



**STAFF REPORT  
INFORMATION ONLY**

**595 Bay Street and 306 Yonge Street Zoning By-law  
Amendment Application – Item TE28.6  
Obligations Under Previous Development Agreements**

<b>Date:</b>	December 12, 2013
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 27 - Toronto Centre-Rosedale
<b>Reference Number:</b>	13 166022 STE 27 OZ

**SUMMARY**

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Toronto and East York Community Council has requested the City Solicitor to report directly to the December 16, 2013 meeting of Council to provide information on any of the City’s legal obligations under two related agreements pertaining to lands located northeast of Bay Street and Dundas Street West (the “Development Lands”). The first agreement is a development agreement that stemmed from the settlement of an Official Plan amendment appeal in 1978 (the “Development Agreement”). The second agreement is a private density transfer agreement entered into by the owners of the properties located within the Development Lands (the “Density Transfer Agreement”). Both agreements were registered on title to all properties within the Development Lands in 1979.

Counsel for the owner of 633 Bay Street (MTCC 723) has made a claim that the City has no jurisdiction to process or approve the current Zoning By-law amendment application for 595 Bay Street and 306 Yonge Street (the “Current Zoning Amendment Application”) without the consent of all parties to either agreement. The City is a party to the Development Agreement, however the City has no obligations under this agreement when determining the merits of the Current Zoning Amendment Application. The Development Agreement contains a provision that states any successor Council is not bound to any provision in the agreement when determining the merits of a future Zoning By-law amendment application. This is consistent with the City’s statutory obligation under the *Planning Act* to process and make a decision on any new application to amend the Zoning By-law. The City is not a party to the Density Transfer Agreement and therefore has no obligations relating to it.

## **Financial Impact**

There are no financial impacts as a result of this report beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

As part of a 1978 appeal of an application to amend the former City of Toronto Official Plan, a settlement was reached between the City and the property owners within the Development Lands. The Official Plan amendment was approved by the Ontario Municipal Board (the "OMB") in 1978. On October 5, 1979 the Development Agreement was executed by the parties, implementing the settlement and outlining how future development should proceed on the effected lands. The former City of Toronto enacted By-law 522-79, implementing the development of the lands as proposed within the Development Agreement. On November 7, 1979 the Density Transfer Agreement was entered into by all of the property owners within the Development Lands, and this agreement contained obligations and restrictions regarding the future development of the lands.

## **ISSUE BACKGROUND**

MTCC 723, a party to both the Development Agreement and the Density Transfer Agreement, is claiming that the City has no right, title or authority to process or make any determination on the merits of the Current Zoning Amendment Application without the consent of all parties to either agreement. The Density Transfer Agreement contains a specific provision that requires the consent of all parties to the agreement prior to any party submitting an application for a Zoning By-law amendment unless the proposed amendment does not prejudice or impose any additional obligations on any other property within the Development Lands.

This report provides information that is contrary to MTCC 723's position that the City has obligations under either agreement that prevent the processing of the Current Zoning Amendment Application, and in fact the City currently has an obligation under the *Planning Act* to process and make a determination on the merits of the Current Zoning Amendment Application.

## **COMMENTS**

City Council should make a determination on the Current Zoning Amendment Application for the following reasons:

- The City is obligated under the *Planning Act* to process and make a determination on any application to amend its Zoning By-law, provided the prescribed information and materials are submitted to the City.

- The City is not party to the Density Transfer Agreement and is therefore not bound by a provision requiring the consent of all parties of the agreement prior to the submission of any Zoning By-law amendment application that prejudices any other party.
- The City is a party to the Development Agreement, however, this agreement contains a provision that any future Council for the City is not bound by the agreement when a future application to amend the Zoning By-law is made by any party. This is consistent with the notion that a decision cannot be made by Council that would fetter the discretion of Council in the future.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski, City Solicitor