



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Legal Action by 570840 Ontario Ltd. and AW-Rite Mini Storage Inc. v. City of Toronto

Date:	May 25, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 6 – Etobicoke-Lakeshore
Reason for Confidential Information:	This report concerns information related to a proposed or pending acquisition of land for municipal purposes and resulting litigation. The advice and communications provided are subject to solicitor-client and litigation privilege.
Reference Number:	

SUMMARY

The purpose of this report is to report on a court application that has been commenced against the City and to obtain instructions on the litigation. It is a time sensitive matter as the court application is scheduled to be heard on June 25, 2009.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1; and
2. the confidential attachment including the recommendations in Attachment 1 remain confidential.

DECISION HISTORY

At its meeting held on May 14, 2009, Etobicoke York Community Council by the adoption of Item EY27.32 directed the City Solicitor to report directly to the City Council meeting of May 25th and 26th, 2009 with respect to the issues referred to in the action commenced by 570840 Ontario Ltd. and AW-Rite Mini Storage Inc., (“*AW-Rite*”), regarding the subdivision of the lands formerly known as 21 and 24 Fleeceline Road, such report to include the status of the public art contribution for the development.

FINANCIAL IMPACT

Aw-Rite has commenced the Court application against the City. Depending on the outcome of the litigation, there could be legal costs owed and other financial impacts. The confidential attachment comments further on these risks and the financial impacts.

ISSUE BACKGROUND

The litigation involves the determination of outstanding obligations arising from the subdivision agreement and development of the subject lands.

COMMENTS

In 1997, 570480 Ontario Ltd. and AW-Rite Mini Storage Inc., “*AW-Rite*”, entered into a Subdivision Agreement with the former City of Etobicoke for the development of a 152 row house project on a former industrial site at 21 and 24 Fleeceline Road. The Subdivision Agreement contained various obligations on the part of AW-Rite, including the environmental remediation of the site in accordance with the Final Soil and Ground Water Management Plan to the satisfaction of the City of Etobicoke, such Plan to meet the applicable Ministry of Environment and Energy standards and guidelines.

The Subdivision Agreement also called for conveyance to the City of Block 153, a linear parkland strip to the south, and Block 155, a berm strip adjacent to Canadian National Railway property to the north. Block 154, a steep slope along the eastern boundary of the site leading to Mimico Creek, was to be conveyed either to the City or to the Conservation Authority.

A dispute has arisen between the City and AW-Rite as to whether Blocks 153, 154 and 155 have been environmentally remediated in accordance with the contractual requirements of the Subdivision Agreement. As a result, these blocks have not yet been conveyed to the City.

AW-Rite issued a Notice of Application in the Ontario Superior Court of Justice dated March 16, 2009, to be heard on June 25, 2009, for the following:

1. an Order requiring the City to release AW-Rite's Letter of Credit in the amount of \$357,000 which was issued pursuant to the terms of the Subdivision Agreement;
2. an order requiring the City to reimburse AW-Rite for fees charged by its bank in connection with the Letter of Credit, together with interest;
3. a Declaration that the City is the beneficial owner of Blocks 153, 154 and 155;
4. an Order requiring the City to accept a transfer of title to Blocks 153, 154 and 155, or, in the alternative an Order vesting the title in the name of the City;
5. a Declaration that AW-Rite has no interest in Blocks 153, 154 and 155, including liability for realty taxes; and
6. the costs of the court application.

The confidential attachment provides an analysis of the issues in dispute between the parties and makes recommendations for responding to the litigation.

CONTACTS

Andrew Stikuts, Solicitor, Legal Services, Litigation Division, Tel: (416)392-7220, Fax: (416)696-4176, Email: astikuts@toronto.ca

Brian W. Haley, Solicitor, Legal Services, Planning Law Division, Tel: (416)392-6757, Fax: (416)397-5624, Email: bhaley@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Recommendations and Confidential Information