



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**1030 McNicoll Avenue – Ontario Municipal Board –  
Section 37 Contribution**

<b>Date:</b>	May 10, 2010
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 39-Scarborough Agincourt
<b>Reason for Confidential Information:</b>	This report is about litigation that affects the City and contains advice and communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	05 211770 ESC 39 OZ

**SUMMARY**

---

On October 31, 2007, the Ontario Municipal Board ("OMB") allowed appeals to the City of Scarborough Official Plan and to the City of Scarborough Zoning By-law No. 24982, to permit the development of 1030 McNicoll Avenue for a mixed use development including senior citizen residences and institutional and community facilities. At the request of the parties, the OMB deferred making any decision on the issue of the appropriate section 37 contribution, leaving this issue to the parties to come to an agreement, failing which the OMB would convene a continuation of the hearing to settle the section 37 issues.

City Planning and the City Solicitor have had ongoing discussions with the appellant regarding an appropriate section 37 contribution, in view of the unique nature of the proposal.

## **RECOMMENDATIONS**

---

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1; and
2. Council authorize the public release of the Confidential Recommendations in Attachment 1 and Attachment 2 remains confidential at the end of the Council meeting.

## **FINANCIAL IMPACT**

---

The adoption of these recommendations will have no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

In 2005, the owner of the subject property made application for amendments to the City of Scarborough Official Plan and to the City of Scarborough Zoning By-law No. 24982 (Employment Districts Zoning By-law) to permit a mixed use development consisting of 578 apartment dwelling units for seniors, commercial and institutional uses (place of worship) and community facilities within integrated buildings.

On May 23, 24 and 25, 2006, City Council adopted a Refusal Report from the Chief Planner, dated March 14, 2006. The Refusal Report did not address the issue of appropriate s.37 benefits in the event the applications were approved by the Board. On June 6, 2006, the owner appealed the matter to the Ontario Municipal Board.

On October 31, 2007, the Ontario Municipal Board issued its decision allowing the appeals and approving the proposed amendments to the City of Scarborough Official Plan and the City of Scarborough Zoning By-law No. 24982.

## **ISSUE BACKGROUND**

At the request of the parties, the Ontario Municipal Board deferred hearing evidence and making a decision on the issue of the appropriate level of section 37 contribution, thus leaving this issue to the parties to come to an agreement. If the parties fail to come to an agreement, the OMB will hold a continuation of the hearing to settle and make a final determination on section 37 issues.

## **COMMENTS**

City Planning and the City Solicitor have had ongoing discussions with the appellant regarding an appropriate section 37 contribution. Attachment 1 to this report discusses the section 37 issues.

## **CONTACT**

Robert Robinson, Solicitor, Planning and Administrative Tribunal Law  
Telephone (416) 392-8367, Fax (416) 397-5624, E-mail: [rrobins2@toronto.ca](mailto:rrobins2@toronto.ca)

## **SIGNATURE**

---

Anna Kinastowski, City Solicitor

## **ATTACHMENTS**

1. Confidential Information – 1030 McNicoll Avenue – Ontario Municipal Board – Section 37 Contribution
2. Letter dated April 8, 2010 from Davies Howe Partners