



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Court Applications by Toronto Port Authority and Porter Airlines Inc.

Date:	July 9, 2007
To:	City Council
From:	City Solicitor
Wards:	Trinity – Spadina, Ward 20
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This is a report seeking instructions regarding two court applications that have recently been served on the City of Toronto. The court applications have been brought by the Toronto Port Authority (“TPA”) and Porter Airlines Inc. in respect of certain actions taken by the City of Toronto that concern the Toronto City Centre Airport (“TCCA”). The applicants seek certain declaratory relief relating to a lease agreement between the City and the TPA and recent actions taken by the Toronto and East York Community Council in respect of parking in the vicinity of the TCCA on Bathurst Street south of Queens Quay (now known as Eireann Quay).

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1 and;
2. The Confidential Attachment remain confidential as it contains information subject to solicitor-client and litigation privilege.

FINANCIAL IMPACT

The relevant financial information is addressed in the confidential Attachment 1.

DECISION HISTORY

Toronto and East York Community Council, at its meeting of February 13, 2007, considered a communication (February 13, 2007) from Councillor Adam Vaughan (reference Report TE3.76) and requested that the Director, Transportation Services, Toronto and East York District report back to Community Council on:

1. the cost of building a sidewalk on the west side of Bathurst Street from Queens Quay to the end of the road, which would result in the sidewalk being constructed square to the southwest corner of Queens Quay West and Bathurst Street and eliminating the parks bay located in the northeast corner of Little Norway Park; and
2. the cost of landscaping the lower corner so as to extend the park to the northeast corner of the intersection.

In response to this request, staff submitted a report dated April 17, 2007 which was considered by the Toronto and East York Community Council at its meeting on May 1, 2007 <http://www.toronto.ca/legdocs/mmis/2007/te/bgrd/backgroundfile-3027.pdf>. The staff report recommended the approval of the construction of a sidewalk on the west side of Bathurst Street, immediately west of lands leased to the TPA, in an alternative configuration to address certain access and safety concerns raised by the City's Transportation, Emergency and Fire Services officials. Instead of adopting the staff recommendations at its meeting of May 1, 2007, Community Council did the following:

1. approved the construction of a sidewalk on the west side of Eireann Quay (Bathurst Street) adjacent to the road, based on Attachment 2 included in the report (April 17, 2007) from the Director, Transportation Services, Toronto and East York District, referred to as Drawing #421F-8777;
2. directed that the design be amended to include plantings and planter boxes, and/or a fence, on the west side of the sidewalk to address safety concerns identified by City staff and that the location of the planters be approved by the Ward Councillor;
3. directed that the west side of Eireann Quay (formerly Bathurst Street) adjacent to the BQ1 lands (the lands leased to the TPA), be designated as a fire route with no stopping at any time to address the safety concerns raised by Toronto Fire Services about the need to have free and clear access to the Ferry Terminal in the event of a catastrophe, emergency or evacuation situation at the island airport.

On June 25, 2007, the TPA and Porter Airlines commenced their court applications. The applications are scheduled to be heard on September 10, 2007. At its meeting on June 26, 2007, the by-law was adopted by Community Council dealing with the no-stopping requirements on Eireann Quay.

ISSUE BACKGROUND

The City leases certain lands to the west of Eireann Quay to the TPA for the purpose of access and parking for the TCCA. In light of the new ferry terminal, the TPA wishes to reconfigure these lands to accommodate taxi queuing and parking. The TPA has repaved the leased lands and marked out queuing lanes. A photograph of the leased lands depicting the current configuration is attached. The TPA has sought approval from the City to remove five parking curbs along with the realignment of the lot from an east-west direction to a north-south alignment.

The court applications seek certain declaratory relief against the City. Essentially, the applicants are challenging the actions taken by the Toronto and East York Community Council and, in addition, the City's failure to approve the application by the TPA to City staff to allow it to remove certain parking curbs so that it can use the leased lands in the manner proposed. The TPA is seeking an order from the court requiring the City to approve the TPA's application to remove the parking curbs and an order from the court quashing the actions taken by Community Council.

The TPA asserts in its court materials that in early 2006, the TPA and its agents, notified the City of a forthcoming application for approval of minor work on the leased lands which essentially involves fresh pavement, changes to the pavement markings and the removal of five parking curbs so that these lands can be used for improved access including parking, to the TCCA. The court application alleges that the City has failed or refused to respond in good faith. Instead of approving the TPA's application, the City has taken the steps described above through the Community Council. The applicants allege that the effect of this is to make it unlawful for taxis or any other vehicles to stop on the street. It is alleged that this, combined with the City's refusal to approve the application to remove the curb stones, interferes with the safe use and operation of the TCCA by preventing available transit (including taxis and buses) from access to the TCCA. The court applications allege that the actions taken by Community Council were done in bad faith in furtherance of certain City Councillors' objectives to shut down or interfere with the operations of the TCCA. The applicants also rely upon the Tri-partite Agreement governing the TCCA which includes a provision that the parties to the agreement (which includes the City) are not to interfere with the safe use and operation of the TCCA.

Transportation Services has installed the "no stopping" signs on Eireann Quay but they have been covered up pending the enactment of the by-law (which occurred at the June 26, 2007 Community Council meeting) and the City Solicitor being able to obtain instructions from City Council in order to respond to the court applications.

COMMENTS

The attached confidential report comments on the court applications and seeks instructions on responding to those applications.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

1. Confidential Report
2. Attachment 3 to the Report dated April 17, 2007 from the Director, Transportation Services Toronto and East York District
3. Photograph of leased lands