



**STAFF REPORT
INFORMATION ONLY**

**City-Initiated Official Plan and Zoning By-law
Amendments, Yonge-Eglinton Centre Focused Review**

Date:	February 24, 2009
To:	City Council
From:	City Solicitor and Chief Planner and Executive Director, City Planning
Wards:	Ward Nos. 22 , 16 and 25
Reference Number:	File No. 04 142873

SUMMARY

The City Solicitor and the Chief Planner and Executive Director, City Planning advise that the proposed alternate wording for Policy 6(a) of the Yonge-Eglinton Secondary Plan respecting implementation of a new public road in the block at the southwest corner of Yonge Street and Eglinton Avenue should not be revised by replacing the words “shall not preclude” with “shall include”. Such wording would require every phase of development to implement construction of the public road when the intent is to secure and/or protect for a portion of the public road as development in the southwest quadrant proceeds in phases. The suggested words “shall include” are not appropriate because the construction of the road should not be required in connection with every development of any portion of the site.

The City Solicitor advises that proposed Policy 6(b) of the Plan respecting the use of strata plans to limit height is not appropriate in either its current form or as proposed in the alternate form. The Chief Planner recommends that Policy 6(b) remain without amendment. Both the City Solicitor and Chief Planner advise that this Policy should not be revised by replacing the word “may” with “shall”, so that a decision to use a strata plan can be made at such time as there is a proposed sale of the property in question and after reviewing all of the relevant facts.

The City Solicitor and Director of Facilities and Real Estate have advised previously against including Policy 6(b) in the secondary plan. The City Solicitor notes that height limits for the block are recommended to be implemented by the zoning amendment by-law that is also before City Council. The Chief Planner notes that those zoned height limits are subject to appeal to the Ontario Municipal Board, which is a reason the

community has requested City retention of air rights above the 120 metres on portions of the southwest quadrant.

The City Solicitor advises that suggested new Recommendation 10, related to Policy 6(b) to “mandate” now the use of strata plans in a possible future sale of the land is inappropriate and premature. Finally, suggested new Recommendation 11 is premature in so far as there has not yet been a determination of whether there will be sale of the site or part of it; if so, in what manner the property will be offered; and whether in those circumstances it would be advisable to engage a fairness monitor.

Financial Impact

The recommendations in this report have no financial impact.

ISSUE BACKGROUND

The report (January 5, 2009) of the Chief Planner and Executive Director, City Planning recommends amendments to the Yonge-Eglinton Secondary Plan and Zoning By-law. These include amendments specifically directed to the TTC-owned lands at the southwest corner of Yonge Street and Eglinton Avenue.

The draft official plan amendment as proposed in the staff report would, among other matters, add a specific policy acknowledging the long term objective of implementing a through-block public road and the possible use of a strata plan to limit building height on a future sale involving the site. Several amendments were proposed at Committee which would revise such possibilities as recommended into absolute mandatory requirements for implementing a new public road for each phase of development, the use of a strata plan on a sale, and the appointment of a fairness monitor in connection with a future sale.

COMMENTS

S. 1.4 of the draft official plan amendment would amend s. 7 of the existing secondary plan by adding the following, new Policy 6:

“1.4 Section 7, **SITE AND AREA SPECIFIC POLICIES** is amended by adding the following Site and Area Specific Policy 6, together with the key map as shown on the attached Schedule 1, as follows:

6. Southwest quadrant of Yonge and Eglinton

On the lands shown as 6 on Map 21-1 the following additional policies shall apply:

- (a) new development shall not preclude the implementation of a new public road extending east and south from Duplex Avenue to Berwick Avenue.

Land dedications will be required where necessary to implement the new public road.

- (b) strata plans to limit height may be utilized on city-owned lands to implement the objectives of this Plan”

These proposed recommendations were referred to staff for consideration and a report:

- “1. That Section 1.4 Item 6 (a) and (b) of the draft Official Plan Amendment contained in the report (January 5, 2009) from the Chief Planner and Executive Director, City Planning, be amended to read as follows:

- “6. Southwest quadrant of Yonge and Eglinton

On the lands shown as 6 on Map 21-1 the following additional policies shall apply:

- (a) new development shall include the implementation of a new public road extending east and south from Duplex Avenue to Berwick Avenue. Land dedications will be required where necessary to implement the new public road.
- (b) strata plans to limit height shall be utilized on city-owned lands to implement the objectives of this Plan.”

- 2. That the report (January 5, 2009) from the Chief Planner and Executive Director, City Planning, be amended by adding the following new Recommendations 10 and 11:

“10. City Council mandate that any Request for Proposals process for the redevelopment of the public lands in the southwest quadrant of Yonge-Eglinton Centre, to be undertaken by the City and/or Toronto Transit Commission, include as the principal development control mechanism in the Request for Proposals (apart from the Planning and Urban Design Guidelines for the quadrant) a stratified upper limit of the lands available for sale and/or lease and the Request for Proposals be consistent with the Official Plan, Yonge-Eglinton Secondary Plan; and

11. Any Request for Proposals involving public lands in the southwest quadrant of the Yonge-Eglinton Centre provide for the appointment of a ‘Fairness Monitor’ acceptable to the City and Toronto Transit Commission.”

Policy 6 has two parts. Policy 6(a) states the Official Plan objective of a new public road being established in connection with the redevelopment of the block at the southwest corner of Yonge Street and Eglinton Avenue, and would protect for the construction of the public road by requiring that no development that would prevent the construction of

the new road be permitted. The suggested revision would transform what is a policy objective to establish and protect for a new road (“shall not preclude”) into an obligation to implement the new road as part of every phase of redevelopment (“shall include”). It is premature to set such an obligation in the secondary plan at this time. The intent of Policy 6(a) is to secure and/or protect for a portion of the public road as development in the southwest quadrant proceeds in phases. The draft Official Plan amendment provides for the implementation of the public road through Section 2 which amends Schedule 2 of the Official Plan, THE DESIGNATION OF PLANNED BUT UNBUILT ROADS, by requiring a new road link between Duplex Avenue to Berwick Avenue. Furthermore, Section 6(vi) of the draft zoning by-law amendment applies Holding Provisions (H) to the southwest quadrant until such time that, among other matters, arrangements and/or necessary agreements are made with the City respecting land dedications and/or funding for the future public road, or portion thereof.

Respecting Policy 6(b), the City Solicitor has previously provided a legal opinion advising generally that, if City Council were to determine it advisable to do so, a three-dimensional portion of a City-owned site could be described and sold in accordance with a strata plan of survey defining the physical limits of the land being sold, including an upper limit. A purchaser would not be able to construct above the upper boundary of what was conveyed because it would not own what was above.

Policy 6(b), as currently drafted, would recognize that a strata plan may be used in a future sale of the site. The Chief Planner notes the concerns expressed by the Director, Facilities and Real Estate but, for the reasons set out at p. 29 of the Planning report, includes the policy in recognition of community wishes expressed through consultation. An official plan can contain a wide variety of policies relating to land use planning principles, goals and targets. The City Solicitor does not advise that inclusion of Policy 6(b) would be illegal. However, the view of the City Solicitor is that it would be inappropriate and premature to include in the secondary plan a policy that would dictate one element of a future RFP in respect of the site or part of it for sale or long term lease, even though no such transaction is currently being considered for authorization and any such offering would have to be determined by City Council upon recommendation of the Government Management Committee. The Chief Planner supports retaining Policy 6(b) as currently drafted so that the matter of retaining air rights above the zoned height limit on the southwest quadrant can be part of the discussion at the time that the City is considering sale of their lands on this block.

In the view of the City Solicitor, it would be premature to adopt proposed Recommendations 10 and 11, which are directed toward a possible future RFP in respect of the site or part of it for sale or long term lease. The City Solicitor is of the view that to include proposed Recommendations 10 and 11 would be fettering the decision – making of Council (or a future Council), rather than making determinations at such time as there is a proposed marketing or sale of the property in question before Committee/Council for consideration.

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SIGNATURE

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