

## Strip Plaza Rehabilitation

<b>Date:</b>	May 27, 2008
<b>To:</b>	Economic Development Committee
<b>From:</b>	Sue Corke, Deputy City Manager Anna Kinastowski, City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	P:/2008/Cluster A/EDCT/ECON DEV/0806-027

### **SUMMARY**

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At its meeting on July 5, 2007, the Economic Development Committee directed the City Solicitor and the General Manager of Economic Development, Culture and Tourism (the “General Manager”) to determine how the City can utilize the Community Improvement Plan designation as a tool in the rehabilitation of strip plazas. This report addresses the legal, financial and administrative difficulties of utilizing Community Improvement Plans and BIA/City Board model as the vehicles for improving strip plazas, but recommends instead a property maintenance consultation and education pilot project for 2008.

The City Manager’s Office, Municipal Licensing and Standards, Financial Planning, City Planning, Transportation Services, Solid Waste Management Services and Economic Development staff were consulted in the preparation of this report.

### **RECOMMENDATIONS**

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The Deputy City Manager for Cluster A and the City Solicitor recommend that:

1. Municipal Licensing and Standards Division undertake in 2008 a strip plaza property maintenance pilot project, in consultation with City Divisions where appropriate and necessary, consisting of issue identification and stakeholder consultation and education within three strip plazas, one in each of the West, North and East Districts of the City, and that each be eligible for up to \$10,000 in Clean and Beautiful City funding for improvements to adjacent public lands.

2. Municipal Licensing and Standards Division and the Deputy City Manager of Cluster B consider the establishment of a special strip plaza education and enforcement team as a service priority during the 2009 Service Planning process.
3. The Executive Director, Municipal Licensing and Standards, in consultation with the General Manager, Solid Waste Management Services and the City Solicitor, review and report as necessary, on any amendments to existing City By-laws that regulate littering and other debris removal that could improve the effectiveness of the By-laws.

### **Financial Impact**

There are no 2008 financial impacts resulting from this report.

The proposed pilot project can be accommodated within the existing Municipal Licensing and Standards Division's 2008 operating budget. However, the Division advises that the number of locations inspected in 2008 will be reduced in order to accommodate the pilot project within their 2008 work plan.

The proposed strip plaza education and enforcement team within the Municipal Licensing and Standards Division will be considered as a service priority as part of the 2009 Service Planning process.

The proposed \$30,000 Clean and Beautiful City expenditures fall within the mandate of the City's Clean and Beautiful program and can be accommodated within its 2008 capital budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **DECISION HISTORY**

The Economic Development Committee, at its meeting on April 11, 2007, requested the City Solicitor to report back to Committee regarding a communication from Councillor Moscoe in relation to Economic Development Committee Item 3.3, to determine what amendments are required to Municipal Code Chapter 19, Business Improvement Areas, in order to establish "Special Policy Areas" in relation to privately-owned strip plazas.

The City Solicitor submitted a report dated May 22, 2007 to the Economic Development Committee at its meeting of June 7, 2007 identifying the legal difficulties of using a Business Improvement Area model for funding improvements to private property and correcting property standard infractions. The Committee deferred consideration of this report to the July 5 Committee meeting, and requested the City Solicitor to re-examine the issue with respect to the creation of Special Policy Areas consisting of strip plazas, and report further on what the City can do in this regard. The Committee decision can be viewed at <http://www.toronto.ca/legdocs/mmis/2007/ed/decisions/2007-06-07-ed05-dd.pdf>. The communication from Councillor Moscoe can be viewed at <http://www.toronto.ca/legdocs/mmis/2007/ed/decisions/2007-04-11-ed03-dd.pdf>.

The City Solicitor and the Acting Director, Small Business and Local Partnerships submitted a report dated June 28, 2007, to the Economic Development Committee at its meeting of July 5, 2007, recommending that the matter of how to rehabilitate strip plazas and industrial corridors be deferred until the Economic Development Committee meeting of November 29, 2007, due to the complex legal, administrative and budgetary issues that must be explored.

The Economic Development Committee approved the deferral recommendation noted above and referred back the May 22 and June 28, 2007 reports, with instructions to determine how the City can utilize the Community Improvement Plan designation as a tool in the rehabilitation of strip plazas. In addition, the Committee requested the City Solicitor and the General Manager to work with the Chair of the Licensing and Standards Committee in the development of this program.

## **ISSUE BACKGROUND**

The issue of how to maintain and rehabilitate strip plazas has been a challenge for many years. The issue primarily centres on the maintenance of common use areas of older (1950's & 1960's era), multiple-ownership strip plazas. It is most common in such plazas that each property owner owns the area of land upon which the portion of the strip plaza building is located, as well as a strip of property at the front and rear of the building.

Typically, the area at the front of the building is shared-use for customer parking, and often residential tenant parking if the strip plaza includes apartment units on upper floors. The lands at the rear of the strip plaza building are most often used for vehicular access to all units, business-owner parking, deliveries and waste storage and collection. Most often, no one has overall responsibility for the management and maintenance of the front and rear areas, and as a result, they deteriorate over time. Such maintenance issues are currently addressed through the enforcement of property maintenance standards and litter by-laws, but the experiences of Municipal Licensing and Standards staff suggest infractions often re-occur.

In recent years, there have been a number of requests for reports relating to multiple-ownership strip plazas, which have resulted in the following reports being submitted by the City Solicitor:

- an October 26, 2001, report regarding the “Licensing of Strip Plazas (Strip Malls) in Order to Regulate their Maintenance” concluded that the City did not have the authority to require all businesses located in a strip plaza to be parties to a collective strip plaza licence or to enter into a collective property maintenance agreement;
- a March 8, 2002, report regarding “Incentives for requiring Business located in Strip Plazas (strip malls) to Maintain Common Parking Areas”, which concluded that the City does not have the authority to create an incentive for businesses

sharing a common parking area to maintain such an area through its property standards by-law and licensing requirements; and

- a March 10, 2003, report regarding “Strip Plazas (strip malls) with Right of Way Easements and the Enforcement of Property Maintenance and Property Standards By-laws” which concluded that the existence of right of way easements for pedestrian and vehicular access does not significantly impede or facilitate the enforcement of property maintenance and property standards by-law in strip plazas under multiple ownership.

Further, as noted above, a May 22, 2007, report from the City Solicitor to the Economic Development Committee regarding “Strip Plazas as Business Improvement Areas to Improve Private Property,” was referred back to staff pending exploration of the complex legal, administrative and budgetary issues regarding strip plaza rehabilitation efforts by the City.

A work team consisting of staff from Municipal Licensing and Standards, Legal, Financial Planning, City Planning, Solid Waste Management and Economic Development was created to develop and consider options for the City regarding the maintenance of multiple-ownership strip plazas. Members of the staff team consulted with the Chair of the Licensing and Standards Committee during the development of the recommended approaches.

## **COMMENTS**

This report presents an account of all options considered by staff to encourage the rehabilitation of multiple-ownership strip plazas. An overriding principle in the recommended approach is that the City should not assume responsibility for private property maintenance.

### Municipal Licensing and Standards 2008 Initiative

As part of the 2008 Workplan, the Municipal Licensing and Standards Division will conduct retail plaza assessments in each District, with special focus on the City’s 13 priority neighbourhoods. These assessments will concentrate on issues that include property standards, waste containment, illegal signs, graffiti and business licences. If desired by Council, the assessment program may include a pilot project whereby three strip plazas within the City, one in each of the North, West and East Districts, will be subject to an education and outreach initiative targeted towards property owners and tenants within the strip plazas. In order to encourage a positive response from the property owners and tenants, funding of up to \$10,000 will be provided through Clean and Beautiful City, as part of its 2008 program and capital budget allocation, for improvements to adjacent public lands.

It is therefore recommended the Executive Director, Municipal Licensing and Standards, undertake in 2008 a strip plaza property maintenance pilot project, in consultation with the General Manager of Solid Waste Management where necessary, consisting of issue identification and stakeholder consultation and education within three strip plazas, one in

each of the West, North and East Districts of the City, and that each be eligible for up to \$10,000 in funding from the Clean and Beautiful City Office for improvements to adjacent public lands. As part of the pilot program, Municipal Licensing and Standards will undertake an investigation of enforcement practices regarding multi-ownership strip plazas in other jurisdictions.

In addition, staff believes there is merit in considering the establishment of a special strip plaza education and enforcement team within the Municipal Licensing and Standards Division to address strip plaza issues City-wide. It is therefore recommended that the Municipal Licensing and Standards Division and the Deputy City Manager of Cluster B consider the establishment of a special strip plaza education and enforcement team as a service priority during the 2009 Service Planning process.

#### Litter By-laws

Littering is regulated under several City by-laws. Municipal Code Chapter 548, Littering and Dumping of Refuse, has general provisions that prohibit littering and the dumping of refuse. Chapter 548 also requires the owner of the land (which term includes the person managing or receiving the rent, and the lessee or occupant if they are responsible under a lease for maintaining the land) to immediately clean and clear refuse from land.

There are also special littering provisions in other by-laws. For example, Municipal Code Chapter 629, Property Standards, has property standards that require property to be maintained free from litter and rubbish, etc. The former area municipalities' streets by-laws also have provisions prohibiting the fouling of streets and related prohibitions. Municipal Code Chapter 545, Licensing, imposes special litter control obligations on the owner of an entertainment establishment/nightclub and the operator of a clothing drop box.

The above by-laws were enacted under the *Municipal Act, 2001* or its predecessor, other than Chapter 629, Property Standards, which was enacted under the *Building Code Act, 1992*. The City now has an additional power with respect to debris removal that some of the former municipalities had under special legislation. In the past, this special legislation was used by one of the former municipalities to require the occupants (i.e., persons who may not meet the definition of "owner" noted above) of commercial establishments, retail stores and restaurants to remove litter from abutting sidewalks.

Clause 12(5)(c) of COTA makes it clear that the City's general powers include the power to require persons to remove debris from land they own or occupy or from other private or public land. The clause provides for an exemption from the procedural requirements in a specific provision of COTA *or* other Acts that would also permit the enactment of a debris removal by-law. This means that the debris removal by-law is not subject to the procedural requirements that apply to a property standards by-law under the *Building Code Act, 1992*.

It is recommended that the Executive Director Municipal Licensing and Standards, in consultation with the General Manager Solid Waste Management and the City Solicitor,

report to Council, as necessary, on any amendments to existing City by-laws that regulate littering and other debris that could improve the effectiveness of the by-laws.

In addition to the initiatives noted above, the following approaches have been considered by the work team.

Establishment of a “Mini Business Improvement Area” or other City Board to Undertake Strip Plaza Maintenance

In his communication, Councillor Moscoe proposes “organizing the plaza into a mini BIA”, i.e., a city board be established to organize property owners in strip plazas and provide a means of funding to improve their properties. Fees would be collected by the City from the individual property owners and redistributed through the board to improve the common, though privately-owned, areas of the strip plaza, and to manage such services as garbage storage and collection, recycling programs and landscaping. It appears that the board is intended to have the power to overrule individual property rights.

Such a board could not perform improvements to private property without the consent of the owner, as it would not have the power, absent other legislation, to overrule individual property rights.

BIAs are designated by the City under the authority of COTA, 2006 (COTA), and previously under the authority of the *Municipal Act, 2001*, to oversee the improvement of City-owned land, building and structures, and to promote the area as a business or shopping area. In adopting the new Municipal Code Chapter 19, Business Improvement Areas, on June 11, 2007, Council established a policy against BIAs funding improvements to private property.

Under COTA, BIA Boards of Management are city boards to which Council may delegate control and management of such municipal services and activities as the City considers appropriate. The improvement of private property and the operation of what is essentially a property management service are likely not municipal services that can be delegated to a city board. Even if these are municipal services, a city board’s power to deal with property standards issues is restricted by the procedural requirements for notice, the issuance of orders to comply and appeal rights under the *Building Code Act, 1992*.

Aside from the issue of whether the funding of private property improvements is a municipal service, there are substantial legal impediments to removing the restriction on BIA funding of private property improvements due to the issues of vacancy tax and charity tax rebates, the priority lien status granted to BIA charges, and bonusing. These issues, which were canvassed in the report dated May 15, 2007 from the City Solicitor and the General Manager to Council, are set out in Attachment 1 appended to this report.

Accordingly, it is recommended that Chapter 19 of the Municipal Code should not be amended to create “special policy areas” allowing for the creation of city boards charged with the responsibility of maintaining strip plazas.

The establishment of a separate city board to undertake this role is also not recommended. It would work in much the same way as the “mini BIA” proposed above, however, as with the mini BIAs, there are substantial legal impediments to establishing such a board. These issues were canvassed in the report dated May 22, 2007 from the City Solicitor to the Economic Development Committee and are also set out in Attachment 1 appended to this report.

#### Community Improvement Plans

Section 28 of the *Planning Act* allows for the adoption of community improvement plans within (an area of) a municipality designated as a “community improvement project area.” These plans set out measures for community improvement and can authorize grants or loans to property owners to further the goal of improving a community. For example, grants and loans may be provided for the rehabilitation of buildings. Grants and loans provided to property owners within Community Improvement Project Areas are excepted from the rule against bonusing in section 82 of COTA.

There is currently a Commercial Façade Improvement Program available in Community Improvement Project Areas that correspond geographically to BIAs. If a strip plaza is located in a BIA, it will become eligible for façade improvement grants in accordance with eligibility and priority criteria as set out by the grant program. Secondly, the BIA Commercial Façade Improvement Program is targeted to BIAs on the basis that the incentives are complementary to the streetscaping and area beautification initiatives undertaken by BIAs.

Serious issues arise in relation to community improvement plans adopted for the purpose of providing financial support to address the property maintenance and standards issues typically associated with strip plazas. The City does not have the authority to provide grants or loans to industrial or commercial enterprises for the purpose of conducting repairs where the repair rectifies a breach of a property standards by-law. Many problems observed at strip plazas probably constitute breaches of property standards requirements.

Therefore, providing grants or loans through a Community Improvement Plan for such purposes would probably contravene the prohibition against assisting commercial enterprises set out in section 82 of COTA. As noted previously, the overriding principle in the recommended approach is that the City not assume responsibility for private property maintenance. Development and implementation of a new grant and loan program would require development of defensible policy rationale and corresponding amendments to existing provincial legislation and a source of City funding.

Staff from City Planning, Economic Development, Legal Services and Financial Planning advise against Community Improvement Plan initiatives targeted to property maintenance and standards issues.

## **CONCLUSION**

In light of the above-noted considerations, it is not recommended that Community Improvement Plans be utilized as part of the strip plaza revitalization effort. Rather, staff recommend an education and enforcement-related approach consisting of a 2008 strip plaza property maintenance pilot project augmented by Clean and Beautiful City funding for improvements to adjacent public lands. In addition, staff recommend that the Municipal Licensing and Standards Division and the Deputy City Manager of Cluster B consider the establishment of a special strip plaza education and enforcement team as a service priority during the 2009 Service Planning process.

## **CONTACT**

Lisa Strucken, Solicitor

Tel: 416-392-8518; Fax: 416-397-5624; [lstrucke@toronto.ca](mailto:lstrucke@toronto.ca)

Lance Cumberbatch, Director, Investigation Services

Tel: 416-392-7633; Fax: 416-397-5463; [lcumber@toronto.ca](mailto:lcumber@toronto.ca)

Mike Major, Manager, Small Business and Local Partnerships

Tel: 416-392-0623; Fax: 416-392-1380; [mmajor@toronto.ca](mailto:mmajor@toronto.ca)

Elyse Parker, Project Manager, Clean & Beautiful City Office

Tel: 416-338-2432; Fax: 416-392-8115; [eparker@toronto.ca](mailto:eparker@toronto.ca)

## **SIGNATURE**

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Sue Corke  
Deputy City Manager

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Attachment 1 – Legal Issues Pertaining to the Establishment of City Boards to Fund Private Property Improvements.

### **Attachment 1**



## **Legal Issues Pertaining to the Establishment of City Boards to Fund Private Property Improvements.**

### Legal Framework of City Boards

The City has broad authority under section 143 of COTA to establish city boards and can give them the control and management of such **municipal services and activities** as the City considers appropriate, by delegating the powers and duties of the City to the board in accordance with COTA. The powers provided to a city board are subject to limits on and duties related to, the power and any procedural requirements, including conditions, approvals and appeals which apply to the power. For example, as discussed below, any city board established to deal with property standards issues must comply with the procedural requirements set out in the *Building Code Act, 1992*.

### Establishment of a City Board to Improve Private Property

The City's property standards by-law, Chapter 629, Property Standards, was enacted under the authority of the *Building Code Act, 1992* (the "BCA"), which allows the City to pass by-laws prescribing standards for the maintenance and occupancy of property, and requiring property that does not conform with the standards to be repaired and maintained to conform with the standards. The BCA contains precise procedural requirements that must be followed by the City before it can enforce its property standards by-laws, including the issuing of orders to conform, and the provision of appeal rights. Any by-law to establish a City board to compel the improvement of private property is subject to the limitation in section 12 of COTA, that all procedural requirements, in this case as set out in the BCA, must be followed before the City can perform the repairs for the property owner. The costs incurred by the City in carrying out the repairs are a lien against the property with priority lien status.

The City cannot do indirectly what it cannot do directly. The establishment of a city board to allow the board to improve private property without following the property standards requirements would likely be viewed as an attempt to circumvent the provisions of the BCA, as City boards are agents of the City, and its purpose can be said to be in conflict with or frustrating the purpose of the BCA.

In addition, the City and its city boards may charge fees under Part IX of COTA for services or activities provided or done by or on behalf of the City or city board. If the City or its city board lacks the necessary legislative authority to provide a service or activity, the City and its city board have no authority to charge a fee. City boards can only be established to control and manage municipal services and activities, and are still subject to property standards procedural requirements.

### Bonusing

Section 82 of COTA prohibits the City from **directly or indirectly** assisting any manufacturing business or other industrial or commercial enterprises through the granting of bonuses. The enhancement of private property using BIA funds, or funds from another city board established for that purpose, could be subject to legal challenge on the basis of bonusing by the City, especially as city boards are agents of the City. Such improvements arguably provide a greater benefit to the property owner than to the City, and are not necessary to maintain the economic and social well being of the community. There is no public nuisance to be eliminated and such a program is unlikely to be equally available to all property owners.

Section 83 of COTA allows the City to make grants for purposes that council considers to be in the best interests of the City, subject to the bonusing [prohibition] provisions in section 82 of COTA. Case law indicates that in order to avoid being a bonus, the City must receive sufficient consideration or public benefit in return for the assistance provided. Where the assistance provided is widely available to commercial enterprises, there is less chance that the assistance violates section 82.

### BIA Tax Issues

COTA clearly contemplates that BIAs will be established for the same purposes as set out in the *Municipal Act, 2001*. Sections 329(12) and 331 of COTA (which provide for charity tax rebates and vacancy tax rebates) define “tax” to include fees and charges imposed for the promotion of the area as a business and shopping area, or the improvement, beautification and maintenance of **City-owned land, buildings and structures** in the area beyond that provided at the expense of the City generally, i.e. the same description of the purposes for which BIAs were established under the *Municipal Act, 2001*. Deviation from the definition of “tax” will jeopardize the eligibility of properties within the BIAs for charity tax rebates and vacancy tax rebates in relation to BIA levies.

### Priority Lien Status

BIA charges are collected under the fees and charges sections of COTA (sections 258 - 266), for services provided on behalf of the City. Under Ontario regulation 594/06, fees and charges that are imposed by the City for the purpose of promoting the area as a business or shopping area, or to oversee the improvement, beautification and maintenance of **City-owned land, buildings and structures** in the area, beyond that provided at the expense of the City generally, are given priority lien status. Fees and charges for improvements to private property therefore do not have priority lien status.