

2306 St. Clair Avenue West Remediation

Date:	April 24, 2008
To:	Licensing and Standards Committee
From:	City Solicitor
Wards:	Ward No.11 - York South-Weston
Reference Number:	

SUMMARY

This report provides information on the legal options currently available to the City to remediate the fire damaged property at 2306 St. Clair Avenue West (the “Property”). Based on the assessment by City Building staff that the Property is not currently unsafe, the City has no legal grounds at this time on which to issue any orders to remedy an unsafe condition at the Property based on violations of the *Building Code Act*.

Municipal Licensing and Standards intends to assess the condition of the Property in May and, if debris remains at the Property, it intends to issue a Notice of Violation for Waste to the Property owner to remove debris from the Property. Municipal Licensing and Standards staff have not issued any Property Standards orders to repair the Property at this time as this could jeopardize ongoing investigations regarding the fire and the interests of third parties with respect to the Property and equipment at the Property. This approach will be reassessed after the May inspection.

The legal title to the Property was reviewed and the City has no legal standing to order remediation of the Property based on the encumbrances currently registered on Title.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

In Motion M103 of the City Council meeting held July 16, 17, 18 and 19, 2007, City Council directed the City Solicitor to undertake a review into the legal options available

to the City to ensure that the legal matters surrounding the fire and subsequent building condition were resolved.

<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/m103.pdf>

ISSUE BACKGROUND

The fire at the Property occurred November 7, 2006. As the premises were being operated as a meat processing plant, there were a number of animal carcasses which were ordered removed by Toronto Public Health. The Fire Marshall then conducted an investigation into the cause of the fire, followed by an investigation by the police and owner and the insurance adjuster for the insurers of the Property. The owner then erected hoarding around the site to prevent unauthorized entry into the Property in accordance with a Building Code Order issued by Toronto Buildings. Subsequent inspection by Municipal Licensing and Standards revealed that the hoarding had been breached, allowing access to the property. Municipal Licensing and Standards staff then arranged for a City contractor to secure the Property from entry under an Emergency Order.

COMMENTS

Building Code and Municipal Licensing and Standards Review

While there is authority under the *Building Code Act* to deal with unsafe buildings, the Property is not, in the opinion of Toronto Building staff, currently unsafe. According to Toronto Building staff, the building does not pose a danger to people in the normal use of the Property as it is not occupied, and it is not unsafe to those outside the building as it is satisfactorily fenced.

Municipal Licensing and Standards also has authority under the *Building Code Act* to deal with violations of property standards under Municipal Code Chapter 629, Property Standards, including violations that pose a threat to the health and safety of persons. Municipal Licensing and Standards staff advise that they intended to issue an order for the Property owner to remove debris and waste at the Property but have not done so because the police had advised that the removal of debris or any work on the Property was prohibited while the police investigation is ongoing. The police now advise that they have completed their investigation of the site and collected necessary evidence, but have not closed the investigation into the fire. The Fire Marshall has also completed its investigation regarding the fire. However, there is an ongoing investigation into the fire by the insurance adjuster for the insurers of the Property and by the owner's adjuster. In addition, New York Pork & Food Exchange Limited, a former tenant of the Property that operated the meat processing plant, is now bankrupt and there are various parties and creditors with interests in the Property and equipment at the Property, and ongoing disputes regarding the proceeds of the insurance on the Property.

Municipal Licensing and Standards intends to assess the condition of the Property in May and, if debris remains at the Property, it intends to issue an order to the Property owner to remove debris from the Property.

Given the ongoing investigations and rights of third parties with respect to the Property and equipment at the Property, Municipal Licensing and Standards recommends against issuing any order to repair the Property at this time. Municipal Licensing and Standards will reassess this approach after the May inspection.

City staff from Buildings and Municipal Licensing and Standards advise that they will continue to monitor the Property to ensure that it is secure from access by the public and in a safe condition.

Property Title Review

The Property is owned by Kingcrest Investments Ltd. (the “Owner”). A number of encumbrances are registered on Title, which range from charges or mortgages between the Owner and a number of different banks, to construction liens registered by contractors who have provided services on the Property.

The City is not a party to any of the encumbrances registered on Title. As the encumbrances all deal with matters between private entities, the City is not in a position to enforce remediation of the Property based on any of the Title registrations. However it should be noted that Municipal Licensing and Standards executed an emergency order to secure the Property against public access. Once this order is confirmed in court, the costs associated with issuing this Order will be added to the tax roll for the Property and collected in the same manner as municipal taxes.

We are advised that Tribute Communities homebuilders had reached an agreement to purchase the Property, which fell through. When the Property was not transferred, the area residents became unhappy as they had been advised that the abattoir operation at the Property would be closed. Again, the City was not a party to this transaction, nor, to the best of our knowledge, was it involved in the promise made to area residents. The City therefore has no legal means from a real estate perspective to address the concerns of the neighbouring property owners.

CONTACT

Rebecca Hartley
Solicitor, Legal Services
Tel. No.: 416-397-5415
Fax No.: 416-397-5624
rhartle@toronto.ca

Christina Cameron
Solicitor, Legal Services
Tel. No.: 416-392-7235
Fax No.: 416-397-5624
ccameron@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor