



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Request for directions regarding the appeal of By-law No. 1222-2009 (the Bloor Dundas Avenue By-law).

Date:	March 2, 2012
To:	Toronto and East York Community Council
From:	City Solicitor
Wards:	Ward 14 – Parkdale-High Park
Reason for Confidential Information:	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.
Reference Number:	

SUMMARY

On December 4, 2009, City Council passed By-law No. 1222-2009 (the "Bloor Dundas Avenue By-law") implementing new zoning regulations for two areas designated as *Avenues* under the City's Official Plan: Bloor Street West between Keele Street and the rail corridor; and, Dundas Street West between Glenlake Avenue and Boustead Avenue. This report deals with an appeal by the owner (the "Appellant") of the site known as 1540 Bloor Street West (the "Site") located at the north-west corner of the intersection of Bloor and Dundas.

The Appellant appealed the Bloor Dundas Avenue By-law to the Ontario Municipal Board (the "OMB") together with its own site specific zoning amendment application for a 27 storey building. By its decision dated March 9, 2010, the OMB dismissed the Appellant's site specific appeal of its own zoning application. No date has been set to hear the Appellant's Bloor Dundas Avenue By-law appeal but by letter dated May 6, 2011, copy attached, the Appellant submitted a "With Prejudice Offer To Settle" that appeal, (the "Settlement Proposal"). Without prejudice discussions resulted and the purpose of this report is to obtain directions.

RECOMMENDATIONS

The City Solicitor recommends that:

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

FINANCIAL IMPACT

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

DECISION HISTORY

In considering Item TE29.10 at its meeting of November 30, December 1, 2, 4, and 7, 2009, City Council directed staff to oppose the Appellant's site specific appeal of its own zoning application for a 27 storey building. City Council also directed the City Solicitor to advise the OMB that any redevelopment of the Site must comply with the Bloor Dundas Avenue By-law, which was adopted by Council at that same meeting (Item TE29.2).

ISSUE BACKGROUND

The Bloor Dundas Avenue By-law imposes a maximum height of 20 metres (approximately 6 storeys) over most of Bloor Street West between Keele and Dundas. However, it permits the Site to have a height of 32 metres (10-storeys) on the east part of this L-shaped lot, with a 20 metre height limit (6-storeys) on the part extending westerly behind the five adjacent lots. The following is an excerpt showing the maximum heights and density for the Site.

Map 5 of 5

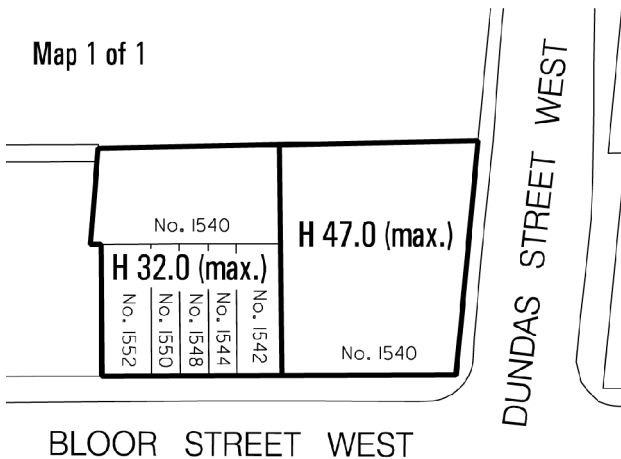


LANDS REFERRED TO IN SECTION 12(2)347(9)(b) - SITE E
H: DENOTES HEIGHT IN METRES ABOVE GRADE

City of Toronto
 City Planning
 File # 08_164661_12(2)347(9)(b)E
 11/24/09_NRS

If the Site were consolidated with the five adjacent lots, the Bloor Dundas Avenue By-law would permit the Site to have a maximum height of 47 metres (15 storeys), stepping down to 32 metres (10-storeys), with a density formula of MCR T7.0 C2.0 R6.0. The following is an excerpt showing the maximum heights for the consolidated Site and five adjacent lots.

Map 1 of 1



LANDS REFERRED TO IN SECTION 12(2)347(9)(d)
H: DENOTES HEIGHT IN METRES ABOVE GRADE

City of Toronto
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However, as the Site has not been consolidated the height limits of 32 metres (10-storeys) and 20 metres (6-storeys) apply.

Confidential staff report for directions regarding the appeal of By-law No. 1222-2009 (the "Bloor Dundas Avenue By-law").

In summary, the Appellant's Settlement Proposal differs from the Bloor Dundas Avenue By-law: (a) by proposing a 15 storey building at the east corner (as opposed to 10 storeys) with 10 storeys extending westerly behind the five adjacent lots (as opposed to 6 storeys); and, (b) by proposing a density of 9.5, whereas the Bloor Dundas Avenue By-law has a density formula of MCR T5.5 C2.0 R4.5.

The Settlement Proposal also offers Section 37 benefits, which can be summarized as: 9 rental replacement units for at least 10 years; street improvements; \$10,000 for daycare; \$25,000 for a multi-purpose facility; \$25,000 for park acquisition and improvement; pedestrian lighting and streetscaping; \$10,000 for Bishop Marrocco greenspace improvements; compliance with Toronto Green Standards Checklist; and, \$10,000 for public art.

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 in camera.

CONTACT

Stephen M. Bradley, Solicitor, Planning & Administrative Law; Ph: (416) 392-7790;
Fax: (416) 397-5624; Email: sbradley@toronto.ca

SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 – letter dated May 6, 2011 from Sherman Brown Dryer Karol Gold Lebow Barristers & Solicitors.

Attachment 2 – Confidential Staff Report.

May 6, 2011

Metro Hall
26th Floor, 55 John Street
Toronto, Ontario
M5V 3C6

Attention: Mr. Stephen Bradley, City Solicitor

Dear Mayor and Members of Council:

**Re: WITH PREJUDICE OFFER TO SETTLE
– 1540 Bloor Street West, City of Toronto**

And Re: 1540 BSW Development Inc. appeal of the City Council approval of the Bloor Dundas Avenue By-law (By-law No. 1222-2009) affecting the lands along Bloor Street West between Keele Street and the Rail Corridor, and Dundas Street West between Glenlake Avenue and Boustead Avenue, City of Toronto

We are the solicitors for 1540 BSW Development Inc., the owner of the property municipally known as 1540 Bloor Street West in the City of Toronto. The Site is located at the north-west corner of Bloor Street West and Dundas Street West, which intersection has been recognized as a significant "Gateway Mobility Hub" pursuant to the "Metrolinx's Mobility Hub Backgrounder (December, 2008)" which hub facilities include the Bloor subway line, the streetcar service, the bus transit service, the existing GO transit service, the VIA rail service, and the approved Pearson-Union transit connection. Furthermore, the recent approval and commitment from Metrolinx to proceed with the electrification of the Pearson-Union (Gerogetown Line) connection, as outlined in the Metrolinx December 2010 Electrification Study further reinforces the importance of properly intensifying transit hubs.

The Site has frontage on two main arterial roads, Bloor Street West and Dundas Street west, which site is well removed from any low density single family areas, with the closest single family area being more than 60 metres (200 feet) from the Site. The Site is located immediately to the south of the Dundas West TTC Station, with retail uses to the north and west along both street frontages, with two 29 storey apartment buildings located on the opposite side of the street within the north-east quadrant of this same intersection. The Site is designated "Mixed Use" pursuant to the City of Toronto Official Plan, which designation anticipates and promotes higher order uses and densities, which lead to our client's filing of an application to redevelop the Site with a 27 storey

condominium, with a base which our client contended would revitalize a “run down” portion of the street.

On March 9, 2010, our client's application for a 27 storey condominium building was determined to be of a height that was inappropriate based upon the findings of the Ontario Municipal Board. While the City's Traffic and Engineering Staff had “signed off” on the proposed access, loading and parking supply proposed for the Site, and while the significant separation from the low density areas resulted in no issues of overlook and/or shadowing of same, the main area of concern focused upon both the height of the tower and the design of the podium as it related to the setbacks from both street frontages and the stepbacks to the tower above.

While our client's appeal in respect of its 27 storey proposal has been ruled upon, there is an outstanding appeal against the City's passage of a by-law implementing the “Avenue Study” which suggests a proposed height of 15 storeys, if our client acquired the property to the west, even though that property owner has no intent in selling their property, nor have they ever objected to our client's redevelopment of the Site.

In response to the Decision of the Ontario Municipal Board, and in response to the specific design parameters set out in the City's “Bloor Dundas Avenue By-law”, we have enclosed herewith a “with prejudice” proposal, which includes a revised design at 15 storeys, which design fully complies with all of the City's proposed new standards, save and except the proposed height of 15 storeys (which is recommended in the Avenue Study if we owed an additional property), a height, well below that which was originally proposed (at 27 storeys) which height is also well below the height of the two 29 storey towers on the opposite north-west quadrant of this same intersection. The only other variance to the City approved Avenue Study relates to the proposed density of 9.5, although again, the traffic volumes have been deemed acceptable by City Staff.

Our client's revised design maintains the same access/egress, loading and parking standards which were previously approved by the City's Traffic and Engineering Staff. In responding to the specific issues raised about the design of the podium, our client has proposed a podium of a height of 4 storeys (13.5m), in specific compliance with the City's proposed new zoning by-law implementing the “Avenue Study”. In addition, our client's architect has redesigned the podium, to provide a 4m setback from Dundas Street and a 5m stepback above the podium from Bloor Street, which again, are revisions which are in full compliance with the City's new Bloor Dundas Avenue By-law standards for the Site. The tower has been designed at a height of 15 storeys, with a floorplate that again, is in specific compliance with the “Tall Building Guidelines”. The only area of disagreement, as between our client's design, and the City's Bloor Dundas Avenue By-law, is the proposed height and the resulting density of 9.5, whereas the City's new Bloor Dundas Avenue By-law proposes a density of 5.5 times the area of the lot.

The proposed settlement, in the writer's respectful submission, is proposing a height and density that is clearly warranted for the Site, given the excellent locational attributes, including the significant transportation facilities to the immediate north. The proposed

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density, in terms of the unit count, creates no shadowing and/or overlook, given the 60 metre (200 feet) separation from the nearest low density area. Attached hereto is both an aerial photograph, as well as an elevation of the podium and tower, which demonstrates the fit of the proposal into the intersection and surrounding area. Both our client and the City have expended significant funds on the original hearing, and in this instance, instead of proceeding to a second hearing on a significantly revised proposal, we are submitting the “with prejudice” offer to settle, which we hope both facilitates a cooperative approach, while at the same time, avoids the additional costs of a new hearing, which again, in the writer’s respectful submission, is in the interest of neither the City nor the applicant.

In pursuit of same, in addition to securing the revised design elements, which again, but for the height and density, comply with each and every city standard applied to the Site, our client would also agree to the following:

- 1) The owner to provide nine rental replacement units of a similar size and type within the proposed new mixed-use building for a minimum period of ten years;
- 2) The owner agrees to make improvements to the street right-of-way abutting the Site, including the stepping back of the building at-grade to improve the pedestrian circulation along the Dundas Street West frontages, which will be increased by 1.5 metres and include an upgraded finish to the paving;
- 3) The owner shall contribute \$10,000 towards new non-profit daycare facilities providing licensed child care spaces to serve the current and future demand within the local area;
- 4) The owner shall contribute \$25,000 towards a multi-purpose / recreation (community health) facility for a changing array of programs to meet the needs of an evolving and growing population;
- 5) The owner shall contribute \$25,000 towards the acquisition of local parkland and improvement to local parks;
- 6) The owner shall provide pedestrian lighting and streetscaping as part of the Bloor by the Park BIA Streetscape Improvement Plan;
- 7) The owner shall contribute \$10,000 for the Bishop Morocco Greenspace Improvements;
- 8) The owner agrees to design and construct the building consistent with the Toronto Green Standards Checklist; and
- 9) The owner shall contribute \$10,000 towards public art for the community to be integrated within the project.

In summary, our client is hopeful that its proposed settlement, both in terms of the reduced and revised design, coupled with the Section 37 benefits noted above, including the replacement of rental housing units, results in City Council accepting the terms of settlement set out herein. More specifically, we would request that City Council pass a motion, in the form attached hereto, which will:

“direct your City Solicitor to immediately advise the Ontario Municipal Board of the City’s settlement of this outstanding appeal by its consent to amend the Bloor Dundas Avenue By-law so as to facilitate the settlement plans, with a final order not being issued until the applicant/owner executes a Section 37 Agreement securing the community benefits noted herein.”

Thank you for your consideration of this request.

Yours very truly,

Adam J. Brown
AJB/jn

cc: Mayor and Members of Council
Councillor Gord Perks
Mr. Babak Mortazavi, TAS Designbuild
Mr. Mazyar Mortazavi, TAS Designbuild

Bcc: Mr. Peter Walker, Walker Nott Dragicevic & Associates
Bcc: Mr. Alan Slobodsky

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