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February 17, 2023

Delivered By E-Mail Only: brittany.ziegler@caledon.ca

Application the Town of Caledon

Town of Caledon – Legal Services

Attention: Brittany Ziegler

**Re: POPA 2022-0003, RZ 2022-0004, 21T-22003C and 21CDM-22003C
13290 Nunnville Road –Development Engineering Road Access Design Charrette, Town
of Caledon, Ontario**

Please be advised that we act on behalf of Bolton Summit Developments Inc. (“**Developer**”), the owner of the above noted municipal property, (the “**Project Lands**”) and we have been asked to approach the Town of Caledon (“**Town**”) in respect of PIN 14355-1363, which is adjacent to the Project Lands, upon which the Town maintains a road allowance between Concessions 7 and Concession 8 (the “**Town Lands**”).

A portion of the Property is located at the access point to the Project Lands from the existing cul-de-sac on Nunnville Road (“**Subject Lands**”) and forms part of the driveway apron leading to the Project Lands and to property directly south located at 13286 Nunville Road (“**South Lands**”).

The Developer has applied to the Town pursuant to the provisions of the Planning Act, R.S.O. 1990, Ch. P. 13, as amended, for approval of an official plan amendment, draft Plan of subdivision, draft plan of condominium, and zoning bylaw amendment, which application was prepared by WSP Canada Inc., and submitted May 5, 2022 (hereinafter called the “**Plan**”).

As a condition of the Town providing its approval for the Plan, the Town has asked the Developer to submit this letter to outline its proposal for the work to be constructed on the Subject Lands, including, the construction of a new driveway apron and retaining wall on the Town Lands for the benefit of the condominium residents, and the South Lands (the “**Works**”). As a function of that request, the Developer has also been asked to set out the ways in which the construction of the Works will be an improvement from the current condition from a legal perspective.

Summary

Current Risk

The Project Lands and the South Lands have single family homes built on their respective properties, and currently the driveway entrance at Nunnville Road has signage denoting the driveway is “private”. In fact, the driveway forms part of the Subject Lands, which are Town Lands, but despite that fact, the driveway has never been maintained by the Town. Currently the driveway is maintained on an ad-hoc basis as between the owners at the Project Lands and the South Lands. Not only does the Town not currently provide any snow/ice removal or road maintenance, but they have no written evidence to suggest that there is any formal agreement with the owners to provide maintenance in their absence.

Further, as currently constructed the size of the Subject Lands, and the limited use of the driveway by the existing single family home residents does not warrant any material change in operation by the Town, nor the additional expense associated with such a change.

That said, based on the above, in the event of any personal injury due to a slip and fall accident on the driveway, the Town would be liable for having failed to maintain the public roadway. This is a perilous situation for the Town and one which could be remedied by the approval of the Developer’s Plan on site.

Risk Mitigation and Legal Process

Acknowledging the above circumstances, the Developer has included within its application to the Town, a construction effort on the Subject Lands which would upgrade the current driveway apron, construct a new retaining wall, and provide ongoing maintenance to all Work, which will ameliorate part of the risks noted above.

As part of its obligations in the Plan the Town will secure the Developer’s performance of the Work with the delivery of a Section 37 Agreement (or such successor legislation) to ensure as follows:

1. Developer shall ensure that all Works will be constructed using materials and methods approved by the Town in the process of finalizing its construction efforts;
2. As part of the common elements expenses, but not forming part of the common elements, The Developer and resulting condominium corporation will undertake to establish the operation and maintenance schedule for all Works together with appropriate snow/ice removal and road maintenance of the driveway apron that leads to the common elements of the South Lands and the proposed development, including the private access road, sidewalk, and parking area;
3. The Developer and resulting condominium corporation will undertake to establish the plans for irrigation, maintenance and for replacement (as and when necessary) of all shrubs, plants, flowers and any other soft-landscaping elements or materials comprising part of (or situate within) the Works as well as the removal of any garbage litter and/or debris from the Works;

(with all of said obligations being hereinafter collectively referred to as the “**Operation & Maintenance Obligations**”);

Upon satisfactory completion of the construction of the Works pursuant to the Section 37 Agreement (or such successor legislation) and the completion of all outstanding construction of the condominium, the Town will enter into a further agreement with the Developer under Section 51(26) of the Planning Act, R.S.O. c. P.13, which will further delineate the Operation & Maintenance Obligations as being a part of the conditions for Condominium Registration (“**Operation & Maintenance Agreement**”).

As a provision of the Operation & Maintenance Agreement, the Developer and resulting condominium corporation shall covenant that if the **Operation & Maintenance Obligations** are not being performed or fulfilled to the satisfaction of the Town, then the Town shall notify the Developer and/or condominium corporation registered regarding same, and if such default is not rectified within 48 hours after receiving such notice from the Town, then the Town may proceed to perform the Operation & Maintenance Obligations and to charge back or recover all costs and expenses incurred in doing so, and may add the amount of such costs so incurred to the tax roll of any or all of the Developer or condominium and said costs shall then be recovered and collected in a like manner (and to the same extent) as municipal taxes pursuant the provisions of the relevant municipal act in the relevant jurisdiction.

Conclusion

In relying on the above legal framework, the Town and Developer will be able to proceed with the Plan with the express understanding and expectation that the Works and all Operation & Maintenance Obligations flowing therefrom shall remain at the sole cost and expense of the Developer and or the resulting condominium corporation in perpetuity, or until such point in time that the Town no longer requires.

We submit with this letter a draft form of Operation & Maintenance Agreement, together with the precedent agreements between condominium corporations and municipalities used to draft this Operation & Maintenance Agreement, and which would confirm the legal framework exists to oblige the condominium corporation to be responsible to construct the Works and to operate and maintain the Works on the Town Lands.

We look forward to working with you.

Yours very truly,

Bresver Grossman Chapman & Habas LLP



Michael S. Chajes

Encl.