



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Request for directions regarding the January 8, 2013,
OMB hearing re 770 Lawrence Avenue West and 3083-
3095 and 3101 Dufferin Street – Zoning appeal**

Date:	November 28, 2012
To:	City Council
From:	City Solicitor
Wards:	Ward No. 15 – Eglinton Lawrence
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:	File No. 12 140740 NNY 15OZ (X-REF. 07 283458 NNY 15 OZ)

SUMMARY

The applicant proposes to amend Zoning By-law 617-2012 (OMB) for 770 Lawrence Avenue West, 3083-3095 and 3101 Dufferin Street (the Site") to redistribute the approved density over the Site from Block 2 to Block 1. This results in tower heights increasing from 24 storeys to 29 storeys and from 20 storeys to 25 storeys along Lawrence Avenue West. The amendment also seeks to permit a 1,600m² retail use on Block 2 (the Shoppers Drug Mart store) to remain for 20 years, rather than the presently permitted 3 years. The owner appealed its rezoning application citing Council's lack of decision on the applications within the time frame specified by the *Planning Act*.

The Ontario Municipal Board (the "OMB") has now set a four day hearing commencing January 8, 2013 to hear the appeal.

Discussions have been held with the owner, which have resulted in the need for further directions from City Council for the hearing.

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 together with Attachments 1 through 8, if adopted, and the balance of the report to remain confidential.

Financial Impact

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

DECISION HISTORY

There are no Council decisions respecting the present application. However the following sets out the history leading to the present zoning application.

Applications were submitted on November 20, 2007 (Zoning By-law Amendment) and December 20, 2007 (Draft Plan of Subdivision) to permit a mixed-use redevelopment of the subject lands including 15,200m² of non-residential space and 1,880 residential units in a series of point towers and mid-rise buildings. The applications also sought to establish a public road through the site connecting Lawrence Avenue West to Dufferin Street and create a public park in the centre of the site.

A Preliminary Report was prepared for these applications dated March 6, 2008 and considered by North York Community Council on April 8, 2008. The report can be found at:

[Http://www.toronto.ca/legdocs/mmis/2008/ny/bgrd/backgroundfile-11453.pdf](http://www.toronto.ca/legdocs/mmis/2008/ny/bgrd/backgroundfile-11453.pdf)

The applicant appealed the proposed zoning by-law amendment and subdivision applications to the Ontario Municipal Board, citing council's lack of decision on the applications within the time frame specified by the *planning act*. A request for direction report dated November 3, 2009 was prepared by city planning staff for the North York Community Council meeting of november 10, 2009. The report can be found at:

[Http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-25260.pdf](http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-25260.pdf)

The request for direction report described the proposal as having a total of 1,700 residential units and 7,500m² of commercial space over the entire 3.8 hectare site, which reflected the revised proposal being reviewed by city planning staff at the time. The overall floor space index of this proposal was 3.7 times the lot area.

At its meeting of December 1, 2, 4 and 7, 2009, city council directed the city solicitor and appropriate staff to attend the Ontario Municipal Board hearing to oppose the proposed zoning by-law amendment and draft plan of subdivision applications in their current form. In addition, city council directed the city solicitor and city staff to meet with the applicant and the community to negotiate a possible settlement for the matter.

A copy of the Council direction can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.doitem=2009.NY29.33>

As a 9-day Ontario Municipal Board hearing was scheduled to commence on February 23, 2010, a community meeting was held on January 21, 2010. As a result of the discussions between City staff, the applicant and members of the community at this meeting, City Legal staff required further direction from City Council in advance of the February 23, 2010 hearing. A report was prepared by the City Solicitor dated January 25, 2010 recommending that Council accept a proposal by the owner to settle the outstanding issues with the City.

This settlement proposed that the City and owner would jointly request that the Board allow the appeals and approve a Zoning By-law Amendment, Draft Plan of Subdivision and Draft Plan of Subdivision Conditions to permit the proposed development of the lands in accordance with the following:

- A maximum gross floor area of 122,667 m² (reduced from 139,700 m²);
- A maximum of 1,500 dwelling units (reduced from 1,700 units);
- Maximum tower heights of 15 storeys on Dufferin Street, 24 storeys at the corner of Dufferin Street and Lawrence Avenue West and 20 storeys on Lawrence Avenue West (reduced from 26, 31 and 25 storeys, respectively);
- Maximum tower floor-plates of 750 m² gross floor area (reduced from 800 m²);
- The two storey building on Block 1 to be replaced with a 12-storey building;
- The east/west portion of the future public street, and its associated driveway, to be shifted approximately 11-12 metres northward;
- A minimum of 6% of the dwelling units constructed on the site to have three or more bedrooms; and
- The area of the new public park dedication to be a minimum of 6,985.6 m².

The proposed settlement also contained a number of other details relating to Section 37 and conditions relating to the Draft Plan of Subdivision. The settlement proposal attached to the City Solicitor's report and adopted by City Council can be found at:

<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-27064.pdf>

By its Decision issued on March 19, 2010, the Ontario Municipal Board allowed the appeals to amend Zoning By-law No. 7625 of the former City of North York and to approve the associated Draft Plan of Subdivision, subject to conditions. The Board withheld its Order until it was advised by the City Solicitor that the Section 37 Agreement was completed and that the Technical Services Director was satisfied that water pressures and flows were adequate to service the development.

Acting upon a request from the owner, in an Interim Order dated November 8, 2010 the Board exercised its authority pursuant to s. 43 of the *Ontario Municipal Board Act*, to alter its previous Decision and make revisions to the proposed Zoning By-law to enable the applicant to erect a temporary sales presentation centre on the site. This presentation centre is currently located at the corner of Lawrence Avenue West and Dufferin Street and is marketing the development under the name “Treviso”.

On November 30, 2011 the City Solicitor advised that Board that the Board could issue its Final Order in this matter.

As a result of a further request by the owner, the Board again exercised its authority pursuant to s. 43 of the *Ontario Municipal Board Act* to alter its previous Decision and made the following revisions to the proposed Zoning By-law:

- a) To modify By-law No. 7625 to allow an existing retail store including accessory medical professional offices, to be relocated within the lands for a three year period ending November 30, 2014; and
- b) To clarify the requirement that the owner register a Plan of Subdivision prior to the issuance of a building permit for the 511th dwelling unit to specify that the Plan of Subdivision must be registered by the owner prior to the issuance of an above grade building permit for the 511th dwelling unit.

Zoning By-law 617-2012 (OMB) is the resulting By-law that implements the Ontario Municipal Board decision dated December 16, 2011.

ISSUE BACKGROUND

Discussions have now been held with the owner, which have resulted in the need for directions from City Council for the January 8, 2013 OMB hearing.

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 by Council in conference.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENT

Attachment 1 - Confidential Information - Request for directions regarding the January 8, 2013 OMB hearing regarding 770 Lawrence Avenue West, 3083-3095 and 3101 Dufferin Street.