



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

621 King Street West - Appeal to Divisional Court of Ontario - Municipal Board Decision Approving Minor Variances

Date:	January 24, 2012
To:	Planning & Growth Management Committee
From:	City Solicitor
Wards:	Ward 20 – Trinity-Spadina
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege. This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	

SUMMARY

At its meeting of March 8 and 9, 2011 City Council directed that the City Solicitor seek leave to appeal an Ontario Municipal Board decision released on February 16, 2011. The Board decision approved nine minor variances, thereby permitting one 11 storey building and one 12 storey building on the former Travelodge Motel site at 621 King Street West in the King-Spadina area of the City.

The City opposed the development application at the two day Ontario Municipal Board hearing and the City Solicitor recommended that the City seek leave to appeal the Board's decision to the Divisional Court due to a number of potential errors of law in the Board's decision. The City Solicitor was successful in obtaining leave of the Divisional Court to appeal the Board's decision to a full three judge panel of the Court. The appeal was heard on October 27, 2011.

On December 7, 2011, the Divisional Court released its decision dismissing the City's appeal. The Court found that substantial deference was owed to the Ontario Municipal

Board and that since the Board was exercising its judgement within its own specialized area of expertise, the decision approving the minor variances should be allowed to stand.

The purpose of this report is to provide comments and advice respecting the Divisional Court's decision.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council receive this report for information.
2. City Council direct that Confidential Attachment 1 remain confidential as it contains advice that is subject to solicitor-client privilege and potential litigation.

Financial Impact

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

COMMENTS

Section 96 of the Ontario Municipal Board Act permits an appeal of an Ontario Municipal Board decision to the Divisional Court but only with leave and only on a point of law. The City's Motion for leave to appeal the Board's decision was granted on June 1, 2011 on three questions of law. The full panel of the Court heard the City's appeal on November 27, 2011 and released its decision on the appeal on December 7, 2011.

CONTACT

Brendan O'Callaghan
Solicitor, Planning and Administrative Tribunal Law, Legal Services
Telephone: 416-392-7786; Fax: 416-397-5624; E-mail: bocallag@toronto.ca

SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1: Confidential Information