

NOTICE OF MOTION

39 McGlashan Road and 596-598 Marlee Avenue – Tax Sale Matters

Moved by: Councillor Johnston

Seconded by: Councillor Walker

“**WHEREAS** on December 5, 6 and 7, 2000, with Councillor Johnston’s Motion No. P(9) remaining on the Order Paper to be heard at the next following January meeting of Council, the tax deed to 39 McGlashan Road was delivered to the tax sale purchaser, Lone Star Realty Ltd; and

WHEREAS the tax deed was delivered without the intended transfer being disclosed to Council at its meeting on December 7, 2000 considering the matter, and notwithstanding that Motion No. P(9) specifically asked that independent legal counsel be retained to advise City Council on all matters related to the tax sale and, pending Council’s receipt and consideration of the report of outside legal counsel and any rebuttal of the Elliott family’s counsel, there be no steps taken in furtherance of this tax sale, including, specifically, the delivery of the tax deed to the tax sale purchaser; and

WHEREAS the Elliott Family commenced legal proceedings against the City, former Chief Financial Officer and Treasurer Wanda Liczyk, Assistant City Solicitor Susan Ungar and Mayor Lastman, alleging misrepresentation, fraud and abuse of power, and seeking damages in the amount of \$8 million, plus costs, which litigation is now before the Ontario Court of Appeal (the ‘Elliott Litigation’); and

WHEREAS in the course of the Elliott Litigation the Elliotts have sought to rely upon: written reports and oral submissions made to City Council and to Councillors individually, in open Council, in in-camera sessions of Council, in Administration Committee meetings, and in outside meetings; offers to settle made to or by the City and all related settlement meetings and discussions; videotape recordings of City Council, City files and records including computer files and records; and, telephone records (the ‘Privileged Materials’); and

WHEREAS the Elliotts have examined the City’s Mr. Doyle, Ms. Liczyk, Mr. Phillips and Ms. Brunning, and the Elliotts report all these witnesses have refused to answer questions about the Privileged Materials and to produce the Privileged Materials requested of them, claiming solicitor/client privilege and privilege in settlement discussion matters; and

WHEREAS City Council by resolution has the authority to waive privilege over the Privileged Materials; and

WHEREAS as a public body responding to the complaint of a constituent citizen, City Council should be held to the highest standard of full, plain and true disclosure so as the citizen complaint

can be justly and fairly considered; and

WHEREAS the retainer of Lerner & Associates LLP to represent the City in the Elliott Litigation and the related terms of engagement have never come before City Council for its consideration and approval; and

WHEREAS it is reported by the Elliotts that they are advised the City has incurred legal fees exceeding \$550,000.00 in all its litigation with them, including over \$200,000.00 to Lerner & Associates LLP alone over the last four months; and

WHEREAS there was a tax sale in June 1997, pursuant to which a property at 596-598 Marlee Avenue in the former City of North York was sold by the former City of North York to the same purchaser that purchased the Elliotts' home by tax sale in December 1997, Lone Star Realty Ltd.;

NOW THEREFORE BE IT RESOLVED THAT:

- (1) City Council waive privilege over the Privileged Materials;
- (2) City Council be informed of the details of the retainer of Lerner & Associates LLP, and the terms of engagement, for its consideration and the approval of City Council;
- (3) City Council be fully informed of the legal costs incurred to date by the City in all the legal proceedings with the Elliotts since December 1997, specifically including the legal fees paid or due to Lerner & Associates LLP, and an estimate of the legal fees expected to be incurred in the future, for the consideration and approval of City Council; and
- (4) an internal audit be conducted into the circumstances of the sale of 596-598 Marlee Avenue and to consider the procedures followed with respect to this tax sale, and that the results of the internal audit be reported back to City Council for its consideration.”

July 24, 2001

According to Chapter 27 of the Municipal Code, the foregoing Notice of Motion:

Notice was previously given	(√)
Meets Municipal Code provisions and only requires a simple majority to introduce and debate	
Requires two-thirds to waive notice	
Requires two-thirds to re-open	
Should be referred to Administration Committee	(√)
Requires two-thirds to waive referral if Council wishes to debate	
Recommendations are time sensitive	(√)

