



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Authorization Respecting Motion for Leave to Appeal a
Decision of the Ontario Municipal Board re: 200 Russell
Hill Road**

Date:	March 13, 2007
To:	Toronto East York Community Council
From:	City Solicitor
Wards:	St. Paul's - Ward 22
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The Ontario Municipal Board issued a decision respecting 200 Russell Hill Road on February 20, 2007. In order to protect the City's appeal rights, the City Solicitor filed a notice of motion to seek leave to appeal to the Divisional Court within the required time frame. This report considers whether Council should authorize the City Solicitor to continue that leave to appeal process and discusses considerations respecting the applicant's site plan and tree, ravine and heritage demolition permits and proposed motion for costs.

RECOMMENDATIONS

The City Solicitor recommends:

1. that Council adopt the confidential instructions to staff in Attachment 1.
2. Council authorize the public release of the confidential Recommendations included in Attachment 1 at the conclusion of the Council meeting.

FINANCIAL IMPACT

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

DECISION HISTORY

In January 2005 the applicant filed an application with the City for a proposal which evolved into a 22 unit condominium consisting of two buildings, being 4 and 5 storeys respectively on a ground level mezzanine structure. The proposal would have a significant building mass within a low density residential neighbourhood. A portion of the building mass would be constructed on the area of the site which slopes toward the Nordheimer Ravine.

In July 2005 Council confirmed its intention to designate the single family residence on the site under the *Ontario Heritage Act*. At its meeting on October 26, 27, 28, and 31, 2005 Council refused the applications for Official Plan amendment, zoning by-law and site plan. These were appealed to the Ontario Municipal Board. The Board approved the applications, but provided the City with an opportunity to work with the applicant to finalize the ravine and tree permits and the proposed conditions of site plan approval before site plan approval is granted. The Ontario Municipal Board's approval of the Official Plan amendment and zoning by-law form the subject matter of the motion for leave to appeal.

Outstanding matters now include finalizing the site plan conditions and the ravine and tree permit conditions. The Board remains seized of these matters should further disputes arise. In addition, the Board remains seized of Council's refusal on September 25, 26 and 27, 2006 of a demolition permit for the designated structure. Further, upon receipt of the City's notice of motion for leave to appeal, the applicant requested the Ontario Municipal Board to schedule a hearing for costs against the City in relation to this file.

ISSUE BACKGROUND

The *Ontario Municipal Board Act* provides a right of appeal to Divisional Court on errors of law provided leave for this purpose is granted by the Court. The Confidential Attachment to this report addresses potential errors of law in the Ontario Municipal Board's decision and considerations respecting the Divisional Court's criteria for providing its permission to appeal such a decision.

COMMENTS

Because of the short time frame between the date of the Ontario Municipal Board's decision and the deadline for submission of a notice of leave to appeal, the City Solicitor has filed a notice of motion in order to protect the City's rights. The Confidential Attachment to this report seeks Council's authorization whether to continue that legal

process. It also discusses the impact of that process on other outstanding aspects of the development approvals process. This report was prepared in consultation with municipal staff involved in community planning, litigation and heritage matters.

CONTACT

Gordon Whicher, Solicitor, Planning and Administrative Tribunal Law, (416) 392-1228, Fax (416) 397-5624, gwhiche@toronto.ca

Kirsten Franz, Solicitor, Civil Litigation, (416) 392-1813, Fax (416) 392-1199
kfranz@toronto.ca

SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

1. Confidential Attachment: re Authorization Respecting Motion for Leave to Appeal a Decision of the Ontario Municipal Board re: 200 Russell Hill Road