requirements of OPA15 have perhaps been misunderstood. OPA 15 arose, as stated in the Staff Report, from the initiation by Council of the Community Area Policy Review for Low Rise Residential designations, in recognition of development pressures – particularly proposals for infill townhouse developments - in existing neighbourhoods. An examination of the policies was to consider, among other things, clarity of interpretation of existing policies and their ability to ensure compatibility. Accordingly, and, again, in the context of development pressures for infill developments, the resulting report clarified and validated the Official Plan intents that:

- Community Areas with existing development are not intended to experience significant physical change;

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- New development that respects and reinforces the existing scale, height, massing, lot pattern, building type, character, form and planned function of the immediate local area is permitted as set out in the policies of Section 9 of the Official Plan; and
- Limited intensification may be permitted in accordance with the policies of Section 9 of the Official Plan.

It must be noted that while the new provisions of OPA15 are not deemed to apply to development applications completed before its effective date of May 28, 2019 (subject to appeals), the policies in VOP2010 are not as a result nullified, but continue to be in full force and effect. Council's approval of OPA15 further validates and clarifies those official plan policies. In fact, the proposed changes in OPA15 to Policy 9.1.2.3 continue to protect the large lot subdivision in which the application lands are located as set out in the Official Plan. What's more, when Council approved OPA15 in 2018 the City represented that it conformed to current Provincial policy. While the City cannot defend the policies 9.1.2.2 and 9.1.2.3 under OPA 15 before the LPAT it is a betrayal of the local residents and all residents living in established neighbourhoods in Community Areas not to defend the provisions of 9.1.2.2 and 9.1.2.3 in the Official Plan, for if the unchanged policy provisions in OPA15 conform with current provincial policy then so must those unamended policy provisions in the Official Plan that apply to these lands.

The Community Area Policy Review for Low-Rise Residential Designations resulted in Council adopting Urban Design Guidelines for Infill Development in Established Low-Rise Residents Neighborhoods. These Guidelines were approved by Council on October 19, 2016. The Guidelines are currently in effect an apply to the Subject Lands. In fact Policy 9.1.2.3(f) requires that proposed building heights and massing should respect both the scale of adjacent residential buildings and any city urban design guidelines prepared for these Community Areas.

Subsequently, Council approved OPA15 on September 28, 2018, implementing the policy changes recommended by the Community Area Policy Review for Low Rise Residential Designation study.

The bylaw adopting OPA15 states in the text constituting OPA15 to the VOP2010 that:

- The resulting amendments provide for greater clarity of interpretation and more definitive policies that will support compatible infill development that will address the unique needs of the Low Rise Residential Areas in Established Community Areas;
- The amendments in this Official Plan Amendment are consistent with the Provincial Policy Statement, 2014; and

- The amendments to the Vaughan Official Plan were reviewed in the context of the new 2017 Growth Plan. It has been concluded that the amendments in this Official Plan Amendment conform with Provincial Growth Plan for the Greater Golden Horseshoe 2017.

Furthermore, the Staff Report asserts that:

- The applications, including an amendment to Sections 9.1.2.2 and 9.1.2.3 of VOP2010, Volume 1 were deemed complete on April 7, 2017;
- The Applications are consistent with the Provincial Policy Statement, 2014; and
- The Applications conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019.

The relevant provisions of policies 9.1.2.2 and 9.1.2.3 in VOP2010 are substantially and effectively unchanged by OPA 15 as they relate to this application. The City has represented that OPA 15 conforms to both the PPS 2014 and the provincial *Growth Plan for the Greater Golden Horseshoe* (2017) and therefore so must these unchanged same policies in VOP2010.

The Staff Report asserts that the applications are also consistent with the PPS 2014 and conform to Growth Plan for the Greater Horseshoe 2019 (which was approved only two weeks ago on May 16th, 2019). Therefore, unless amendments were recently filed by the applicant, the application is subject to the 2017 Provincial Growth Plan.

How can both the City's policies and the developers applications satisfy the same provincial policies and yet the application does not conform with the City's policies? The very integrity of planning in Vaughan seems to be at stake at the heart of that question – a question residents have a right to know and understand and Council has a duty to report.

Developing townhouses at 48 uph does not create a "large lot" fabric per the Guidelines.

Staff are enabled by OP 13.15 to initiate a study of the appropriate development form, including environmental impacts and urban design, the critical issues for our client. Staff refused to include the policy without explanation. It is respectfully submitted this study would have better considered the requirement to build in existing, stable and established neighbourhoods in a built form that closely mirrors the built form and character of existing residences.

In addition, the Subject Lands are surrounded by the Greenbelt. To the immediate south, an Area of Natural and Scientific Interest (Marigold Creek) and a Significant

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Woodland ANSI are the immediate lands to the proposed sub-division. Staff ignores this fact without explanation.

In addition, the policy framework for Official Plan Amendment No 15 has been brought into effect, which implements The Community Area Policy Review for Low-Rise Residential Designations Study (the "Study").

The proposed development does not satisfy the requirements of Sections 9.1.2.2 and 9.1.2.3 of the VOP 2010 that direct new development within "Community Areas" to be designed to respect and reinforce the physical character of the established neighbourhood. Nor does the proposed development pay sufficient attention to the local lot patterns, sizes and configuration, surrounding heights and setbacks, building types of nearby residential properties and local street patterns. The Staff analysis references townhouses located 1,000 metres from the subject lands as examples of development in the area, but fails to acknowledge or sufficiently recognize the estate residential lands located immediately abutting to the east and the estate residential lands found across the street on the north side of Major Mackenzie Drive.

The compatibility criteria of Section 9.1.2.2 and 9.1.2.3 of the VOP 2010 are intended to ensure new development will co-exist with existing development. The proposed development will not be integrated within the surrounding neighbourhood context and does not represent good planning.

Additionally, the application is premature pending the outcome of the *Local Planning Appeal Tribunal Act*, section 35 review request regarding the proper application of OP 9.1.2.3 and the applicability of "transit-friendly" densities along Major Mackenzie Drive.

The outcome of that case is critically important to your decision. Six ratepayers groups participated in that hearing, an unprecedented turnout.

First Nations Notice

At the public hearing held September 2017, our client formally requested that notice to potentially affected First Nations be sent immediately. Given the historically strong First Nations' presence along the Humber River Valley adjacent and connected to this particular area, and the known close proximity of the proposed development lands to a significant historical settlement by the Huron Wendat Nation - as little as one kilometre away, not to mention the recent relationship Vaughan established and celebrated working with the Huron Wendat Nation for development in Block 47, eighteen months later the City's response is to rely on Planning Act O.Reg 543/06 and 545/06 for giving notice to First Nations. These regulations only require Notice to be given to a Chief of a First Nation Council if that First Nation is located on a Reserve and any part of that

Reserve is within one kilometre of the proposed development. In 2019, with the unreconciled issues of treatment of First Nations' rights, culture and history, this is inexcusable.

The nearest First Nation's reserve to Vaughan is nearly 100km away. The Huron-Wendat Nation, the friends of Vaughan Council and most closely culturally affiliated First Nation with Vaughan's past, are 1,000km distant. In other words, Staff feels it is perfectly fine for the Huron-Wendat or any other First Nation to never receive Notice of Council decisions.

Under these regulations, the Huron-Wendat Nation has never and will never receive notice that sites of cultural significance to the Huron-Wendat Nation may be impacted as long as Staff and Council abide by these unconstitutional relics.

The failure to notify and consult the Huron Wendat Nation violates the Huron-Wendat Nation's constitutional right to be consulted and accommodated with respect to its cultural heritage interests.

These regulations put the rights of municipalities, ratepayers, school boards, conservation authorities, utilities, and in the case of O. Reg. 544/06, telecommunications infrastructure providers before the constitutionally entrenched rights of First Nations.

The notice requirements contained in these regulations are relics of the past and are considered "profoundly racist" as stated by Grand Chief Konrad Sioui of the Huron-Wendat Nation in a letter to the Honourable Dalton McGuinty on March 17, 2009.

It is high time this very unfortunate anomaly be fixed, in the interests of truth and reconciliation.

The Canadian Constitution in s. 35 expanded the rights of First Nations creating a concept of First Nations rights that is far greater than matters affecting interests on or nearby Reserves. First Nations are entitled to be on the same footing and receive the same rights of natural justice as school boards and telecommunications companies.

Amendments must be made to the *Planning Act* and corresponding regulations that recognize the cultural and heritage rights of the Huron-Wendat Nation by ensuring that it is statutorily notified like any other interest and consulted before any ancestral remains are disturbed. In the meantime, in 18 months the City of Vaughan could not even write a single letter to a recognized group, with known interests in the area, and an established working relationship with the City of Vaughan, to advise them of a

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potential cultural interest on lands similar to and connected to known historical settlements, pursuant to my client's request at the Public Hearing for this matter.

In order to determine if portions of the *Planning Act* are constitutionally valid, a party may "State a Case" in writing to the Local Planning Appeal Tribunal in order for the Tribunal to refer the question to the Divisional Court for its opinion on any question that, in the opinion of the Tribunal, is a question of law.

Conclusion

My client has been personally participating in local community planning for over 20 years and his family for over 40. They have lived in their home for 51 years. He has diligently and enthusiastically attended policy planning meetings and public hearings for new development to stay informed and contribute to the new development of lands around his community and to protect the character of his local community. His family has taken the view that their interest in this community does not end at the property line around their home. Now, not only does the City of Vaughan not apply the policies it represented to him and his fellow residents to protect the neighbourhood they created but he also is forced to be a party to multiple LPAT hearings to defend City policy, at his own expense. When on September 28, 2018 Council approved OPA15, not two weeks earlier the City was opposing my client at an LPAT hearing, refusing to support the very policies in the Official Plan which OPA 15 clarifies and enhances, policies intended to maintain the character of his subdivision and neighbourhood and others like it, which he has been fighting for. Why should any resident in Vaughan believe you'll do any better by them?

Please do not hesitate to contact me at 416-572-0464, or by email to david@donnellylaw.ca, cc'ing alexandra@donnellylaw.ca should you have any concerns.

Yours truly,

David R. Donnelly

cc. Client