

1465 Lawrence Avenue West, Historical Legal Issues and Agreements between the City and the Owner

| | |
|------------------------------|----------------------------------|
| Date: | January 11, 2007 |
| To: | Etobicoke York Community Council |
| From: | The City Solicitor |
| Wards: | 12 York South Weston |
| Reference Number: | |

SUMMARY

At its meeting of September 25, 26, 27 and 28, 2006, City Council requested that the City Solicitor report to the January, 2007 meeting of the Etobicoke York Community Council to outline the historical legal issues and agreements between the City and the owner of 1465 Lawrence Avenue West.

The historical legal issues are set out below and have been mostly resolved in the City's favour. There are no written agreements between the City and the owner.

FINANCIAL IMPACT

The Recommendations will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

In the context of considering the owner's application for the enlargement of a previously approved second apartment building on the site and the conversion of the building from rental to condominium, members of Etobicoke York Community Council raised questions about the environmental legal history of the site and the issue of any existing agreements between the City and the owner. The questions were raised in the context of the Preliminary Report on development applications OPA Application 05 202527WET and CD Application 05 173995WET 12CD.

COMMENTS

The subject property is the site of an existing 20 storey, 161 unit apartment building and has approval for a second apartment building not yet built. There is currently an active development application with the City for approval of a larger than permitted second apartment building and for the conversion of that building to condominium, which application Council has yet to decide upon.

Several years ago, in the process of conducting soil tests on the site, the owner became aware that a portion of the site was contaminated with waste. The owner was of the view that the City was responsible for placing the waste on his site and he, through his lawyers, began making requests for compensation to the City. In 2001, City lawyers were involved in lengthy negotiations with the owner regarding a possible resolution of the issue but these discussions did not result in a settlement and the owner commenced a legal action against the City for damages caused by the waste on his property.

In preparing a defence to the owner's action, the City discovered archival evidence that a previous owner of the lands had in fact asked a private waste disposal contractor to deposit waste on the site. As a result of this discovery, the City brought a summary judgement motion to dismiss the owner's claim, which motion was substantially successful in disposing of the issues before the Court. A copy of the Court's Disposition on the matter is on file with the Clerk. This 2005 Disposition of the Court was the last significant legal activity on the site with regard to the environmental dispute. The environmental dispute is unrelated to the development applications currently with the City.

At a 2002 Ontario Municipal Board hearing, City Legal was directed by Council to support an OPA and zoning amendment which would permit a second apartment building on the site on the understanding that the second building would be a rental building. The City and the applicant were successful in achieving this result at the Board and the intention that the second building be a rental building is reflected in the Board's decision.

However, the section 37 agreement confirming and implementing this intention of the parties was never executed as a result of the environmental litigation as well as the owner's decision to attempt to change the tenure of the second building. As a result, there are no signed agreements between the owner and the City.

CONTACT

Brendan O'Callaghan
Solicitor, Legal Services Division
Telephone Number 416-392-7786
Fax Number 416-397-5624
E-mail bocallag@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor