

**Response to TSCC #1498 Questions – 12 Rean Drive
Shared Loading and Waste Collection Area**

Date:	March 9, 2009
To:	North York Community Council
From:	City Solicitor
Wards:	Ward 24 – Willowdale
Reference Number:	Site Plan Application No. 03 035348 NNY 24 OZ

SUMMARY

Item No. NY23.28, adopted by North York Community Council at its meeting on February 9, 2009, requests the City Solicitor to report to NYCC on March 26, 2009, to respond to questions/issues raised by John Craig on behalf of TSCC#1498 that stem from a report from the City Solicitor to NYCC dated January 21, 2009 (the “City Solicitor Report”). The purpose of the City Solicitor Report was to review the site plan approval process undertaken for the property at 12 Rean Drive, and comment on any potential liability to the City for approving the site plan application. The current report responds to the six specific questions/issues posed by Mr. Craig in his communication entitled Rean Drive-Shared Loading and Waste Collection Area - Additional Issues to be addressed by City Solicitor, dated February 4, 2009 (the “TSCC #1498 Memo”).

FINANCIAL IMPACT

This report 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. The public portion of the City Solicitor Report that reviewed the site plan process can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-18526.pdf>

The TSCC#1498 Memo containing the questions raised on behalf of TSCC#1498 that stem from the City Solicitor Report can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-18892.pdf>

ISSUE BACKGROUND

As a condition of its site plan approval for the proposed condominium tower, the owner of the 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 to the loading and waste collection area was obtained by Claridges upon the registration of the Waldorf plan of condominium. The grant of 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. An agreement containing maintenance and cost sharing provisions was registered on title for an access easement Waldorf provides to another neighbouring condominium located at 15 Barberry Place (“Amica”). The City Solicitor Report reviewed the site plan approval process that was undertaken for Claridges. Mr. Craig, through the TSCC#1498 Memo, provided additional questions/issues to be addressed by the City Solicitor.

COMMENTS

Provided below are summaries of the individual questions/issues posed in the TSCC #1498 Memo and a response:

- 1. No mention is made of the role of the Daniels Corporation as predecessor corporation to Amica and Waldorf with respect to the Barberry Place easement area and to Claridges and Waldorf with respect to the Rean Drive easement.**

Prior to registration of the plans of condominium Amica, Waldorf, and Claridges were owned by individual corporations. The fact that all three corporations were subsidiaries of the Daniels Corporation was not relevant to the site plan approval process.

2. Site plan approval required an Easement Agreement, not just an easement registered on title. What is the City's definition of an Easement Agreement?

The condition of site plan approval requiring the easement agreement was initiated, drafted, and subsequently cleared by Technical Services. Technical Services have advised that the term "easement agreement" meant no more than an arrangement to permit access.

The City can require such an easement but has no authority to require private parties to include other terms in their agreement.

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

The City's role within the site plan approval process is to determine the appropriateness of a proposed loading and waste collection area and to ensure that access is functional.

4. An easement agreement as a condition for approval should cover matters such as reciprocal rights of access, responsibilities for maintenance and repairs.

These are matters for the respective land owners to consider.

5. What are the appropriate conditions for an easement agreement as noted in section 23 and 31 of the Site Plan Agreement?

Again, the City's concerns are limited to ensuring there is functional access.

6. Misleading statements in Summary.

There are no misleading statements in the summary.

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SIGNATURE

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