

**NOTICE OF MOTION****Authorize the Public Release of the Ontario Municipal Board Pre-hearing Report Item CC2.3 Regarding 1705-1745 Avenue Road, Including the Confidential Portion**

**Moved by:** Councillor Stintz

**Seconded by:** Councillor Walker

**SUMMARY:**

At the February 5, 6, 7 and 8, 2007 meeting of Council, City Council adopted the following motions with respect to Item CC2.3, headed "Request for directions regarding the February 20, 2007, OMB pre-hearing re 1705 - 1745 Avenue Road":

1. Council adopt the confidential instructions to staff in Attachment 1.
2. Council authorize the public release of confidential Recommendation 1 in Attachment 1, in the event it is adopted by Council.

The Ontario Municipal Board and the City of Toronto have reached minutes of settlement for 1705-1745 Avenue Road

Members of the community have requested that Council authorize the release of the entire direction report, including the confidential portion.

**REQUIRES RE-OPENING:**

Item CC2.3 adopted by City Council on February 5, 6, 7 and 8, 2007, as it relates to the public release of confidential information on this Item.

**RECOMMENDATION:**

1. City Council authorize the public release of the direction report, including the confidential portion.

September 26, 2007

Confidential Attachment

**According to Chapter 27, Council Procedures:**

Fiscal Impact Statement provided	
Should have Fiscal Impact Statement prior to debate Requires two-thirds to waive requirement if Council wishes to debate	*
Requires two-thirds vote to re-open	(√)
Motion Recommendations are Urgent	

\* Deputy City Manager and Chief Financial Officer to advise.



**STAFF REPORT  
ACTION REQUIRED  
Confidential Attachment**

**Request for directions regarding the February 20, 2007,  
OMB prehearing re 1705 - 1745 Avenue Rd.**

<b>Date:</b>	January 25, 2007
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 16 Eglinton-Lawrence
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions and this report contains advice or communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	

**SUMMARY**

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At the first prehearing conference in this matter the Ontario Municipal Board (the “OMB”) set a second prehearing for February 20, 2007, and a three week hearing commencing on April 16, 2007, to hear the appeals (the “Riocan Appeals”) regarding 1705 - 1745 Avenue Road (the “Site”). The OMB also directed that at the February 20, 2007, prehearing “it is expected that the issues will be refined further” and that “the City will be more specific in terms of the size of the building it is projecting.” The purpose of this report is to obtain directions as required by the OMB for the prehearing set for February 20, 2007. This matter must therefore be considered at the City Council meeting commencing on February 5, 2007.

**RECOMMENDATIONS**

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The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1.

2. Council authorize the public release of the confidential recommendation no. 1 in Attachment 1 in the event it is adopted by Council.

## **FINANCIAL IMPACT**

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The adoption of these recommendations could result in expenditures of up to \$155,000.00 for the retention of outside consultants to oppose the Riocan Appeals at the OMB. Funds are available in the Legal Services' 2007 Interim Estimates, as approved by City Council in December, 2006. The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **COMMENTS**

At its meeting held on September 25, 26, 27 and 28, 2006, City Council adopted with amendments the recommendations found in Clause 78 of North York Community Council Report No. 7 and instructed the City Solicitor to oppose the Riocan Appeals. Council also authorised the City Solicitor "to retain outside consultants to oppose the proposed development and to defend the City's residential neighbourhoods."

At the first OMB prehearing conference, City legal counsel submitted a tentative issues list, but also advised that the City was not in a position to confirm the issues until they had been reviewed with outside consultants, yet to be retained. Legal Services Division has since retained consultants who have reviewed the issues. I am now in a position to report upon their analysis and obtain directions, as required by the OMB, to refine the issues and to "be more specific in terms of the size of the building" the City "is projecting."

## **CONTACT**

Stephen M. Bradley, Solicitor, Planning & Administrative Law; Ph: (416) 392-7790;  
Fax: (416) 397-5624; Email: sbradley@toronto.ca

## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Confidential Recommendations and Confidential Information - Request for directions regarding the February 20, 2007, OMB prehearing re 1705 - 1745 Avenue Rd.

## **Attachment 1 – Confidential Information**

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### **Confidential Recommendations and Confidential Information - Request for directions re the February 20, 2007, OMB prehearing re 1705 -1745 Avenue Rd.**

<b>Date:</b>	January 25, 2007
<b>To:</b>	City Council
<b>From:</b>	City Solicitor

### **CONFIDENTIAL RECOMMENDATIONS**

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The City Solicitor:

1. be authorized to inform the OMB:
  - a. with respect to “the size of the building” the City “is projecting”, it is the City’s position that it would be premature to approve a development at more than 5 storeys on the Site in advance of the completion of the Avenue Study that has been commissioned for Avenue Road from Wilson Avenue to Lawrence Avenue West,
  - b. the City seeks Section 37 contributions pro-rated on a gross floor area basis from the \$400,000.00 recommended in the Final Report, and
  - c. the City will not advance issues at the OMB with respect to traffic, parking and loading, or Site ingress/egress (including ingress/egress by way of the rear laneway between St. Germain Avenue and Fairlawn Avenue), provided the applicant complies with the recommendations of the Final Report with respect to these matters, and
2. notwithstanding recommendation 1, be further authorised to negotiate terms of settlement to,
  - a. reduce the number of storeys from the 7 storeys proposed by the applicant,
  - b. obtain such modifications and conditions to proposed development as the Chief Planner has identified in the Final Report,
  - c. obtain Section 37 contributions pro-rated on a gross floor area basis from the \$400,000.00 recommended in the Final Report,

- d. sign any Minutes of Settlement on behalf of the City as are required to implement this settlement, and
- e. in the event of achieving this settlement, to support it at the OMB hearing.

## **CONFIDENTIAL INFORMATION**

Size of Building: As the “size of the building” the City “is projecting” deals with matters of architecture and urban design as well as land use planning, City legal counsel canvassed nine outside consultants with expertise in these areas, seven of whom were not able to support Council’s refusal position. However, Mr. Franco Romano (a land use planner) would be prepared to testify that it would be premature to approve a development at more than 5 storeys on the Site in advance of the completion of the Avenue Study that has been commissioned for Avenue Road from Wilson Avenue to Lawrence Avenue West. Riocan has proposed a 7 storey building. Mr. Romano has estimated that the upset limit of his fees and disbursements would be \$100,000.00.

Mr. Ronji Borooh (who has expertise as an architect and in the area of urban design) has reviewed Mr. Romano’s analysis and is prepared to provide visual graphics and testimony to support Mr. Romano. Mr. Borooh has estimated that the upset limit of his fees and disbursements would be \$55,000.00.

It is worth noting that notwithstanding the support of Mr. Romano and Mr. Borooh, it may be difficult to successfully oppose the Riocan 7 storey building, given the analysis and recommendations contained in the Final Report and the policy contained in Section 2.2 of Chapter 2 of the City’s new Official Plan that,

Growth will be directed to the *Centres, Avenues, Employment Districts* and the *Downtown . . .*

In effect, therefore, the City will be expending approximately \$155,000.00 to advocate for a 2 storey reduction in the height of the proposed building. Given Legal Division’s limited budget for outside consultants, this may well create budgetary problems should a large, complex hearing materialize later in the year. I am therefore recommending that the City Solicitor be instructed to negotiate a reduction in the height of the building to less than 7 storeys before proceeding to the hearing.

Section 37 Benefits: In refusing the recommendations of the Final Report, City Council directed that the OMB be advised that “City Council would prefer a lower building than the Section 37 Community benefits outlined” in the Final Report (which totalled \$400,000.00). I interpret this to mean that the Section 37 contributions may be pro-rated on a gross floor area basis from the \$400,000.00 set out in the Final Report. Recommendation 1(b) confirms that this is the position to be advanced at the OMB.

Traffic, Parking and Site Ingress/Egress: Riocan has proposed a two-way laneway behind the 7 storey building connecting St. Germain Avenue and Fairlawn Avenue.

Residents have raised concerns regarding traffic, parking and ingress/egress to the Site. City Legal Division has therefore retained the services of a traffic consultant, Mr. Ray Bacquie of iTrans, to peer review the Traffic Impact Study submitted in support of Riocan's proposal. Mr. Bacquie has concluded that correcting any deficiencies he found in the Study would not "significantly change the ultimate findings" of the Study and that even if the issues he identified were addressed, he still anticipated that iTrans would not be in a position to, (a) oppose the development of the Site as proposed by Riocan, or (b) oppose any significant aspect of the associated proposed site plan, including the replacement of the existing direct ingress/egress from Avenue Road with the proposed rear lane system. Legal counsel had also discussed this issue with City planning and transportation staff, who have confirmed their strong support for the proposed rear lane system.

Mr. Bacquie also advises that any further studies would result, at most, in iTrans supporting modest mitigation measures such as passive mitigation (e.g. signage), but nothing to oppose the proposed Riocan development. Recommendation 1(c) is therefore supported by Mr. Bacquie's analysis and the analysis of City transportation and technical services staff.