

12 Rean Drive-Shared Loading and Waste Collection Area

Additional Issues to be addressed by City Solicitor

Submitted by John Craig on behalf of TSCC#1498 to Councillor Shiner

February 4, 2009

1. No mention is made of the role of The Daniels Corporation

The Daniels Corporation, subsidiaries of Daniels or corporations which they controlled, were the predecessor corporations to Amica and Waldorf with respect to the Barberry Place easement area and to Claridges and Waldorf with respect to the Rean Drive easement. That is, Daniels created the easements for itself.

Mark Crawford's Report is misleading in that he refers to "two private property owners" or that "Waldorf and Amica entered into a formal easement agreement...." as if the two parties got in a room and negotiated an agreement. He should clarify for Council that this was not a case of two independent corporations deciding to negotiate agreements for the use, maintenance and repair and cost sharing. This was Daniels proceeding because it was the right thing to do in the case of the Barberry Place easement agreement by entering into an agreement with itself-or because the approval process required an easement agreement.

2. Approval required an Easement Agreement

The City's approval condition for both the Amica and Claridges projects was that an "easement agreement" be entered into and registered on title. An easement agreement is commonly also referred to as an access agreement or a shared facilities agreement. An easement agreement is understood to not only refer to access rights but also outline the responsibilities for sharing operating costs, repairs and maintenance and major replacements such as Reserve Fund expenditures. What is the City's definition of an Easement Agreement? Why is it appropriate to ask for an easement agreement when the easement already exists and then only to later announce that the easement agreement is not required because the easement satisfies some of their requirements such as access?

3. No mention is made of the relationship between Amica and Clairidges

Amica and Claridges are not just 2 neighbours which the Waldorf condominiums have but they are physically connected facilities which are offered to seniors and the aging. This is not apparent from the Report. Why would Daniels put in place an easement agreement for the Amica easement off of Barberry Place and not for the Claridges easement off of Rean Drive? Does the City not have an oversight role in this area?

4. An Easement Agreement as a condition for Approval

When the City approves a building project and sets out as a condition of that approval that an easement agreement be created and registered on title, would it not make sense to set out the basic elements of what an easement agreement should cover such as reciprocal rights of access, responsibilities for maintenance and repairs, responsibilities for major repairs and replacement, cost sharing arrangements, operating rules etc.

5. What are the appropriate conditions?

In Mark Crawford's "Comments" section he refers to the fact that 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 tower". Perhaps in his Report, Mark Crawford could show Council the actual easement wording and point out what appropriate conditions exist in that easement wording to ensure the use and sharing as required.

6. Misleading statements in Summary

There are some misleading statements in Mark Crawford's Summary

- In paragraph one, he indicates, "as a condition of their site plan approval, the owner of 12 Rean Drive (i.e. Daniels) was required to enter into an easement agreement...". His last sentence of this paragraph says, "an easement agreement containing provisions regarding maintenance and costs sharing was not entered into". The point is NO EASEMENT Agreement whatsoever was entered into. An easement is NOT an easement agreement!
- The first sentence of paragraph two indicates that "the obligation to enter into an easement agreement for shared loading and waste collection was satisfied by the applicant". How is it satisfied when an easement agreement was not entered into? This is very misleading wording.