



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Review of Site Plan Approval – 12 Rean Drive
Shared Loading and Waste Collection Area**

Date:	January 21, 2009
To:	North York Community Council
From:	City Solicitor
Wards:	Ward 24 – Willowdale
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	Site Plan Application No. 03 035348 NNY 24 OZ

SUMMARY

Item No. NY22.41, adopted by North York Community Council at its meeting on January 13, 2009, requests the City Solicitor to report to NYCC on February 9, 2009, on the site plan approval process undertaken for the property at 12 Rean Drive and any potential liability to the City for approving the site plan application. As a condition of their site plan approval, the owner of 12 Rean Drive was required to enter into an easement agreement for a shared loading and waste collection area located on the property at 8 Rean Drive. An easement right for access to the proposed shared area was registered on title; however an easement agreement containing provisions regarding maintenance and cost sharing was not entered into.

The obligation to enter into an easement agreement for shared loading and waste collection was satisfied by the applicant. Technical Services only required access rights to the shared loading and waste collection, and did not require proof of a formal maintenance and cost sharing arrangement between the two private property owners. The confidential attachment to this report comments on whether the City may be subject to any liability for approving the site plan application for 12 Rean Drive without requiring a maintenance or cost sharing agreement.

RECOMMENDATIONS

1. That the confidential information in Attachment 1 remain confidential.

FINANCIAL IMPACT

The Recommendation has no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

Council approved a zoning amendment application at its meeting on January 27, 28 and 29, 2004, to permit a 9-storey, 138-unit apartment building for senior citizens at 12, 14 and 16 Rean Drive, presently 12 Rean Drive. A report from the Acting Director, Community Planning, North District, dated December 8, 2003 can be found at the following link:

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040127/tn1rpt/cl047.pdf>

Site plan approval was granted by the Acting Director of Community Planning, North York District, on November 21, 2005.

ISSUE BACKGROUND

As a condition of their site plan approval for the proposed condominium tower, the owner of the proposed condominium at 12 Rean Drive ("Claridges") was required to enter into an easement agreement with the owner of the proposed condominium at 2 and 8 Rean Drive ("Waldorf") for a shared loading and waste collection area located on the 8 Rean Drive portion of the Waldorf property. An easement right for access for the loading and waste collection area was obtained by Claridges upon the registration of the Waldorf plan of condominium. The easement did not include provisions regarding maintenance and cost sharing. Waldorf claims that Claridges' requirement to enter into an easement agreement as denoted in the site plan agreement has not been adhered to because an easement agreement containing cost sharing provisions was not executed and registered on title to the subject properties.

As part of site plan approval for another neighbouring condominium development located at 15 Barberrly Place ("Amica"), the owner of these lands was required by the City to enter into an easement agreement with Waldorf for a shared access area on the 2 Rean Drive portion of the Waldorf property. Access rights were granted by Waldorf to Amica at the same time access rights were granted to Claridges, however, unlike the Claridges arrangement, Waldorf and Amica entered into a formal easement agreement that stipulates maintenance and cost sharing for the shared access area. This agreement was registered on title to both the Waldorf and Amica lands. Waldorf claims that the City required the same type of agreement for Claridges and Waldorf.

COMMENTS

As a condition of Claridges' site plan approval the City required an easement agreement to protect reciprocal rights-of-way for a proposed shared solid waste collection and loading area for Claridges and Waldorf. Sections 23 and 31 of the Site Plan Agreement require that the easement agreement be registered on title and contain appropriate conditions to ensure the use and sharing of the loading and waste collection area of Waldorf's 8 Rean Drive condominium tower.

The City Solicitor was advised the following by Technical Services:

- 1) It was not Technical Services' requirement that Waldorf and Claridges enter into an easement agreement that contained provisions on maintenance and cost sharing for the shared loading and waste collection area;
- 2) The site plan condition requiring the easement agreement, as denoted in Sections 23 and 31 of the Site Plan Agreement, has been satisfied by the registration of an easement on title providing access rights to Claridges to the shared loading and waste collection area located on the 8 Rean Drive portion of the Waldorf site; and
- 3) It was the intent of Sections 23 and 31 of the Site Plan Agreement that access rights were all that Technical Services required.

Site plan approval was granted to Claridges on November 21, 2005 after all pre-approval conditions were satisfied, including the condition requiring an easement agreement to protect reciprocal rights-of-way for a proposed shared solid waste collection and loading area.

As a condition of Amica's site plan approval for the development at 15 Barberrry Place, the City required a similar easement agreement to the one required for Claridges; to protect reciprocal rights-of-way for a shared access area located on 2 Rean Drive portion of Waldorf's property. Reciprocal access rights were provided by the registration of an easement on title. In addition to the access rights contained in the registered easement, Amica and Waldorf entered into an easement agreement that obligated both parties to share the maintenance costs associated with the shared access area. This easement agreement was not required by Technical Services.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

1. Confidential Attachment: Legal Advice to Council