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August 9, 2022

BY EMAIL

Chair and Members of Planning Committee  
City of Hamilton  
71 Main Street West  
Hamilton, Ontario, Canada, L8P 4Y5

Dear Sir/Madame:

**Re: Re-Enactment of the Parkland Dedication By-law  
PED22158  
Committee Date: August 9, 2022 [Item 9.7]**

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We are the lawyers for Wilson Street Ancaster Inc. (“WSAI”). WSAI is the registered owner of the lands known municipally as 270 Melvin Avenue in the City of Hamilton (“270 Melvin”). WSAI is constructing a street townhouse development at 270 Melvin. WSAI’s townhouses front onto a private driveway that directly connects the townhouses to the adjacent public street, being Melvin Avenue.

Pursuant to Hamilton’s in-force Parkland Dedication By-law (By-law No. 18-126), the expected parkland contribution for a street townhouse development that fronts onto a public road is capped at 5% of the “net land area”. In our client’s case, this would roughly equate to cash-in-lieu of parkland at a rate of \$5,250 per unit. However, because WSAI’s townhouses only “flank” onto a public road, and are otherwise accessed from a private driveway extending from a public road, City Staff have taken the position that the 5% cap is not applicable. Instead, City Staff have applied an overall cash-in-lieu cap of \$9,000 per unit (which is the cap applied to units within “Lower Hamilton”).

The foregoing describes a 71% increase in parkland cash-in-lieu owing only to the fact that WSAI’s townhouse development is better facilitated by a private drive as opposed to direct frontage. Notwithstanding that the project achieves better design at a higher density, because these townhomes are not fronting directly on the adjacent public street, there is a cost “punishment” being imposed that will ultimately impact the affordability of the project. WSAI has currently appealed the City’s parkland cash-in-lieu request in respect of 270 Melvin to the Ontario Land Tribunal.

The requirement that street townhouses must front onto a “public” street in order to benefit from the 5% cap is contained in s. 4(1)(b)(v) of Hamilton’s in-force Parkland Dedication By-law. We have reviewed staff’s draft of the proposed Parkland Dedication By-law and note that the same section will continue to impose the same “public” street requirement.

We submit that the proposed re-enactment of the Parkland Dedication By-law provides Hamilton City Council with an opportunity to re-examine the above-noted cap related to street townhouse development and to fix the non-sensical limitation on townhouse placement that results in a cost punishment where street townhouses front onto a private street or driveway as opposed to directly on a public street. Our client’s request is that Council simply remove the words “fronting on a public street” from proposed s. 4(1)(b)(v) of the proposed Parkland Dedication By-law. The resulting exemption will better incentivize street townhouse development as the City has originally intended.

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Please do not hesitate to contact the writer should you have any questions or concerns.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in cursive script that reads "Patrick J. Harrington".

Patrick J. Harrington

cc. City Clerk, City of Hamilton

AIRD BERLIS