



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Review of OMB Decision
840 – 842 York Mills Road and 16 Lesmill Road
Official Plan and Zoning By-law Appeals - Phase 1 Decision**

Date:	February 12, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 34 – Don Valley East
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

To report on the Ontario Municipal Board (OMB) Decision issued on January 29, 2009 regarding a Phase 1 disposition of a site specific Official Plan and Zoning By-law appeal respecting 840 – 842 York Mills Road and 16 Lesmill Road (the Site) and to seek additional instructions to protect the City’s planning initiatives.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1; and
2. City Council authorize the public release of the confidential recommendations in Attachment 1 if adopted by Council.

FINANCIAL IMPACT

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

DECISION HISTORY

City Council at its meeting of March 3, 4 and 5, 2008 adopted the recommendations of the Chief Planner and Executive Director, City Planning Division, to refuse the Official Plan and Zoning By-law amendments to permit the development of a commercial centre including a large scale retail Home Depot store at the Site.

It was agreed that the Hearing would be conducted in a phased manner, with the first Phase dealing with issues relating to the impact of current Provincial legislation on the application.

The OMB issued its Decision on January 29, 2009 finding that neither the Growth Plan for the Greater Golden Horseshoe (Growth Plan) nor the Provincial Policy Statement 2005 (PPS) would prevent the approval of the Home Depot application and that the hearing should move into the more detailed second Phase.

ISSUE BACKGROUND

This matter involved applications to amend the Toronto Official Plan and North York Zoning By-law to permit the development of a commercial centre consisting of retail uses including a Home Depot, commercial and restaurant uses on the site at 16 Lesmill Road and 840 to 842 York Mills Road. The proposed gross floor area is 27,339 square metres.

The applications were filed on December 21, 2006. Home Depot appealed their Official Plan amendment application to the Ontario Municipal Board due to the City's failure to make a decision on the application within the time limitation set out in the *Planning Act*. They also have appealed the zoning by-law amendment application to the OMB.

The property is 5.67 ha in size and is located west of the corner of Lesmill Road and York Mills Road. Existing uses on the site include an industrial operation and warehouse.

The Planning Division recommended refusal of the application on the basis that the proposal to permit major retail uses in an employment area does not conform to the Growth Plan. Approval of the application without first undertaking a municipal comprehensive review which addresses the policies and conversion criteria of the Growth Plan would be contrary to the Places to Grow Act 2005 which requires that all municipal planning decisions conform with the Growth Plan.

The "Request for Direction Report" of January 30, 2008 which recommended refusal dealt with the application at a policy level. It noted that under the Growth Plan, conversion of lands within employment areas to non-employment uses is permitted only through a municipal comprehensive review that has demonstrated that the land is not required for employment purposes over the long term and that there is a need for conversion.

The Growth Plan elaborates on these policies by defining “non-employment uses” for the purpose of the conversion policies to include major retail uses.

Under the new City Official Plan, which is in force for the Site, the lands are designated Employment Areas on the land use mapping. Such Employment Areas are intended to be places of business and economic activity, limiting retail uses to either small scale stores with stores which serve area business and certain retail outlets which are auxiliary to the employment uses. The Site is also shown on the urban structure map as an Employment District. The planning policies seek to promote Employment Districts exclusively for economic activities and permit uses that support that function including a range of industrial, business and commercial uses.

Notably, large scale stand alone retail uses are nevertheless permitted under an express policy, Policy 4.6.3, to locate within an Employment Area if they front on a major street which is at the boundary of the Employment Area, subject to certain operational criteria.

Prior to the final approval of the new Official Plan in July, 2006, the City also introduced for approval at the OMB a new Policy 4.6.4 by way of settlement with Home Depot, an original appellant to the new plan, which would provide for the potential introduction of large scale retail uses in the interior of Employment Areas if located on a major street. This “interior” permission could only be achieved through an Official Plan amendment, whereas the “boundary” permission requires the lesser step of a rezoning application.

The City was advised subsequent to the receipt of the subject Home Depot application for the Site that the Ministry of Public Infrastructure Renewal was concerned that Policy 4.6.4. did not conform to the Growth Plan. The Growth Plan had been released by the Province on June 16, 2006.

A letter dated July 28, 2008 from the Ministry of Public Infrastructure Renewal was received by the City as part of the Ministry’s Growth Plan conformity exercise which advised that Policy 4.6.4 should be deleted from the Plan. The Ministry’s position is that it would lead to the conversion of employment lands to non-employment uses through individual Official Plan amendments without the benefit of a municipal comprehensive review.

A further Report from the Planning Division dealing with required amendments to the Official Plan to achieve conformity to the Growth Plan and which recommended the deletion of Policy 4.6.4 was adopted by the Planning & Growth Management Committee on February 4, 2009 and will be before City Council for consideration at its meeting of February 23 and 24, 2009.

The OMB held a 4 day hearing in November, 2008 on the threshold issue as to whether or not the relevant Provincial Policy, which under the *Growth Act* must be applied by City Council and in turn by the OMB, would prevent the approval of this major retail use proposal. The Board found, in essence, that this proposal would not amount to a

conversion of employment lands on an analysis of the City's Official Plan policies for Employment Areas and that the hearing could proceed to Phase 2.

COMMENTS

A copy of the OMB decision has been filed with the City Clerk.

The Confidential Attachment to this report provides further information.

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information