



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

3101 Kennedy Road – Settlement Offer

Date:	May 14, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 39 Scarborough-Agincourt
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	08 147003 ESC 39 OZ

SUMMARY

In a report adopted by City Council at its meeting of February 23, 24 and 25, 2009 (the “Refusal Report”), Planning Staff recommended refusal of an application to amend the existing zoning for the lands known as 3101 Kennedy Road (the “Subject Site”) to expand the range of permitted uses to include retail stores, restaurants, personal service shops, libraries, financial institutions and medical and dental offices so as to facilitate the construction of three single storey buildings with 229 parking spaces at grade (the “Proposal”).

On January 16, 2009, prior to Council’s consideration of the Refusal Report, the applicant appealed its Rezoning application to the Ontario Municipal Board due to Council’s failure to make a decision within the time allotted by the *Planning Act*. In February 2009, the applicant also appealed a Site Plan Approval Application to the Board. A two week hearing has been scheduled for this matter, beginning June 29, 2009.

Representatives for the applicant have met with City Staff to discuss several concerns which Staff had raised with the Proposal. The confidential attachment comments on the merits of the discussion and related settlement offer by the applicant.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential recommendations embodied in Attachment “A” to this report; and
2. City Council authorize the public release of any recommendation adopted by City Council. The balance of Attachment “A” remains confidential.

FINANCIAL IMPACT

The Recommendations have no financial impact beyond what has already been approved in the current year’s budget.

DECISION HISTORY

In the Refusal Report, Planning Staff recommended refusal of a proposal which sought to amend the existing industrial zoning of the Subject Site to expand the range of permitted uses to allow for, among other things, a wide range of retail stores, restaurants, and personal service shops.

The applicant has appealed the Rezoning and related Site Plan Application to the Ontario Municipal Board. At a pre-hearing conference on April 23, 2009, the Parties set down dates for a 2 week hearing, scheduled to begin on June 29, 2009. It is anticipated that a number of City Staff and outside consultants would be involved in a contested hearing.

ISSUE BACKGROUND

The Refusal Report cites several deficiencies with the Proposal which are of concern to Planning Staff. The Subject Site is designated as an Employment Area and is identified as an Employment District on the Official Plan’s Map 2, Urban Structure. The Proposal was originally for a development with up to 60% retail and/or office uses and 40% restaurant uses. There was no minimum requirement for non-restaurant employment uses and no restriction on the type of retail uses to be permitted.

It is Planning Staff’s position that what the applicant was originally proposing would have constituted a commercial shopping centre in an Employment District on lands designated for Employment Areas. A commercial shopping centre is not permitted under the Employment Area designation. As a result, Staff formed the opinion that the Proposal would not conform to the Toronto Official Plan and the Province’s Growth Plan for the Greater Golden Horseshoe. Staff were also concerned about the potential precedent setting nature of the Proposal. Approval of this application would set a precedent which would provide for this amount of retail throughout Employment Areas having a negative impact on employment uses provided for by the Official Plan.

The applicant has met with City Staff on a “without prejudice” basis to discuss possible resolutions to the concerns that City Staff originally had with the Proposal. Attachment 1 comments on the discussion and related settlement offer.

COMMENTS

A hearing has been set for two weeks beginning June 29, 2009. As such, Council direction is being requested.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information