



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**Review of OMB Decision  
OPA 72 – Conformity to the Provincial Growth Plan**

<b>Date:</b>	August 18, 2010
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	All Wards within the City
<b>Reason for Confidential Information:</b>	This report contains advice or communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	

**SUMMARY**

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To report on the Ontario Municipal Board (OMB) Decision issued on June 10, 2010 regarding the disposition of a Motion concerning Official Plan Amendment No. 72 (Growth Plan Conformity) and to seek instructions to protect the City's planning initiatives.

**RECOMMENDATIONS**

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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.

**Financial Impact**

The financial implications resulting from the adoption of this report are discussed in the confidential attachment.

## DECISION HISTORY

City Council at its meeting of May 26 and 27, 2009, adopted By-law No. 563-2009 containing Official Plan Amendment 72. OPA72 was prepared by the Chief Planner and Executive Director, City Planning Division, to achieve conformity with the Provincial Growth Plan for the Greater Golden Horseshoe (hereinafter the Growth Plan) within the time frame required by the *Places to Grow Act*. The final planning report containing the changes of the Official Plan which was arrived at following consultation with staff of the Provincial Ministry of Municipal Affairs and Housing is contained at Item PG25.2. A preliminary planning report identifying initial issues is found at Item PG23.5. A status report summarizing public consultation carried out by the Planning Division is contained at Item PG24.7.

A number of appeals were made to OPA72 and as part of the pre-hearing procedure a motion was brought by Home Depot, a party contesting the removal of section 6.4.4 from the Official Plan, asserting that the City had followed the incorrect procedure under the *Planning Act* in adopting OPA72. Home Depot argued that this error voided the Official Plan amendment. The OMB agreed with the motion of Home Depot in its Decision of June 10, 2010, and refused to approve OPA72.

## ISSUE BACKGROUND

Section 12 of the *Places to Grow Act* requires that municipalities subject to a Growth Plan must, within 3 years following the release of such a plan, amend their own official plans to conform to this Provincial planning initiative. The Growth Plan was released on June 16, 2006. It establishes provincial targets for employment and population growth within each municipality and contains related policies to achieve these goals. Following the City's internal policy review and a period of consultation with Ministry staff, the City Planning Division brought forward a series of amended policies that were intended to bring the City's Official Plan into conformity with the Growth Plan.

As Council will be aware, the City of Toronto, by way of Regulation made under the *Planning Act*, is exempt from seeking Ministerial approval of Official Plan amendments which it may adopt itself as the delegated approval authority under section 17 of the *Planning Act*.

During discussions with Ministry officials, City staff, with the concurrence of the Ministry, concluded that the City could proceed in the usual course under the *Planning Act* with a municipally initiated Official Plan amendment utilizing the procedures for notice and public meeting contained in section 17 of the Act. A separate procedure under section 26 of the Act, normally utilized in connection with the mandatory 5 year comprehensive Official Plan review, is also available in connection with a Provincial Plan conformity exercise. Both the Ministry and City staff were of the view that the language of section 26, which section imparts certain additional procedural requirements, including submission for approval to the Minister of Municipal Affairs and Housing, was not mandatory but was presumably placed in the *Planning Act* to provide as an

administrative option the integration of the Official Plan 5 year review with a Provincial Plan conformity review. As noted above, the OMB found on the motion brought by Home Depot that the use of section 26 was mandatory.

The City remains under a statutory obligation to complete the process of amending its Official Plan to reflect the Provincial Growth Plan policies and the options for pursuing that process are discussed in the attached Confidential Information Attachment 1.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Attachment 1: Confidential Information