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LAWYERS

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File: 10018

**WITHOUT PREJUDICE**

August 23, 2013

**By email**

Ms. Esther Armchuk-Ball, Town Solicitor  
Town of Newmarket  
395 Mulock Drive  
Newmarket, Ontario  
L3Y 4X7

Dear Ms. Esther Armchuk-Ball:

**Re:    Redevelopment of former Glenway Country Club  
      Appeal to OMB of OPA, ZBL and Subdivision  
      Applicant/Appellant: Marianneville Developments Limited**

We are the solicitors for Marianneville Developments Limited with respect to the above-noted matters. All three development applications have been appealed to the OMB. At the OMB prehearing conference held August 7, 2013 the OMB schedule an eight (8) week hearing commencing on Monday, March 3, 2014. The OMB also scheduled a further prehearing conference on Tuesday, December 10, 2013. The OMB was advised that a settlement offer would be sent to the Town in an effort to resolve all issues as between our client and the Town. That settlement offer is detailed herein.

Attached to this letter are:

- a) A revised plan of subdivision.
- b) A revised Official Plan Amendment; and
- c) A revised Zoning By-law Amendment.

The area of the property which is the subject of the development applications is nearly ninety (90) acres. Marianneville also owns other lands (which were formerly used as the Glenway Golf Course) and which lie west of the parcel which is the subject of the development applications. These other lands total nearly fifty-seven (57) acres.

The settlement proposed would provide 6.5 acres of parkland on the development parcel. This would exceed the maximum parkland dedication requirements under the Planning Act (using either the 5% rate or the alternative 1 ha / 300 dwelling unit rate).

The settlement proposes the following unit counts:

- 184 single detached units (comprised of 160 two-storey detached homes plus 24 single detached common element homes (on Block 168).
- 219 townhouse units of which 205 are residential (Blocks 166 and 167) and 14 are live-work (Block 172).
- 297 apartment units on Block 171.
- 30 detached condominium common element bungalows (on Blocks 169 and 170).

The total number of dwelling units is 730.

The terms of the proposed settlement are summarized below:

1. Town staff will report this settlement to Town Council by November 2013. That report will be a “recommendations” report as opposed to a preliminary report. The report will seek council instructions on whether or not to accept the settlement offer. If council supports the settlement then the Town and our client will jointly request that the OMB approve the settlement at the next upcoming prehearing conference. Marianneville acknowledges that there are other parties to the OMB hearing and that they might oppose this joint request.
2. The above-noted staff report will deal with all three development applications (OPA, ZBL and subdivision). The parties will work co-operatively to come to agreement on the form and content of the OPA, ZBL as well as the conditions of draft plan approval. The OPA, ZBA and plan of subdivision will be substantially consistent with the attached documents. If the parties cannot agree on all of the conditions of draft plan approval then the OMB will be requested to settle the dispute.
3. With respect to Block 171, the development will be limited to a height of six (6) storeys and a maximum of two-hundred and ninety-seven (297) dwelling units.
4. The SWM ponds have, for the most part, been designed to meet Town standards. They have all been designed to meet MOE standards. Marianneville’s consulting team has already provided the Town with the details of and justification for the differences. The Town will accept dedication of these SWM ponds through the subdivision approval process.
5. The Town will allocate sanitary sewer and water capacity for seven hundred and thirty (730) units forthwith after approving this settlement. The parties acknowledge that such allocation only becomes effective if the OMB approves the development.

6. The Town will support the commercial block (Block 173) substantially as applied for including all uses identified by the rezoning application. Marianneville acknowledges that Block 173 is subject to site plan approval and that additional reports may be required in connection therewith.
7. Marianneville will provide a 6 metre landscaped buffer along the west side of Block 168. The landscaped buffer will form part of the block. The purpose of the buffer is to maintain (and enhance) the existing mature vegetation which benefitting the existing homes on the east side of Kirby Crescent (i.e. the rear of addresses 273-391 Kirby Crescent).
8. Marianneville will dedicate (at no cost to the Town), 6.5 acres of parkland in a ring park (which is identified on the draft plan as well as an attached park schematic). This amount exceeds the maximum amount of parkland which Marianneville could be required to provide to the Town pursuant to the Planning Act.<sup>1</sup> Using the 5% parkland rate, the Town would be entitled to 4.58 acres of parkland and using the alternative rate (1 ha / 300 dwelling units), the Town would be entitled to 6.08 acres. Both of these numbers include the commercial block. In both cases the proposed 6.5 acres of parkland exceeds the maximum amounts required under the Planning Act.
9. Where an existing dwelling will abut a new proposed dwelling, Marianneville will use every reasonable effort to preserve existing perimeter trees (for screening purposes). In addition and where feasible, additional perimeter planting will be provided. This will all be at Marianneville's expense.
10. Since some of the existing fencing (between existing homes and the former golf course) is not in good condition, Marianneville will repair (or where appropriate, replace) such fencing. This will all be at Marianneville's expense.
11. Marianneville will contribute to the Town, as a condition of registration of the plan of subdivision, the sum of \$250,000 which will be used by the Town to improve the ring park. As the Town is aware, the Planning Act parkland dedication provisions do not require a developer to improve a park. The developer is only required to dedicate the land to the Town and the Town then bears the cost of improving the park. In this case, however, Marianneville is providing substantial funds towards park improvements in the community.
12. With respect to the lands on the west side of the proposed development (being lands owned by Marianneville but not presently subject to development applications):

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<sup>1</sup> If the Town was to require parkland at the rate of 5% of the land area subject to the subdivision (being 90 acres), then the total parkland requirement would be 4.5 acres. If, on the other hand, the Town used the alternative rate of 1 ha / 300 dwelling units, then the 730 units would generate a parkland dedication of 6 acres. In addition, the 1.6 acre commercial block would generate 0.08 acres of parkland.

- a. Marianneville will build a nine (9) hole golf course on the lands through an amendment to the existing golf course site plan approval.
- b. Marianneville agrees to operate the golf course for a minimum of fifteen (15) years but is under no obligation to operate it beyond that time.
- c. At the expiry of the fifteen (15) years the Town may, at its sole option, purchase the lands from Marianneville at fair market value. If the Town does not enter into an Agreement of Purchase and Sale with Marianneville by the expiry of the fifteen (15) year period then Marianneville is at liberty to sell the land to anyone else.
- d. Should Marianneville chose to build a new clubhouse to support the nine (9) hole golf course, then the Town agrees to permit such a clubhouse and to process any required development application and permits expeditiously.
- e. The parties agree that the clubhouse will be severed from the balance of the golf course lands and that Marianneville may choose to retain ownership of it and not sell it to the Town. The parties agree that Marianneville will not be under any obligation to sell the clubhouse to the Town.

13. If Town Council accepts this settlement offer then it will jointly request (with Marianneville) that the December 10, 2013 OMB prehearing conference be converted to a settlement hearing for approval. Despite the foregoing the parties acknowledge that other parties to the OMB hearing may oppose this settlement and may oppose the matter being decided on December 10, 2013 (preferring that it be decided instead in March 2014 at the scheduled 8-week hearing).

Finally, although this settlement offer is being provided on a “without prejudice” basis, our client hereby consents to it being made public so that, among other things:

- It can be circulated to relevant departments of the Town.
- It can be circulated to commenting agencies including the TRCA and the Region of York.
- It can be provided to the Glenway Preservation Association and any other party or participant to the OMB hearing; and
- It can be dealt with at a public session of Town Council (or a committee of council) should the Town wish to do so. Regardless of the decision the Town will make its planning analysis public (and thus provide it to our client). The Town if of course free to provide any strategic or legal advice on a confidential basis.

Moreover, despite this offer being made public, it remains without prejudice. Accordingly, should the not result in a settlement as between the Town and our client, then our client is at liberty to seek OMB approval of the applications as filed (and appealed) and neither the Town nor any party or participant may use this without prejudice offer in opposition to those appeals.

This offer is open for acceptance until otherwise revoked, in writing. We look forward to the Town's response.

Yours very truly,

A handwritten signature in cursive script that reads "Ira Kagan".

Ira T. Kagan

Enclos. (draft OPA, draft ZBL, draft plan of subdivision and parkland schematic)

cc. Client and its consulting team

Mr. James Feehley (counsel to the Glenway Preservation Association)

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