



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Court Application by M&S Waste and Salvage Ltd.

Date:	October 20, 2009
To:	City Council
From:	City Solicitor
Wards:	Davenport – Ward 18
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client and litigation privileges.
Reference Number:	

SUMMARY

This is a report seeking instructions regarding a court application that has recently been served on the City of Toronto by M&S Waste and Salvage Ltd. The court application is in respect of a decision made by Toronto and East York Community Council on November 18, 2008, regarding the installation of a sidewalk and narrowing of Ernest Avenue, west of Perth Avenue. The applicant seeks certain declaratory relief relating to the narrowing of Ernest Avenue and the renewal of its business licence.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1.
2. the confidential instructions adopted by City Council be released at the discretion of the City Solicitor.
3. the balance of the Confidential Attachment remain confidential as it contains information subject to solicitor-client and litigation privileges.

DECISION HISTORY

Staff Report

(<http://www.toronto.ca/legdocs/mmis/2008/te/bgrd/backgroundfile-16996.pdf>)

Attachment 1 – Drawing

(<http://www.toronto.ca/legdocs/mmis/2008/te/bgrd/backgroundfile-16997.pdf>)

Attachment 2 – Drawing

(<http://www.toronto.ca/legdocs/mmis/2008/te/bgrd/backgroundfile-16998.pdf>)

Attachment 3 – Drawing

(<http://www.toronto.ca/legdocs/mmis/2008/te/bgrd/backgroundfile-16999.pdf>)

Decision Document

(<http://www.toronto.ca/legdocs/mmis/2008/te/decisions/2008-11-18-te20-dd.pdf>)

Toronto and East York Community Council, at its meeting of November 18, 2008, considered a staff report dated October 28, 2008 authored by the Director of Transportation Services, Toronto and East York District regarding a proposal to install a sidewalk along a portion of Ernest Avenue west of Perth Avenue. The staff report set out three options for installation of the sidewalk, all of which involved narrowing the road. The staff report recommended the approval of Option 1, which consisted of the construction of a sidewalk on the south side of Ernest Avenue and a corresponding narrowing of Ernest Avenue from its existing width of 9.8m to a width of 8.1m.

Instead of adopting the staff recommendation at its meeting of November 18, 2008, Community Council did the following:

1. approved the alterations on Ernest Avenue, from Perth Avenue to the west end, generally as shown in Option 2 (drawing no. 421F-9467, attached to the report dated October 28, 2008 from the Director, Transportation Services, Toronto and East York District) to narrow the pavement and provide a sidewalk on the south side.
2.
 - a. prohibited parking at all times on both sides of Ernest Avenue, from Perth Avenue to the west end of the street.
 - b. rescinded the “No Stopping Anytime” regulation on the north and south sides of Ernest Avenue, from Perth Avenue to a point 42 metres west.

The approved design will have the effect of narrowing the road by 3m, thereby reducing the width of Ernest Avenue to 6.8m.

On August 25, 2009, M&S Waste and Salvage Ltd. (“M&S Waste”) commenced its court application. The work has not been commenced due to the court challenge.

ISSUE BACKGROUND

The portion of Ernest Avenue west of Perth Avenue is a dead-end road that ends at the former Canadian Pacific Rail Corridor Spur Lines. On July 14, 1997, the former Toronto City Council approved the purchase of these lands for the construction of a recreation trail and bicycle path along the rail corridor that forms the west boundary of Ward 18. Construction of the recreation trail and bicycle path along the westerly end of Ernest Avenue was completed in 2008.

M&S Waste operates a scrap metal yard on the north side of Ernest Avenue at its westerly end. The business generates a significant amount of truck traffic along Ernest Avenue west of Perth Avenue, as customers and suppliers of M&S Waste drop off and pick up materials from that business. There are no residential units located along that portion of Ernest Avenue. There are residential homes along Ernest Avenue east of Perth Avenue, as well as along Perth Avenue to the north and south of Ernest Avenue. The installation of a sidewalk along the south side of Ernest Avenue will facilitate pedestrian access to the recreational trail at the westerly end of Ernest Avenue.

The court application seeks certain declaratory relief against the City. Essentially, the applicant is challenging the actions taken by the Toronto and East York Community Council and, in addition, the City's failure to renew the business licence.

Municipal Licensing & Standards have since renewed the business licence for the period ending November 14, 2008 and are awaiting a further application and fee payment from M&S Waste for the current year, together with the upcoming year.

M&S Waste asserts in its court materials that there is no engineering justification for narrowing of the roadway along Ernest Avenue, and that in fact, to do so would create a more hazardous situation for pedestrians and cyclists than what currently exists. The court application alleges that the only reason for the decision to narrow Ernest Avenue is to thwart the business activities of M&S Waste by effectively preventing its customers and suppliers from accessing its yard. The court application also alleges that the City failed to consider using the existing right of way along Ernest Avenue for installation of the sidewalk and boulevard, despite the fact that there is sufficient room within that right of way to accommodate both.

Transportation Services has awarded the contract for the construction work approved by Community Council, but has negotiated a delay of the work due to the court application.

COMMENTS

The attached confidential report comments on the court application and seeks instructions on responding to that application.

CONTACT

Diana W. Dimmer, Director of Litigation, Tel: 392-7229, Fax: 392-1199
E-mail: ddimmer@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

1. Confidential Report, with attachment