



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Request for directions regarding an OMB Motion re
730 Dovercourt Road & 323 and 357 Rusholme Road**

Date:	June 13, 2008
To:	Toronto and East York Community Council
From:	City Solicitor
Wards:	Ward 18, Davenport
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions and this report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The Ontario Municipal Board (the “OMB”) will hear a Motion to consider a request by the owner (the “Owner”) of 730 Dovercourt Road and 323 & 357 Rusholme Road (the “Site”) to modify the decision of the OMB issued on November 17, 2005 (the “Board Decision”). This report seeks direction regarding the position to be taken by the City Solicitor at that Motion.

RECOMMENDATION

The City Solicitor recommends that:

1. Council authorize the public release, at the end of the Council meeting, of the confidential instructions adopted by Council together with the appendices.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year’s budget.

DECISION HISTORY

At its meeting held on July 19, 20, 21 and 26, 2005, (in considering Clause 72 of the Toronto and East York Community Council Report 6), City Council instructed the City Solicitor to oppose the Owner's appeal to the OMB based on the principles set out in reports from the Director, Community Planning, South District, as modified by Attachment 1 to the report dated July 21, 2005.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050719/te6rpt/cl072.pdf>

ISSUE BACKGROUND

The Site was the subject of a 1965 site specific zoning by-law which capped the density and building envelopes at the level of three apartment buildings proposed to be constructed at that time. The three buildings were then constructed and continue to exist on the Site. In 2002, the Owner applied for a rezoning to permit a fourth building (consisting, as of revisions dated Sept. 2004, of an L shaped building at 13 and 8 storeys with an overall Site density of 3.43). The Owner then appealed to the OMB. The above noted Council instructions can be summarised as directing the City Solicitor, (a) to oppose the proposed fourth building unless it was modified to meet certain urban design criteria acceptable to the Chief Planner, and (b) to request certain section 37 benefits.

After a three week hearing, including a public evening session, the OMB issued a decision in November of 2005 (the "OMB Decision"), which approved a form of development consistent with the urban design criteria advanced by the City witnesses. With respect to the Owner's proposal, the Board stated: "As much as the Board favours purpose-built rentals and intensification . . . , the visual evidence is compelling. Indeed, even if the above individual objections were not fatal to the size of the slab, the Board finds that the cumulative impact is. The project, as presented, represents over-intensification in terms of its form, and the Board has not been persuaded otherwise."

The Board went on to examine three scenarios that had been presented by the urban design expert called by the City, Mr. Ronji Borooah. The Board stated, "the Board is persuaded of the merits of Mr. Borooah's third scenario" and "In terms of urban form, the Board prefers the third scenario outlined (in testimony) by the City's urban design expert, Mr. Borooah – That scenario was a five-storey podium (stepped back at the third storey), surmounted by a northern 'squarish' 'bump' (point tower) aligned with 730 Dovercourt. The Board finds, however, that the point tower should be limited in height by the 43 degree angular plane, for shadow purposes."

To summarise, the Board Decision approved a podium with a tower. With respect to the tower the Board specifically stated, "Most importantly, the tower would be 'in the shadow' of building A, (being 730 Dovercourt) which Mr. Borooah explained to mean in approximate north-south alignment with it, with a 'smallish, squarish' floorplate." The OMB also imposed certain 37 conditions, but not to the extent requested by the City.

The Board stated it would withhold its Order implementing its Decision until it received an Official Plan and Zoning By-law conforming with the built-form conditions noted above. Instead of complying with this requirement, the Owner has asked the OMB “for a review of and a change to the Order of the Board in this matter pursuant to section 43 of the *Ontario Municipal Board Act*.” In support of its request, the Owner asserts that it cannot economically build a rental building in the form approved by the OMB Decision and the Owner is therefore asking the OMB to change its Decision to allow a different form of building.

Attached as:

- (a) Appendix “1” are two perspectives prepared by City planning staff depicting the form of building envelope approved by the OMB Decision (looking north at the proposed building from the internal central open space) and (looking south west at the proposed building from the intersection of Bloor Street W. and Dovercourt Road), and
- (b) Appendix “2” are two perspectives prepared by City planning staff depicting the form of building envelope now requested by the Owner (looking from the same two directions).

In October of 2007, a Vice-Chair of the OMB heard an initial Motion in respect of this request. The Vice-Chair then ordered that the matter should be reviewed by the OMB panel that heard the original three week hearing. The OMB has just set August 11, 2008 for that panel to hear the Motion. The purpose of this report is to obtain instructions with respect to this next OMB Motion.

COMMENTS

As this report is about litigation before the OMB and contains advice or communications that are subject to solicitor-client privilege, the attachment to this report contains confidential information and should be considered by Council in conference.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

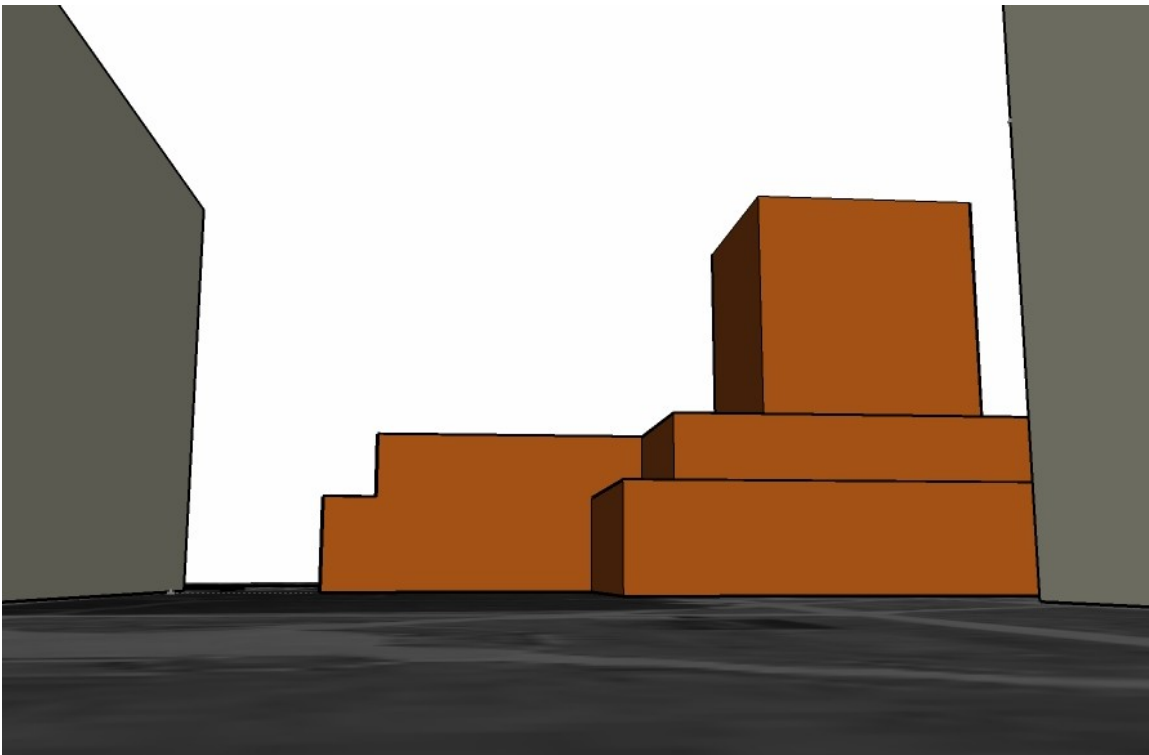
ATTACHMENTS

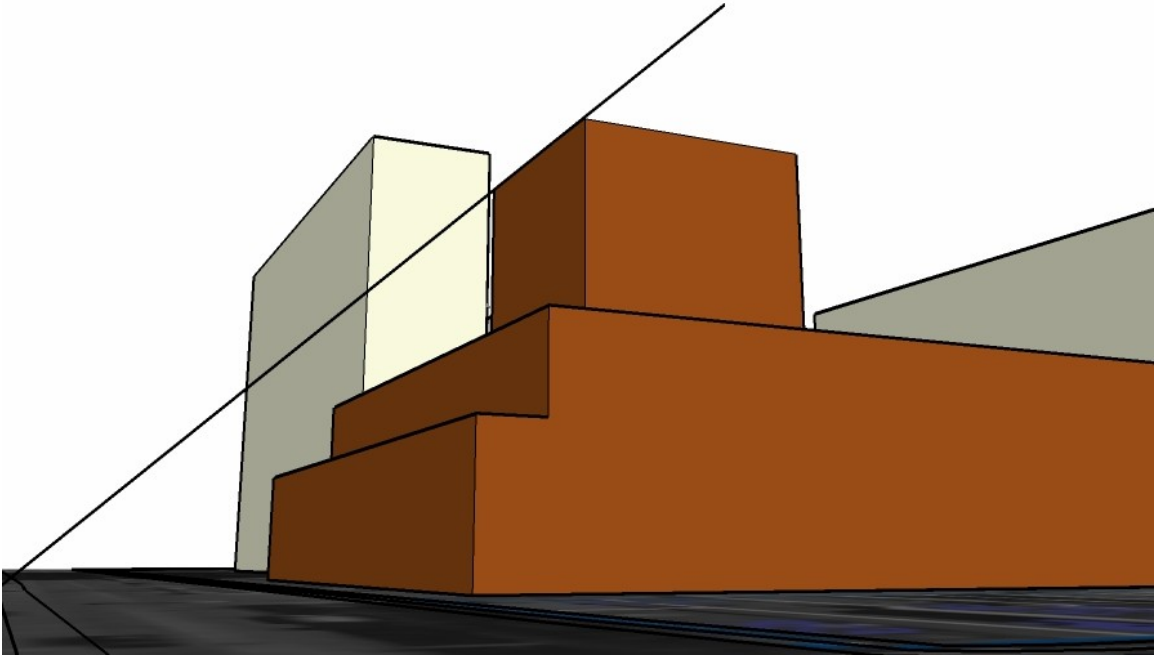
Confidential Recommendations and Confidential Information - Request for directions regarding an OMB Motion re 730 Dovercourt Road & 323 and 357 Rusholme Road.

Appendix "1"

Two perspectives prepared by City planning staff depicting the form of building envelope approved by the OMB Decision

Below is Perspective 1: View looking north at the 4th building envelope (as approved by the OMB) from the central open space located in the middle of the existing 3 apartment buildings.



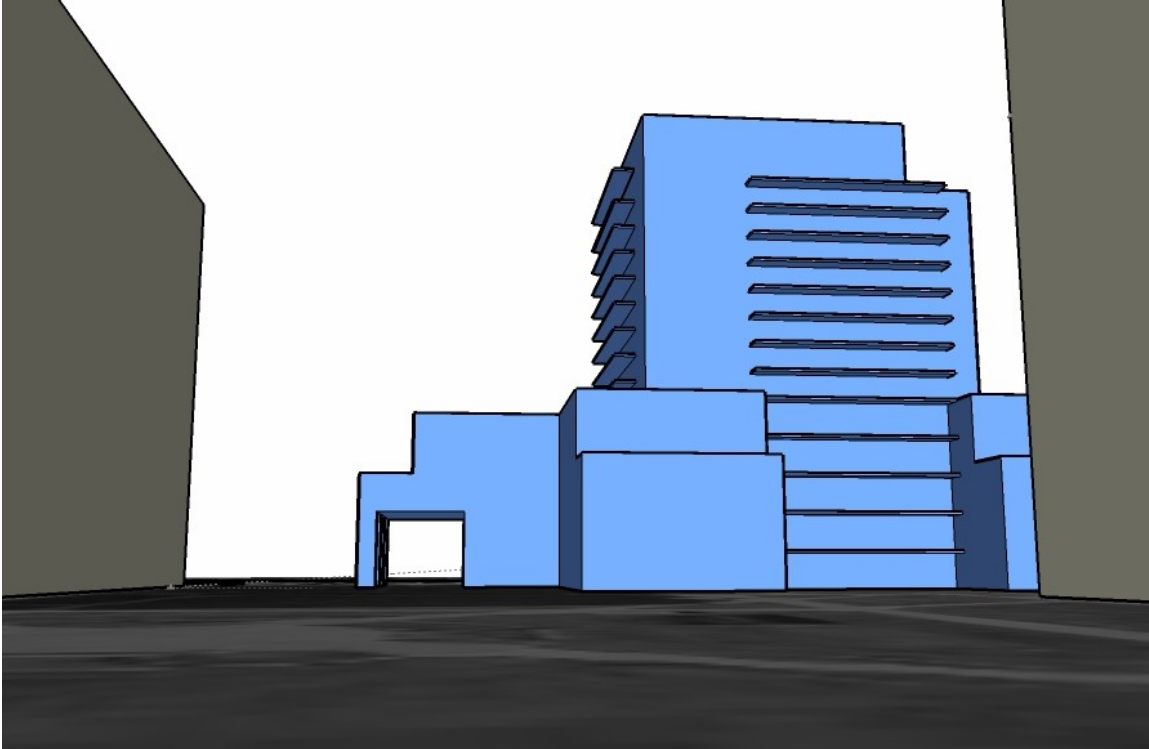


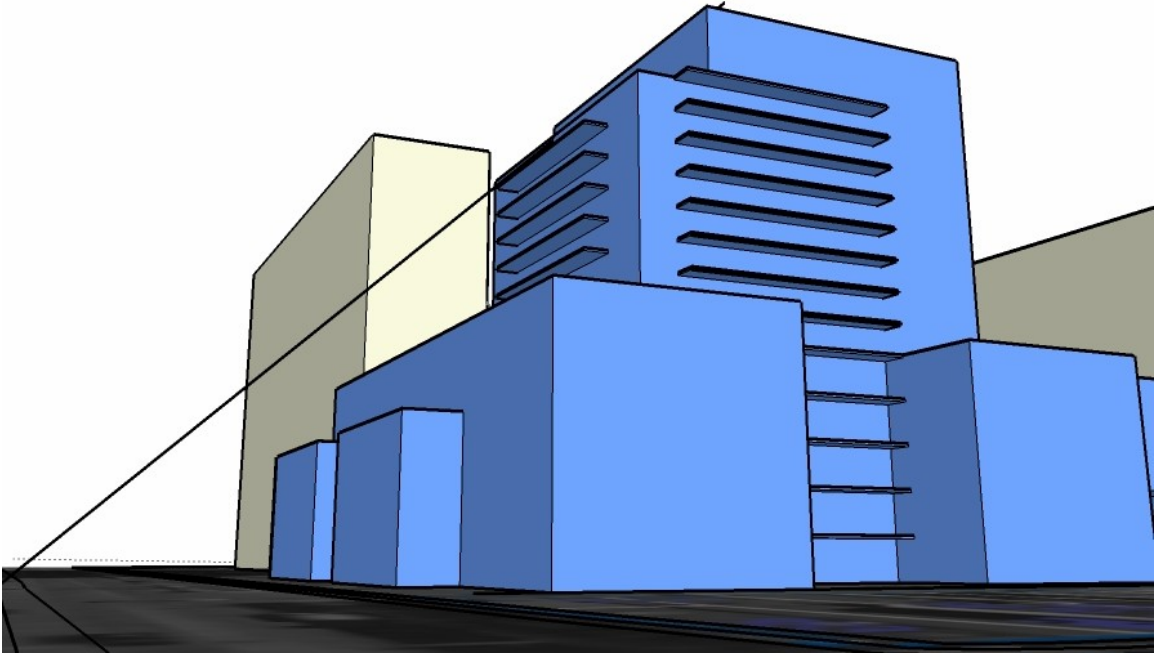
Above is Perspective 2: View looking south at the 4th building envelope (as approved by the OMB) from the intersection at Bloor Street West and Dovercourt Road.

Appendix “2”

Two perspectives prepared by City planning staff depicting the form of building envelope now requested by the Owner.

Below is Perspective 1: View looking north at the 4th building envelope (as now proposed by the Owner) from the central open space located in the middle of the existing 3 apartment buildings.





Above is Perspective 2: View looking south at the 4th building envelope (as now proposed by the Owner) from the intersection at Bloor Street West and Dovercourt Road.