

**40 The Esplanade – City initiated amendment to site specific Zoning By-law – Final Report**

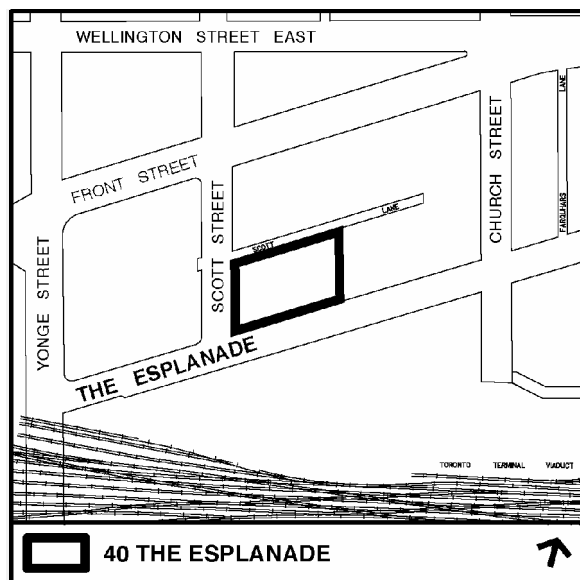
<b>Date:</b>	April 21, 2009
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Director, Community Planning, Toronto and East York District
<b>Wards:</b>	Ward 28 – Toronto Centre-Rosedale
<b>Reference Number:</b>	04 108075 STE 28 OZ

**SUMMARY**

By way of Order No. 2799 issued on October 3, 2006, the Ontario Municipal Board ordered Official Plan Amendment No. 342 (By-law No. 25-2007) of the Official Plan for the former City of Toronto and site specific Zoning By-law No. 26-2007 to permit a mixed use development with two residential condominium towers and retail uses at grade on the lands municipally known as 40 The Esplanade. A Section 37 Agreement was entered into, which required the Owner of the lands to amongst other matters, contribute \$700,000 towards the creation of a municipal park on the lands bordered by The Esplanade, Market Street, Wilton Street and Lower Jarvis Street (known municipally as 125 The Esplanade).

This report recommends that By-law No. 26-2007 be amended to permit a portion (\$150,000.00) of the funds originally allocated to the park to be reallocated to the St. Lawrence Heritage Conservation District Study – Phase 1 study.

This report further recommends that the Section 37 Agreement for 40 The Esplanade be amended to reflect the reallocation of a portion of the \$700,000.00 cash contribution.



## **RECOMMENDATIONS**

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### **The City Planning Division recommends that:**

1. City Council authorize the City Solicitor, in consultation with relevant City staff, to amend the registered Section 37 Agreement for 40 The Esplanade to reflect the reallocation of a portion of the \$700,000.00 cash contribution originally committed to the creation of a park at 125 The Esplanade as follows:
  - a. \$150,000.00 to be directed as a cash contribution to the St. Lawrence Heritage Conservation District Study – Phase 1;
  - b. \$550,000.00 to be directed as a cash contribution to the creation of a park at 125 The Esplanade, subject to the owner of the lands consenting to such amendment;
2. City Council amend Site Specific Zoning By-law No. 26-2007 to reallocate financial contributions in the Section 37 Agreement for 40 The Esplanade as contemplated in this report, substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 1, subject to the owner of the lands consenting to such amendment;
3. City Council authorize the appropriate City officials to take the necessary action to give effect to the above, including execution of the amended Section 37 Agreement and appropriate redistribution/repayment of the original cash contribution made to the City by the owner as applicable;
4. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Zoning By-law Amendment as may be required; and
5. The Amending Section 37 Agreement be executed prior to the introduction of a Bill necessary to enact the proposed zoning amendment.

### **Financial Impact**

The recommendations in this report have no financial impact.

### **DECISION HISTORY**

Pursuant to Ontario Municipal Board Order No. 2799 issued on October 3, 2006 site specific Official Plan Amendment No. 342 (By-law No. 25-2007) and site specific Zoning By-law No. 26-2007 were approved. The Ontario Municipal Board approved site plans and drawings for 40 The Esplanade in Decision Order No. 3023 issued on October 26, 2006. Together, these approvals permit the development of two residential condominium towers with a five storey podium and retail uses at grade.

## COMMENTS

### Section 37 Agreement

The Section 37 Agreement, entered into as part of the approvals process for 40 The Esplanade was registered as Instrument No. AT1168989 on June 15, 2006. Section 3 of the Agreement requires the owner to pay to the City \$700,000.00 "... as a contribution towards the creation of a municipal park on the lands bordered by The Esplanade, Market Street, Wilton Street and Jarvis Street [municipally known as 125 The Esplanade] ..."

This payment has been received by the City.

At its meeting on September 28, 29 and 30, 2005 Council identified an area including 40 The Esplanade as the St. Lawrence Heritage Conservation District Study Area - Phase 1, and authorized staff to accept donations to be used to conduct a Heritage Conservation District Study. The purpose of the HCD study is to analyze the suitability of the area for designation as a Heritage Conservation District (HCD), to rationalize the HCD boundaries and to review existing City policies.

To date, the City has not received sufficient contributions to initiate the HCD study and development pressures in the St. Lawrence Market Neighbourhood are continuing, thereby increasing the likelihood of potential impacts on the area's heritage resources. Accordingly, Staff and the Local Councillor believe there is an urgent need to carry out the Heritage Conservation District study in order to better understand the heritage resources of the area and to identify opportunities for the conservation of these resources. Given the current timeline for the development of the park at 125 The Esplanade, there is an opportunity to reallocate a portion of the funds originally allocated for the park through the site specific by-law and Section 37 Agreement for 40 The Esplanade to the HCD study. It is not anticipated that the reallocation of the funds will delay or affect the creation of a park at 125 The Esplanade for the following reasons:

1. The creation of a park at 125 The Esplanade is contingent on the redevelopment of the St. Lawrence Market North Building at 92 Front Street East. The 125 The Esplanade property will be the site of a temporary building that will house the functions of the St. Lawrence North Market building while the North Market building is redeveloped. Accordingly, the park cannot be developed until the temporary Market building is taken down and the new North Market building is ready for occupancy.
2. When the original Section 37 agreement for 40 The Esplanade was negotiated, City staff anticipated that the new North Market building would be ready for occupancy in 2012. In December 2008, City Council authorized Staff to initiate a design competition for the new North Market building. Staff anticipate that this process will not be completed until mid 2010. As such, Staff currently anticipate that the redevelopment of the St. Lawrence North Market building at 92 Front Street East will commence in 2011 with occupancy of the new building expected in 2014; accordingly, the temporary Market building at 125 The Esplanade will

- not be demolished until at least 2014, after which time the site will be available for the creation of the park.
3. The delay of the development of the park will provide the City with opportunities to secure Section 37 and Section 45(9) funds for the development of the park from new developments within the St. Lawrence Market neighbourhood and from Park Levy funds.
  4. The Parks Division has not established a timeline for the development of this park. Parks Division staff confirmed that the park has not been included in the 2009-2013 Capital Budget and that planning for this park has not yet begun and will not begin for several years (i.e. until there is greater certainty about the timelines for the availability of 125 The Esplanade as a park site).
  5. By-law No. 1420-2007 identifies the St. Lawrence area as a Parkland Acquisition Area and enables the City to secure a higher parkland dedication rate (the Alternative Parkland Dedication Rate) for higher density residential development in this area than was possible under the previous legislative regime; this by-law applies to any development that received its above grade permit after December 31, 2007. Accordingly, the funds that the City will collect through the Park Levy on future development in the St. Lawrence area will likely be higher than anticipated when the original Section 37 Agreement was signed.

## **Official Plan**

Site specific Official Plan Amendment No. 342 of the Official Plan for the former City of Toronto was not included in the Toronto Official Plan because the development conforms to the intent and policies of the new Official Plan.

The proposed reallocation of the Section 37 contribution towards the St. Lawrence Heritage Conservation Study – Phase 1 is consistent with the policies in the City of Toronto Official Plan. Policy No. 305 in Chapter 7 permits cash contributions to fund Heritage Conservation District studies as eligible community benefits in areas identified as Potential Heritage Conservation Districts. The property known municipally as 40 The Esplanade is located within the St. Lawrence Area Phase 1 Potential Heritage Conservation District Area (as identified by Council at its meeting on September 28, 29 and 30, 2005) and accordingly, funds secured by the City through a Section 37 agreement may be used to fund the St. Lawrence Heritage Conservation District Study – Phase 1.

## **Zoning By-law No. 26-7007 (OMB)**

Section 1 (15) of the site specific Zoning By-law (By-law No. 26-2007) contains specific reference to the nature and amount of the community benefits to be secured in the Section 37 Agreement. Accordingly, amendments to both the Section 37 Agreement and Section 1 (15) of site specific Zoning By-law No. 26-2007 are required in order to reallocate a portion of the Section 37 funds from the park to the Heritage Conservation District study as recommended in this report.

The revised community benefits recommended to be secured through amendments to the Section 37 Agreement and the site specific Zoning By-law are as follows:

1. A cash contribution in the amount of \$550,000.00 towards the creation of a municipal park on the lands bordered by The Esplanade, Market Street, Wilton Street and Lower Jarvis Street (known municipally as 125 The Esplanade); and
2. A cash contribution in the amount of \$150,000.00 towards the St. Lawrence Heritage Conservation District Study – Phase 1.

The recommended amendments to Zoning By-law No. 26-2007 are included in the draft Zoning By-law Amendment attached as Attachment No. 1 of this report.

## **CONTACT**

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## **SIGNATURE**

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Raymond David, Director  
Community Planning, Toronto and East York District

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## **ATTACHMENTS**

Attachment 1: Draft Zoning By-law Amendment

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**CITY OF TORONTO**

**BY-LAW No. \_\_\_\_\_**

**To further amend By-law No. 438-86 of the former City of Toronto with respect to lands known municipally as 40 The Esplanade.**

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Section 1. (15) of By-law No. 26-2007 is amended by:
  - (1) deleting the text of subsection (a) and replacing it with the following:

“pays to the City the sum of \$550,000 prior to the issuance of the first *foundation building permit*, towards the creation of a *public park* on the lands bordered by The Esplanade, Market Street, Wilton Street and Lower Jarvis Street;”
  - (2) Deleting “and” at the end of subsection (k);
  - (3) inserting after subsection (l) the following text as subsection (m):

“pays to the City the sum of \$150,000 prior to the issuance of the first *foundation building permit*, towards the St. Lawrence Heritage Conservation District Study – Phase 1; and”

ENACTED AND PASSED this ~ day of ~, A.D. 2009.

DAVID R. MILLER,  
Mayor

ULLI S. WATKISS  
City Clerk

(Corporate Seal)