



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

185 Graydon Hall Drive

Date:	May 14, 2009
To:	North York Community Council
From:	City Solicitor
Wards:	Ward 34 – Don Valley East
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:	

SUMMARY

The purpose of this report is to obtain further direction to the City Solicitor with respect to an ongoing Ontario Municipal Board matter.

This matter was originally scheduled to be before the Ontario Municipal Board on December 6, 2006, but was adjourned. Ontario Municipal Board staff are encouraging counsel to resolve this matter either by settlement or a contested hearing.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential recommendations contained in Attachment 1.
2. Council authorize the public release of the recommendations in Attachment 1 at the end of this Council meeting, if the recommendations contained therein are adopted.

FINANCIAL IMPACT

The financial impact is set out in the confidential attachment.

DECISION HISTORY

North York Community Council Report 7, Clause 85, adopted by City Council on September 25, 26, and 27, 2006, directed that outdoor music not be permitted at the Subject Property and authorized the City Solicitor to attend the Ontario Municipal Board hearing, and retain the appropriate consultants, to request that the OMB refuse the variance application to permit outdoor non-amplified music.

ISSUE BACKGROUND

The Applicant was granted an Official Plan Amendment and Zoning By-law Amendment for the Subject Property in July 2003 (Clause 23, Report No. 6 of the Midtown Community Council, adopted by Council on July 22, 23, and 24, 2003) to permit a Banquet Hall use. Zoning By-law Amendment 739-2003 included a prohibition against “the use of sound reproduction equipment, or other mechanical or electrical or electronic music equipment...” yet permitted the playing of musical instruments subject to the provisions of By-law 738-2003. By-law 738-2003, a temporary use by-law passed under the same authority, permitted “non amplified outdoor music associated with a Banquet Hall” for a period of one year. This By-law expired on its anniversary, and no application was made for an extension.

In April, 2006, the Applicant applied for a minor variance to permit non-amplified music outdoors in conjunction with a Banquet Hall use. On June 29, 2006 the North York Committee of Adjustment refused the variance application. The Applicant appealed the Committee’s decision on July 17, 2006. A hearing was originally scheduled for December 6, 2006, but was adjourned, on consent of the parties, to provide an opportunity for noise testing to be conducted during the summer months.

COMMENTS

By adoption of this report and recommendations, City Council will be provided with the opportunity to provide further direction to the City Solicitor in respect of the hearing.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS - Attachment 1 – Confidential Information