



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Appeal of OMB Decision Re: 1844-1854 Bloor Street West, 6-14 Oakmount Road, and 35 & 47 Pacific Avenue
Appeals of Demolition Permit Refusals**

Date:	February 16, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 13 – Parkdale-High Park
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege
Reference Number:	

SUMMARY

The Ontario Municipal Board (the “OMB” or the “Board”) released a decision on December 30, 2008, regarding demolition permit appeals respecting the properties known municipally as 1844-1854 Bloor Street West, 6-14 Oakmount Road, and 35 and 37 Pacific Avenue (the “Site”), in which it determined that it had the jurisdiction to consider these appeals. In order to protect the City’s appeal rights, the City Solicitor filed a Notice of Motion to seek leave to appeal this decision to the Divisional Court within the required time frame. The Board has continued to hear the merits of the appeals. The hearing is scheduled to conclude on March 11th and 12th, 2009. This report discusses the Board’s decision and asks Council to provide its instructions regarding the application for leave to appeal the decision of the Board regarding jurisdiction.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1; and

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2. City Council authorize the public release of the confidential recommendations in Attachment 1 if they are adopted by City Council.

Financial Impact

The financial impact is discussed in the confidential attachment 1 of this report.

DECISION HISTORY

In March 2006, demolition permit applications were made to demolish 13 houses located at the Site. No building permit application or redevelopment proposal to replace the buildings has been submitted.

On March 27, 2007, the Etobicoke York Community Council considered a staff report dated March 13, 2007, which recommended that the demolition control applications brought by the property owners in respect of the Site be refused and that, in the event of an appeal, the City Solicitor and appropriate staff be authorized to attend at the OMB in support of the recommendation.

The March 13, 2007, Staff Report:

<http://www.toronto.ca/legdocs/mmis/2007/ey/bgrd/backgroundfile-2073.pdf>

Consideration of the report was deferred to give the owners the opportunity to respond to concerns the City had about the proposed demolition. The owners failed to address the City's concerns, and appealed the failure of City Council to approve the demolition permit applications that had been submitted.

The OMB convened a prehearing conference in April 2008 to begin processing the owners' appeals.

Two reports (dated June 18th and 20th, 2008) were prepared for the Etobicoke York Community Council, which were eventually considered by City Council at its meeting on July 15, 16, and 17, 2008. These reports recommended that the demolition control applications brought by the property owners in respect of the Site be refused, and that the City Solicitor and staff support the refusal at the OMB. In the event that Council elected to approve the applications, the reports recommended that a set of conditions be applied to the approval. These conditions were described in Attachment '4', referenced in Report No. 42a that was before City Council on July 15, 16, and 17, 2008.

The June 18, 2008, Staff Report:

<http://www.toronto.ca/legdocs/mmis/2008/ey/bgrd/backgroundfile-14106.pdf>

The June 20, 2008, Staff Report:

<http://www.toronto.ca/legdocs/mmis/2008/ey/bgrd/backgroundfile-14329.pdf>

City Council adopted the reports' recommendations. The City did not issue the demolition permits.

During the course of the OMB hearing it became clear that the above referenced conditions would not be pursued at the current Board hearing as it would be premature to do so under the former City of Toronto 1991 special legislation. That legislation provides a decision to impose conditions on a demolition permit cannot be made until the demolition permit is issued and the owner has an opportunity to speak to what conditions, if any, should be imposed. Therefore in the event the Board allows the appeals and directs the demolition permits to issue, Council cannot rely on the previous direction regarding the imposition of conditions.

ISSUE BACKGROUND

This matter relates to applications that the Site owners have brought seeking permission to demolish 13 residential buildings.

The owners first submitted their demolition permit applications on March 2, 2006. The City did not initially make any decisions with respect to the demolition permit applications, as it was looking to the owners to furnish it with plans indicating how the parcels of land would be redeveloped if the demolition permits were approved.

The owners failed to submit the development plans the City anticipated would accompany the demolition permit applications, and appealed the failure of the City to issue the demolition permits on November 16, 2007.

The OMB convened prehearing conferences in this matter. Following one of the initial prehearing conferences, City Council considered the demolition permit applications and adopted staff's recommendation to refuse them.

The matter was scheduled to proceed to a full hearing on its merits before the OMB in the fall of 2008.

In advance of the hearing on the merits of the appeal, the City brought a preliminary motion before the OMB, arguing that the appeals ought to be dismissed because they were not brought within the appeal period and, as a result, the OMB did not have jurisdiction to consider the appeals. The OMB issued a decision on this preliminary motion on December 30, 2008, finding that the appeals were brought in time. The OMB determined that it had jurisdiction to hear the matter and denied the City's preliminary motion. A copy of the OMB decision is on file with the City Clerk.

Although there is a general right of appeal set out in subsection 33(4) of the *Planning Act*, the City argued that the more specific time frames in the *1985 City of Toronto Act* applied.

In particular, section 3 of the *1985 City of Toronto Act*, provides that:

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“Notwithstanding any other act, where the council of the Corporation has refused to issue a demolition permit under subsection 33(3) of the *Planning Act, 1983*, or where the council has neglected to make a decision therein within one month after receipt of the application by the clerk of the Corporation and where an appeal is taken by the applicant to the Ontario Municipal Board, the appeal shall be filed within twenty days of the mailing of the notice of the refusal or, where council has neglected to make a decision within one month after the receipt of the application by the clerk, the appeal shall be filed within twenty days after the one month period first following receipt of the application by the clerk, and the Board shall hear the appeal and either dismiss it or direct the demolition permit be issued, and the decision of the Board shall be final.”

In this case, the demolition permit applications were submitted on March 2, 2006. By April 2, 2006, one month had passed since the applications were submitted and no decision was made with respect to the issuance of the demolition permits. The 20-day appeal window set out in the *1985 City of Toronto Act* expired on April 22, 2006, without the owner filing an appeal of the City’s failure to decide whether the permits should issue. The owners only appealed the failure of the City to decide whether the permit should issue on November 16, 2007.

City Council decided not to issue the demolition permits in question in July 2008. Notice of this decision was delivered to the owners on July 22, 2008. The 20-day appeal window set out in the *1985 City of Toronto Act* expired on August 12, 2008. The owners did not file an appeal in connection with this refusal.

COMMENTS

The Confidential Attachment to this report provides further information on the OMB decision on jurisdiction and the City's motion for leave to appeal.

CONTACT

Sharon Haniford
Solicitor
Planning and Administrative Tribunal Law
Legal Services
Tel: (416) 392-6975
Fax: (416) 397-5624
Email: shanifor@toronto.ca

Mark Siboni
Solicitor
Litigation
Legal Services
Tel: (416) 392-9786
Fax: (416) 392-1199
Email: msiboni@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information - Re: 1844-1854 Bloor Street West, 6-14 Oakmount Road, and 35 & 47 Pacific Avenue Appeals of Demolition Permit Refusals