



**STAFF REPORT  
ACTION REQUIRED  
Confidential Attachment**

**730 Dovercourt Road & 323 and 357 Rusholme Road  
OMB Hearing - Request for Instructions**

<b>Date:</b>	August 9, 2010
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 18, Davenport
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions and this report contains advice or communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	

**SUMMARY**

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The Ontario Municipal Board (the “OMB”) has held a Motion to consider a request by the owner (the “Owner”) of 730 Dovercourt Road and 323 & 357 Rusholme Road (the “Site”) to modify the decision of the OMB issued on November 17, 2005 (the “2005 OMB Decision”). This report seeks direction regarding that Motion.

**RECOMMENDATION**

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The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1.
2. Council authorize the public release of recommendations no. 1 and 2 of the confidential attachment, if adopted by Council.

## **FINANCIAL IMPACT**

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Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

A 1965 site specific zoning by-law permitted three apartment buildings (now known as 730 Dovercourt Road and 323 & 357 Rusholme Road) to be located within the Site, (being part of the block bounded by Bloor Street West, Dovercourt Road, Hepbourne Street and Rusholme Road).

At its meeting held on July 19, 20, 21 and 26, 2005, (in considering Clause 72 of Toronto and East York Community Council Report No. 6), City Council instructed the City Solicitor to oppose an OMB appeal by the Owner for a fourth apartment building (being an L shaped building at 13 and 8 storeys) in the north-east corner of the Site. Council's instructions were to oppose this application unless it was modified to meet certain built form criteria.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050719/te6rpt/cl072.pdf>

The 2005 OMB Decision approved a form of development consistent with the urban design criteria advanced by the City witnesses. It approved an apartment building consisting of a podium with a tower element. The tower element was to have a 'smallish, squarish' floorplate that was, for shadow purposes, to remain below a 43 degree angular plane drawn from the sidewalk on the east side of Dovercourt Road.

Subsequently, at its meeting held on July 15, 16 and 17, 2008 in dealing with Item TE17.77, Council gave further instructions to oppose a Motion request by the Owner "for a review of and a change to the Order of the Board in this matter pursuant to section 43 of the *Ontario Municipal Board Act*."

<http://www.toronto.ca/legdocs/mmis/2008/te/bgrd/backgroundfile-13835.pdf>

## **ISSUE BACKGROUND**

The 2005 OMB Decision noted that the OMB would withhold its implementing Order until it received an Official Plan and Zoning By-law conforming with the built-form conditions set out in the 2005 OMB Decision. That implementing Order has not yet issued as the OMB has yet to dispose of the Owner's section 43 request.

In support of its request, the Owner asserted that it could not economically build a rental apartment building in the form approved by the 2005 OMB Decision. The essence of the

Owner's concern was that the floor plate of the tower would be too small, at approximately 417 square metres, to be constructed as a residential rental building. However, for urban design reasons relating to the design being advanced by the Owner at that time, Council instructed the City Solicitor to oppose the revised plans.

In October of 2007, a Vice-Chair of the OMB heard an initial Motion in respect of this request. The Vice-Chair then ordered that the matter should be reviewed by the OMB panel that issued the 2005 OMB Decision. During that review, it was agreed by all parties to adjourn for a Mediation Session regarding potential revisions to the building design being advanced by the Owner. This report is seeking instructions, further to that Mediation Session, with respect to the form of the zoning by-law to be approved by the OMB to implement the 2005 OMB Decision.

## **COMMENTS**

As this report is about litigation before the OMB and contains advice or communications that are subject to solicitor-client privilege, the attachment to this report contains confidential information and should be considered by Council in conference.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski, City Solicitor

## **ATTACHMENTS**

Confidential Recommendations and Confidential Information - Request for directions regarding an OMB Hearing, 730 Dovercourt Road & 323 and 357 Rusholme Road.