



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

2205 Sheppard Avenue East - Review of OMB Decision

Date:	January 15, 2010
To:	City Council
From:	City Solicitor
Wards:	Ward 33 –Don Valley East
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege. It concerns litigation that affects the City.
Reference Number:	

SUMMARY

To report on the Ontario Municipal Board (OMB) Decision issued on November 24, 2009 regarding the City's request for a Section 43 review of a phased OMB appeal regarding a mixed use development at 2205 Sheppard Avenue East (the Site) and to seek instructions with respect to a motion for leave to appeal to the Divisional Court.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1; and
2. City Council authorize the public release of the confidential recommendations in Attachment 1 if adopted by Council with the balance of the information to remain confidential.

FINANCIAL IMPACT

The financial impact is discussed in the confidential Attachment 1 to this report.

DECISION HISTORY

In 2006, Dorsay Investments and 1666500 Ontario Inc. (Dorsay), the owners of the Site, filed applications to permit the introduction of residential uses upon lands designated "Employment Areas" under the Official Plan. The applications to re-designate to "Mixed Use Areas" under the Official Plan and re-zone from MO(5) under the former City of North York Zoning By-law were appealed directly to the OMB by the owners at the conclusion of the statutory period.

City Council at its meeting of September 26 and 27, 2007, refused the Official Plan and zoning by-law amendment applications upon the recommendation of the Chief Planner and Executive Director, City Planning Division. The application is for a mixed use project containing 914 residential units and 3,285 square meters of retail and commercial uses.

On consent of the parties, the hearing was split into two phases: firstly, dealing with threshold issues relating to the impact of the Provincial Growth Plan which came into effect in June of 2006, prior to the Dorsay application; and secondly, dealing, if necessary, with the substantive planning issues relative to the development of the site.

The first phase hearing was the subject of a Decision of the OMB issued August 28, 2009. In that Decision the OMB found in favour of Dorsay, ruling that the Growth Plan would not in itself prevent a redesignation of the Site for residential uses and that a redesignation to Mixed Use Areas under the Official Plan was appropriate. In a Decision dated November 24, 2009, the Acting Chair of the OMB refused the City's request for a re-hearing of this matter.

The Acting Chair supported the original Decision of the OMB, which found that the redesignation from Employment Areas to Mixed Use Areas in the absence of a comprehensive municipal review of the City's employment lands did not violate the Provincial Growth Plan. The OMB relied on the identification of the site as an "Avenue" under Chapter 2 of the Plan, and that it did not have explicit "Employment District" protective status, notwithstanding the fact that the lands are designated as Employment Areas.

ISSUE BACKGROUND

As outlined above, the issues concerning this appeal directly affect the application of the Provincial Growth Plan to proposals for residential uses within Employment Areas made after the enactment of the Growth Plan. A key principle of the Growth Plan is the prevention of "conversions" of land to non-employment uses without the municipality first conducting a "municipal comprehensive review". This is intended to be an extensive survey of all existing employment lands in the municipality in relation to the attainment of provincial employment growth targets. The City planning staff opinion resulting in the Refusal Report adopted by City Council was based in large part on the application's non-conformity to the Growth Plan.

The City of Toronto Official Plan directs growth of employment and population uses respectively, to certain prescribed areas and also seeks to preserve these areas to successfully accommodate future growth to attain the City's and the Province's objectives.

The Board relied upon an interpretation of the City's Avenues policies as anticipating or enabling the redesignation of Employment Areas for purposes that derogate from the underlying employment designations. This result is not intended by the structure and policy thrust of the Official Plan. It is also used by the Board to find that the Growth Plan's concept of a protected "Employment Area" which is designated solely for clusters of business and commercial activities, is not applicable as mixed use development is, in the Board's findings, inherent in the Avenues designation.

COMMENTS

A copy of the OMB Decision of November 24, 2009 has been filed with the Clerk. The Confidential Attachment to this report provides further information

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENT

Attachment 1 – Confidential Information – Review of OMB Decision re 840-842 York Mills Road and 16 Lesmill Road.