



STAFF REPORT ACTION REQUIRED

Amendment to Right of Way Agreement Toronto Parking Authority Carpark #701

Date:	October 6 th , 2008
To:	Government Management Committee
From:	President, Toronto Parking Authority
Wards:	Ward 36 Scarborough Southwest – Councillor Brian Ashton
Reference Number:	TPA File No. 5701-00

SUMMARY

The purpose of this report is to obtain authority to amend the current Right of Way Agreement to incorporate a limiting distance easement in favour of Fallingbrook Developments Limited, the owner of 1210 Kingston Road as detailed in the body of this report.

RECOMMENDATIONS

The Toronto Parking Authority recommends that:

1. City Council authorize amending the current Right of Way Agreement to incorporate a limiting distance easement in favour of Fallingbrook Developments Limited, the owner of 1210 Kingston Road; and
2. The appropriate City Officials be authorized to take the actions necessary to give effect thereto.

FINANCIAL IMPACT

The TPA will receive a \$5,000 fee to be paid by the developer to grant this amendment to the Right of Way agreement.

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

DECISION HISTORY

Fallingbrook Developments Limited (“Fallingbrook”) is finalizing the construction and obtaining final occupancy permits of a mixed-use residential/commercial development located at 1210 Kingston Road on the northwest corner of Fallingbrook Road and Kingston Road, adjacent to the south perimeter of Carpark #701 (see attached Site Location Map). The project includes a six-storey building with 42 residential condominium units, a ground floor commercial component and 42 underground parking spaces. City Council approved the development at its meeting of February 14, 2006 by the adoption of the Scarborough Community Council Report No. 2 (Clause 6).

In the final planning report adopted by Council, it was indicated that planning staff preferred access to the development from the TPA parking lot rather than driveways from either Kingston Road or Fallingbrook Road. In June 2006, both the TPA Board and City Council approved the granting of a Right of Way (“ROW”) agreement to allow access to and from 1210 Kingston Road’s underground garage via the TPA’s surface lot to Fallingbrook Road (see attached web link to the City Council Decision Document). Fallingbrook paid \$25,000 for this ROW access.

ISSUE BACKGROUND

During the final stages of construction, Fallingbrook was informed that it must install fire shutters on a number of its windows facing north onto the TPA lot in order to comply with the Ontario Building Code. The cost to meet this requirement was estimated to be in the range of \$20,000. According to the developer, these fire shutters would be an aesthetic intrusion onto the condominium owners. As an alternative, the developer has requested a limiting distance easement restricting the City or any future owner of the parking lot lands from erecting any structure on Part 2 (see attached ROW Plan). This would effectively eliminate the need for fire shutters for 1210 Kingston Road.

COMMENTS

From the standpoint of the developer, the proposed changes to the easement would save the owner the cost of installing fire shutters and avoids the potential for any issues arising from the condominium owners as it relates to the negative aesthetics of the fire shutters over the windows.

From the TPA’s perspective, granting the limiting distance easement does not affect the current parking operation. In the current ROW agreement, should the TPA decide to redevelop the lands and alter the location or configuration of the Right of Way Lands (Part 1 of the ROW Plan), the owner of 1210 Kingston Road must cooperate by providing a release and surrender of this easement, at the TPA’s expense. In consideration of the City and the TPA agreeing to grant the limiting distance easement, the owner has agreed to remove the requirement for the TPA to reimburse the owner in respect of the owner’s costs associated with any future reconfiguration of the ROW Lands.

The TPA retained Integrus Real Estate Counsellors in order to assess the value of the proposed of pursuing this change in easement arrangements and to determine whether the TPA is entitled to any compensation from the developer. The cost of the assessment and

report were paid for by Fallingbrook. The consultant was of the opinion that the compensation entitlement to the TPA for the proposed changes in the easement was nil. The TPA, however, has negotiated a \$5,000 fee to be paid by the developer to grant this limiting distance easement and amendment to the ROW agreement.

For the foregoing reasons, it is recommended that the City grant a limiting distance easement to, and amend the current ROW agreement with, Fallingbrook Developments Limited.

CONTACT

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SIGNATURE

Gwyn Thomas, President

ATTACHMENTS

Site Location Map
ROW Plan

Aerial Photo of CP#701 with highlighted ROW Land Parcels (Parts 1 and 2)

Web link to the City Council Decision Document:

Minute 5.15: <http://www.toronto.ca/legdocs/2006/minutes/committees/adm/adm060704.pdf>

Agenda Item 15: <http://www.toronto.ca/legdocs/2006/agendas/committees/adm/adm060704/agenda.pdf>