



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**693 Bathurst – Central Tech Dome – OMB Hearing -
Request for Directions Report**

Date:	February 9, 2015
To:	City Council
From:	City Solicitor
Wards:	Ward 20 – Trinity Spadina
Reason for Confidential Information:	This report relates to a litigation matter before the Ontario Municipal Board and includes advice that is subject to solicitor-client privilege.
Reference Number:	A0767/13TEY

SUMMARY

The purpose of this report is to seek Council's instruction with respect to the Toronto District School Board's appeal of the Committee of Adjustment's refusal of its minor variance application to permit it to partner with a private operator for the construction and operation of an athletic field and seasonal sports dome at Central Technical School (693 Bathurst) to the Ontario Municipal Board. An OMB-assisted mediation has taken place. The City Solicitor requires instruction for a pre-hearing that is scheduled for February 23rd, 2015, with a 10-day hearing scheduled to begin on June 15, 2015.

This report has been prepared in consultation with the Chief Planner and Executive Director, City Planning.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 2;
2. City Council authorize the public release of the confidential recommendations in Attachment 2, if adopted; and

3. City Council authorize the public release of the Confidential Attachments 2-A, 2-B, 2-C and 2-D at the discretion of the City Solicitor.

Financial Impact

The financial impact is addressed in the Confidential Attachment.

DECISION HISTORY

City Council on May 6, 7 and 8, 2014, directed the City Solicitor, with City Staff or outside consultants if necessary, to attend at the Ontario Municipal Board in support of the Committee of Adjustment decision to refuse Application A0767/13TEY for the property at 693 Bathurst Street:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE31.87>

The Community Planning Staff Report to the Committee of Adjustment dated March 24, 2014 is attached.

BACKGROUND

The Proposal

The Toronto District School Board ("TDSB") proposes to pair with a private operator, Raizenne Inc. to construct and operate an artificial turf field and running track, as well as a temporary dome structure with heating for use during winter months at 693 Bathurst Street (also known as "Central Technical School" or "Central Tech"). Central Tech staff and students would have use of the proposed facility throughout the school year during school hours and the facility would be permitted out by Raizenne Inc. to other users for profit outside of school hours.

Central Tech occupies the block bounded by Lennox Street, Harbord Street, Borden Street, within the *Downtown* area of the City of Toronto. It is designated *Neighbourhoods* in the City of Toronto Official Plan, and is zoned Residential (R4 Z1.0) in the applicable Zoning By-law No. 438-86.

The sports field in question has frontage on both Bathurst Street and Harbord Street. The school is generally located in the middle of a residential area, with some local commercial uses fronting Bathurst, Harbord and to the north on Bloor. It is a designated property under Part IV of the *Ontario Heritage Act*.

The Need for Zoning Relief

A private recreational facility is not a permitted use in this area, which is zoned for residential uses. TDSB properties benefit from a permissive exception in the applicable Zoning By-law 438-86 (provision 11(1)2 of 438-86, the "Permissive Exception"), which allows for new construction to occur on lands owned by the TDSB without the need for it

to comply with the requirements of the Zoning By-law, provided that the proposed use of the lands is "only for teaching or instructional purposes or purposes accessory thereto".

Because the proposed use is primarily a private commercial use and is not "only for teaching and instructional purposes", the Permissive Exception does not apply, and relief from the Zoning By-law is required.

Committee of Adjustment Application & Appeal

On October 7, 2013, Raizenne Inc., with the written consent of the TDSB applied to the Committee of Adjustment for minor variances to permit the use, and to increase the height for a small accessory building. The height variance has since been dropped and is no longer at issue.

The Committee of Adjustment hearing was initially scheduled for November 20, 2013 but was deferred three times to allow for further community consultation and to review the potential impact of the proposal. The circulation of the application had resulted in significant interest and concerns were raised by a number of community members, residents associations, the local Ward Councillor, and the neighbouring Councillor to the west. A number of working group meetings took place and efforts were made to resolve the concerns, but they did not result in consensus and no agreement was reached.

At its hearing on March 26, 2014, the Committee of Adjustment refused the variances. That decision was appealed to the Ontario Municipal Board on April 2, 2014.

An OMB pre-hearing was held on November 25, 2014. The TDSB, the City of Toronto, Raizenne Inc., the Palmerston Residents' Association/Harbord Village Residents' Association, the Friends and Neighbours of Central Technical School and Ceta Ramkhalawansingh all sought and were granted Party status and forty-seven individuals sought and were granted Participant status. At the request of the Parties, a mediation was scheduled to take place in January, 2015, and a further pre-hearing was scheduled for February 23, 2015 as well as a 10 day hearing for the weeks of June 15 and June 22, 2015.

Court Applications

Concurrent with their OMB appeal, the TDSB brought an application to the Superior Court for a declaration that the Permissive Exception allowed the proposed use as-of-right. The City disagreed, taking the position that the proposed use of the facility is not entitled to the benefit of the Permissive Exception because it is not "only for teaching and instructional purposes", and that the interpretation of the zoning examiner was correct.

In its decision dated June 13, 2014, the Superior Court agreed with the City's interpretation and dismissed the application. The TDSB then appealed the Superior Court Decision to the Divisional Court. In its decision dated September 30, 2014, a panel of the Divisional Court dismissed the appeal, agreeing with the City's interpretation and confirming that the proposed use did not fall within the exemption of the Permissive Exception.

Revised PPR Application

On December 10, 2014, counsel to Raizenne Inc. submitted a Preliminary Project Review ("PPR") request to the City, for a similar facility as what had previously been proposed. However, in its covering letter to the application, the proponent indicated that the facility was to be used "only for teaching and instructional purposes, including purposes accessory thereto", in accordance with the Permissive Exception. The application suggested that in addition to the use of the proposal by Central Tech students, the facility would be used outside school hours by community groups for instructional sports programs and other instructional recreational activities such as a gymnastics class, a children's soccer academy or an "instructional toddler time" led by instructors for the purpose of teaching the participants.

Raizenne's stated intent was to pursue a building permit for the revised proposal while concurrently pursuing its minor variance application for uses other than "teaching or instructional", so that if the OMB were not to grant the variance, Raizenne could still operate the facility but limit the use to those only for teaching and instructional purposes, including purposes accessory thereto. Toronto Building determined that the proponent had not provided enough information for staff to determine whether the revised proposal was permitted under the applicable Zoning By-law, and the PPR file was closed on January 8, 2015.

Environmental Issues

In October of 2013, as part of the soil testing work on the site, RMI discovered that surface soil sampling results indicated that the top soil and underlying fill layer had elevated polycyclic aromatic hydrocarbons and metal concentrations above the Ministry of Environment guidelines. This was confirmed by an environmental consultant in November of 2013. While exposure to the contaminants was deemed likely to be minimal and intermittent use of the field in the past not of concern, as a precautionary measure the consultant recommended that access to the field be prohibited until appropriate risk management measures could be put in place. The TDSB closed the field on November 22, 2013.

Heritage

The property is designated under the *Ontario Heritage Act*. The designation By-law identifies views to the school from both Herrick Street and the corner of Bathurst and Harbord Streets across the open space of the campus. Because a dome would obstruct those views/heritage attributes and have an impact on them, City Council approval for the construction of the dome would be required pursuant to Section 33.1 of the *Ontario Heritage Act*.

ISSUES

The proposed variance and proposal for a privately-operated sports facility at Central Tech raises a number of issues for the City and the community, including:

- the need for field improvements and remediation (the students of Central Tech have been without a field since November of 2013 due to environmental contamination);
- lack of accessible green space in the vicinity of Central Tech, and the need to secure appropriate community access to the facility (the school is located in an area of the City that has the lowest parkland provision, and the community has traditionally benefitted from free access to the field);
- the size and scale of the proposed dome and facility;
- parking and traffic concerns;
- the potential for noise and nuisance concerns as a result of the operation of the facility;
- the need to secure appropriate conditions of approval to ensure accountability and enforceability;
- the opportunity for streetscape improvements along Bathurst Street and Harbord Street, adjacent to the field.

These issues are discussed in more detail in the attached Confidential Information.

COMMENTS

The Parties to the hearing have engaged in an OMB-assisted mediation in respect of the TDSB's proposal. The City Solicitor requires instruction in respect of the OMB appeal, and the purpose of this report is to report on the mediation and to seek instruction for the appeal.

CONTACT

Sarah O'Connor, Solicitor, Planning and Administrative Tribunal Law
Tel: 416-397-5378; Fax: 416-397-5624; Email: soconno2@toronto.ca

SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1: Staff Report to the Committee of Adjustment
Attachment 2: Confidential Information

Attachment 1 – Staff Report to the Committee of Adjustment



STAFF REPORT Committee of Adjustment Application

Date:	March 24, 2014
To:	Chair and Members of the Committee of Adjustment Toronto and East York District c/o Anita MacLeod, Manager & Deputy Secretary-Treasurer Toronto and East York District
From:	Director, Community Planning, Toronto and East York District
Ward:	Ward 20, Trinity-Spadina
Reference:	File No: A0767/13TEY Address: 693 Bathurst Street Applicant: Toronto District School Board Agent: Matt Raizenne Application to be heard: March 26, 2014

RECOMMENDATION

City Planning Staff respectfully recommend that, should the Committee approve Application No. A0767/13TEY, the Committee impose the following list of conditions:

- 1) The Toronto District School Board (TDSB) enters into a Section 45(9) Agreement with the City of Toronto to the satisfaction of the Director of City Planning, Toronto and East York, and the City Solicitor to secure conditions that are substantially in accordance with those listed below:
 - a) TDSB will not permit anchor tenants, who schedule the field outside of school hours, to hold any regional tournaments.
 - b) TDSB will not schedule all four fields with the same start time. Instead, the scheduling of the fields will be staggered, such that two of the four fields are scheduled on the hour, and the remaining two fields are scheduled on the half-hour, both when the Dome is in place, and when the Dome is not in place.
 - c) TDSB will submit a parking management plan for the Dome to the satisfaction of the General Manager, Transportation Services that addresses:
 - Measures to control illegal parking at the Borden Street lot and arrangements for removal of derelict vehicles;
 - Securing overflow parking at Harbord Collegiate and King Edward School;

- Coordinating scheduling of fields with school events and advising Dome users when the Borden Street lot is reserved for school events including redirecting sports users to other parking lots;
 - Adding an entrance at the south end of the Borden Street parking lot, at the expense of TDSB, and converting the current entrance to an exit, subject to permits from the City's Right-of-Way management unit;
 - Notifying all anchor tenants of, and promoting, alternative modes of transportation, and alternate parking lots including the requirement for the anchor tenant to advise all users of the Dome of these alternatives.
- d) TDSB will establish a Facility Management Team (FMT) with membership to the satisfaction of the City and TDSB, which will include TDSB, the local community, and the City of Toronto.
- e) TDSB, and its anchor tenants, will reserve time for community use of the Dome, track, and field as follows:
- When the Dome is not in place, 5% of all permitted time (outside of school hours) for the field(s) will be available for community access free of charge. These hours may be reallocated to times when the Dome is in place, subject to the agreement of the FMT;
 - When the Dome is in place, free of charge access to the track will be available to seniors from the local community from 8:00 am to 10:00 am on Mondays, Wednesdays, and Fridays;
 - When the dome is not in place, free of charge community access to the track will be unrestricted when not being permitted;
 - Exact hours to be reserved to allow free of charge community access times will be agreed upon by the proposed FMT, conditional on responsible use of the facilities by the community.
 - Dogs and pets are restricted from school property at any time.
- f) The Dome will be subject to any requirements of the Toronto Building division and Heritage Preservation Services at the time of building or other permits
- g) Any signage related to the Dome will be subject to the City's Sign By-law and Heritage Preservation Services Review.
- h) TDSB will remove the existing fence on Bathurst Street and replace it with a new decorative fence which is to be relocated to the east of the existing row of trees along the east side of Bathurst Street. TDSB will be responsible for the funding

for, and maintenance of, the new decorative fence. In addition, the trees and landscape between the fence and City sidewalk on the east side of Bathurst Street will be maintained by TDSB. The design of the fence will be to the satisfaction of the Manager, Heritage Preservation Services (HPS) and the existing trees along the east side of Bathurst Street will be required to be protected to the satisfaction of the Director, Urban Forestry.

- i) Should the City elect, TDSB will work with the City to improve the Harbord Street frontage of the field as follows:
- Replace the fence fronting the north side of Harbord Street with a new decorative fence to the satisfaction of the Manager, HPS and setting the new fence back a minimum of 7 metres from the TDSB south property line;
 - Entering into a Community Use Agreement for TDSB lands fronting the north side of Harbord Street to the south of the new fence;
 - Capital improvements for soft landscaping, hard landscaping, seating, and lighting of these lands are to be carried out by the City's Transportation Services at the cost of the City of Toronto.
 - The lands, as governed by the Education Act, public access will be restricted to times outside of school operating hours (7:00 am to 6:00 pm on all school days).
- j) The Section 45(9) Agreement will acknowledge that the variances sought in this application are conditional upon the owner entering into, and maintaining in effect, the Section 45(9.1) Agreement, and that the agreement may be terminated if the license agreement for the Dome expires or is terminated.

APPLICATION

The application proposes to construct a seasonal dome (October to March of each year) over the track and field at Central Technical School, and a permanent utility building at the north end of the field to be used for air handling purposes, emergency access, and storage.

COMMENTS

Section 45 of the Ontario Planning Act sets out powers granted to the Committee of Adjustment. Section 45(9) of the Act states that any authority or permission granted by the Committee may be for such time, and subject to, such terms and conditions as the Committee considers advisable and are set out in the decision.

This application was first deferred at the November 20, 2013 Committee of Adjustment hearing, and deferred again at the January 22, 2014 Committee of Adjustment hearing, to

allow for further community consultation and a detailed review of the impact of the proposal. On February 19, 2014, the Committee deferred, for the last time, to the March 26, 2014 hearing.

The site is located at Central Technical School, which occupies a full City block bounded by Bathurst, Lennox, Harbord, and Borden Streets. The sports field faces the street, having frontage on both Bathurst Street and Harbord Street. The site is designated *Neighbourhoods* in the City of Toronto's Official Plan. The site is zoned Residential (R4 Z1.0) in the Zoning By-law 438-86, as amended.

The application proposes a permanent building of 6.1 metres in height and 48 square metres in gross floor area at the north end of the track. The applicant is seeking a variance for height on this accessory building from the maximum permitted height of 4 metres. This purpose of this permanent building, attached to the dome, is to handle the air necessary to inflate the dome, and to provide for emergency access and storage. The proposed sports dome is 24.3 metres in height, covering the track and field and would be in place between October and March of each year. The applicant is also seeking a variance from the permitted use of the land, as any land, building or structure owned by the Toronto Board of Education since June 16, 1986, can be used only for teaching or instructional purposes. While the school will use the dome during school hours, the proposed sports dome will also be available for private use after school hours, and possibly during school hours when not utilized by the school.

On January 22, 2014, City Planning Staff requested a deferral to resolve outstanding issues related to community access for the local residents, potential heritage designation of Central Technical School, the impact on local traffic and parking resulting from increased use of the sports field, and potential environmental issues arising from the replacement of grass with artificial turf. City Council, at its meeting on March 20, 2014, stated its intention to designate the property at 693 Bathurst Street under Part IV, Section 29 of the Ontario Heritage Act. Heritage Preservation Services has indicated that, since the proposed dome will be temporary, there are no issues from a Heritage perspective.

City Staff have continued to evaluate the various impacts of the proposal with respect to its parking and traffic, community use, heritage, open space on Bathurst Street and Harbord Street and environmental issues. Since the February 19, 2014 Committee of Adjustment hearing, there have been regular working group meetings that have resolved many issues. This progress is outlined below.

Parking and Traffic

The applicant has provided updated information on traffic and parking and held a series of meetings with City staff. As a result of these meetings, the TDSB has agreed to measures to manage traffic and parking impacts on the neighbourhood as outlined in conditions 1) a, b, and c at the front of this report. The applicant has not agreed to one of the recommended conditions that requires a second entrance to be added to the Borden Street parking lot which is owned by the TDSB. City Staff are recommending the second

entrance to reduce traffic congestion at the current single entrance as cars are queuing to get in and out of the parking lot.

The success of these conditions will be contingent on active management and enforcement by TDSB and its tenants on the property.

Planning Staff has consulted with Transportation Services staff who agree with these conditions.

Community Use

TDSB has agreed to providing time on the track and field that will be available to the community, free of charge, as listed in condition 1) e. In addition, TDSB has agreed to establish a Facility Management Team to maintain an ongoing dialogue with the City as long as there is a privately operated sport dome at Central Technical School. TDSB has requested that the FMT membership be limited to members of the community, local BIAs, and City and TDSB staff.

Heritage

Heritage Preservation Services staff have provided comment on the application under separate cover. Conditions 1) f, and g relate to heritage.

Open Space on Bathurst and Harbord Street Frontages

There has been a productive discussion on landscape improvements around the new facility. TDSB has agreed to move the fence on Bathurst Street east to improve the greening and streetscape on Bathurst. The new fence will be a decorative fence, more complementary to the heritage building.

On Harbord Street, TDSB has agreed to continue to work with the City to improve this frontage. These conversations are ongoing and will require input from the Ward Councillor, the local community and BIAs.

The open space conditions are secured in conditions 9 and 10 at the front of this report.

Environmental Issues

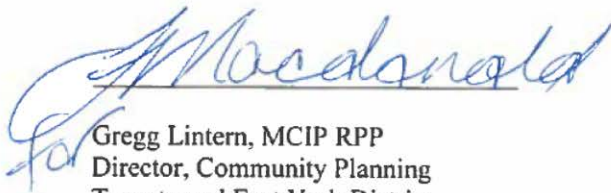
There has been much debate about the environmental impact of the sports dome, and in particular, the proposed artificial turf. Both the City and TDSB are committed to environmental sustainability, and both are involved in ongoing study of artificial turf at their respective facilities. There is no clear direction on this issue yet. City Staff will continue to work with TDSB on best practices to minimize any heat island or other effects of the facility. City Staff has also raised the suggestion of permeable, light coloured materials or soft landscaping to replace asphalt paving around the facility wherever possible.

City Planning Staff respectfully recommend that, should the Committee of Adjustment approve Application No A0767/13TEY, the Committee require the applicant enter into an agreement under Section 45(9) of the Planning Act to secure the conditions of approval described in this report.

CONTACT

Kirk Hatcher
Assistant Planner
Tel: 416 392-0776
Fax: 416-392-1330
E-mail: khatche@toronto.ca

SIGNATURE



for
Gregg Lintern, MCIP RPP
Director, Community Planning
Toronto and East York District

Copy: Councillor Adam Vaughan, Ward 20, Trinity-Spadina
Mathew Raizenne, Agent