

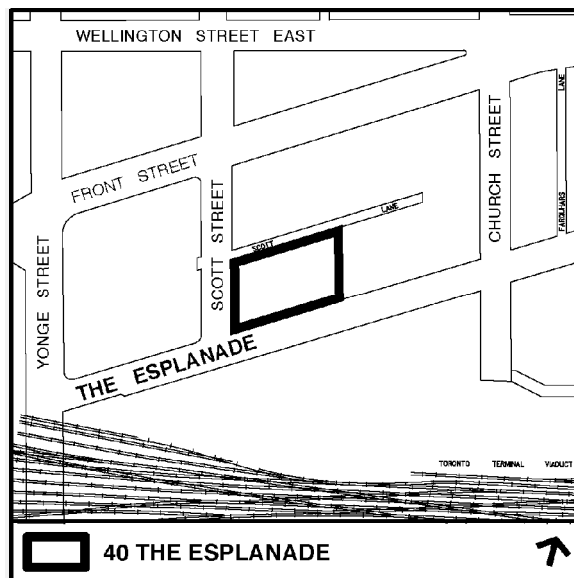
40 The Esplanade (now known as 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street) - City Initiated Amendment to Official Plan Amendment No. 342 and Site Specific Zoning By-law – Supplementary Report

Date:	May 24, 2013
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 28 – Toronto Centre-Rosedale
Reference Number:	04 108075 STE 28 OZ

SUMMARY

By way of Order No. 2799 issued on October 3, 2006, the Ontario Municipal Board approved Official Plan Amendment No. 342 (By-law No. 25-2007) of the Official Plan for the former City of Toronto and site specific Zoning By-law No. 26-2007 to permit a mixed use development with two residential condominium towers and retail uses at grade on the lands known in 2006 as 40 The Esplanade, now known as 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street (the "subject Lands"). A Section 37 Agreement was entered into, which required the Owner of the lands to, amongst other matters, contribute \$700,000 (with indexing) towards the creation of a municipal park on the lands bordered by The Esplanade, Market Street, Wilton Street and Lower Jarvis Street (known municipally as 125 The Esplanade).

This report recommends that Official Plan Amendment 342 and By-law No. 26-2007 be amended to direct the Section 37 funds



originally allocated the creation of the park to be reallocated to local parkland creation or improvements and/or local streetscape enhancement projects, including in particular the Market Street Streetscape Improvement Project and improvements to Scott Lane and Scott Street in the vicinity of the Subject Lands.

The Market Street Streetscape Improvement Project is a road narrowing and flexible boulevard project on Market Street between Front Street East and The Esplanade, less than two blocks east of the subject property. Any remaining unused portion of the funds would be directed to local parkland creation or improvements and/or local streetscape enhancement projects.

This report further recommends that the Section 37 Agreement for the Subject Lands be amended to reflect the reallocation of the \$700,000.00 cash contribution (now approximately \$738,674 with interest).

The address of this development was changed in 2009 from 40 The Esplanade to 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street. Previous staff reports, Council decisions and communications with the public have referenced this development using the 40 The Esplanade address. The implementing Official Plan and zoning by-law amendments will reflect the current municipal addresses.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council amend Official Plan Amendment 342 to reallocate the portion of the Section 37 financial contribution for the lands now known as 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street (formerly 40 The Esplanade) originally directed towards the creation of a municipal park, to local parkland creation or improvements and/or local streetscape enhancement projects, including in particular the Market Street Streetscape Improvement Project and improvements to Scott Lane and Scott Street in the vicinity of such lands as set out in this report, substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 1 to the report (May 24, 2013) from the Director, Community Planning, Toronto and East York District;
2. City Council amend Site Specific Zoning By-law No. 26-2007 to reallocate the portion of the Section 37 financial contribution as set out in Recommendation 1 of this report, substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 2 to the report (May 24, 2013) from the Director, Community Planning, Toronto and East York District;
3. City Council authorize the City Solicitor, in consultation with relevant City staff, to amend site specific Official Plan Amendment 342, Site Specific Zoning By-law

- No. 26-2007 and the registered Section 37 Agreement for such lands to reflect the reallocation of the \$700,000 (and accumulated interest) cash contribution as set out in Recommendations 1 and 2;
4. City Council authorize the appropriate City officials to take the necessary action to give effect to the above, including execution of the amending Section 37 Agreement and appropriate redistribution of the original cash contribution made to the City by the owner as applicable; and
 5. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendment and Zoning By-law Amendment as may be required.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

Pursuant to Ontario Municipal Board Order No. 2799 issued on October 3, 2006 site specific Official Plan Amendment No. 342 (By-law No. 25-2007) and site specific Zoning By-law No. 26-2007 were approved. The Ontario Municipal Board approved site plans and drawings for the Subject Lands in Decision Order No. 3023 issued on October 26, 2006. Together, these approvals permitted the development of two residential condominium towers with a five storey podium and retail uses at grade.

The Final Report, 40 The Esplanade – City Initiated Amendment to Site Specific Zoning By-law dated August 7, 2012 has been deferred at several City Council meetings starting with the October 2, 3, 4, 2012 meeting.

At the May 7 and 8, 2013 City Council meeting, City Council referred the Final Report dated August 7, 2012 – 40 The Esplanade – City Initiated Amendment to Site Specific Zoning By-law back to Toronto East York Community Council and directed staff to prepare a draft Official Plan Amendment for the proposed Section 37 reallocation for the Subject Lands for consideration at a statutory public meeting at the June 18, 2013 Toronto and East York Community Council meeting.

COMMENTS

Section 37 Agreement

The Section 37 Agreement, entered into as part of the approvals process for the then-proposed development on the Subject Lands, was registered as Instrument No. AT1168989 on June 15, 2006. Section 3 of the Agreement requires the owner to pay to the City \$700,000.00 “... as a contribution towards the creation of a municipal park on the lands bordered by The Esplanade, Market Street, Wilton Street and Jarvis Street [municipally known as 125 The Esplanade] ...” This payment has been received by the City and through interest is now at approximately \$738,674. The development has been

constructed and is occupied however none of the Section 37 contribution monies have been spent to date.

At its meeting on January 10, 2012 Toronto and East York Community Council approved proposed alterations to Market Street between Front Street East and The Esplanade, outlined in the December 16, 2011 Staff Report from Transportation Services: <http://www.toronto.ca/legdocs/mmis/2012/te/bgrd/backgroundfile-43499.pdf> Community Councils have delegated authority from City Council to deal with such matters, therefore this approval is considered a Council approval.

The proposed alterations include a road narrowing and flexible boulevard on the west side of Market Street, as identified in drawing 421G-0531, dated December 2011, (See Attachment 3 of this report). In order to implement these alterations, work needs to be completed in conjunction with final streetscaping work associated with a new development at 10-12 Market Street. The re-allocated funds will assist with completion of this project.

Given the longer than anticipated current timeline for the development of the park at 125 The Esplanade, there is an opportunity to reallocate the funds originally earmarked for this park to local parkland creation and/or improvements and/or to local streetscape enhancement projects which may include in particular the Market Street Streetscape Improvement Project and improvements to Scott Lane and Scott Street in the vicinity of the Subject Lands. It is not anticipated that the reallocation of the funds will delay or affect the creation of a park at 125 The Esplanade, as the park's establishment is contingent upon the completion of the redeveloped North Market at 92 Front Street East.

The site at 125 The Esplanade will be the site of a temporary building that will house the functions of the St. Lawrence Market North building until the new building is completed. The design for the new North Market was selected through an international design competition although a Site Plan Control application has not yet been submitted for the winning design. It is likely that the new North Market building will not be completed until 2016, leaving three years for new funding to be allocated to the creation of the new park at 125 The Esplanade.

Letters of concern dated September 5, 2012 and February 19, 2013 were received from Scott & Esplanade Residences Inc. (the developer of the Subject Lands) and Scott & Esplanade Holdings Inc. (the commercial condominium owner at the Subject Lands) regarding the August 7, 2012 Planning Staff report concerning the recommended reallocation of the Section 37 funds.

On April 1, 2013, the solicitors for Scott & Esplanade Residences Inc. and Scott & Esplanade Holdings Inc. contacted staff advising of their willingness to meet but indicated that they were unable to meet until mid April. In a report dated April 2, 2013 staff requested a further deferral to the May 7 and 8, 2013 City Council meeting. On April 23, 2013 Planning Staff met with representatives of Scott & Esplanade Residences Inc. and Scott & Esplanade Holdings Inc., the local Councillor, City Legal, and Parks,

Forestry and Recreation staff to discuss the matter. At the meeting public realm and parks projects that are underway were discussed. Staff have prepared revised wording for the Section 37 benefit to address concerns expressed. Subsequent to the meeting, Planning Staff also met with the City of Toronto Public Realm staff to discuss the matter.

A meeting was held on May 3, 2013 with representatives from TSCC 2035 – London on the Esplanade, which is the residential condominium corporation for the Subject Lands. A consensus on the Section 37 reallocation was achieved with all in attendance at that time.

In a report dated April 30, 2013 to City Council, Planning staff reported that the Section 37 reallocation will require an Official Plan Amendment as well as a zoning by-law amendment. As public meeting notice was not given for the required Official Plan Amendment, staff recommended that the matter be referred back to Toronto and East York Community Council and City Council direct staff to prepare a draft Official Plan Amendment along with the draft Zoning By-law Amendment for consideration at a statutory public meeting at the June 18, 2013 Toronto and East York Community Council meeting.

Official Plan

The proposed reallocation of the Section 37 contribution towards local parkland creation or improvements and/or local streetscape enhancement projects, including in particular the Market Street Streetscape Improvement Project and improvements to Scott Lane and Scott Street in the vicinity of the Subject Lands is consistent with the policies in the City of Toronto Official Plan. Policy 2.2.1.11 in the Downtown Accessibility and Mobility Section of Chapter Two states that "A program of street improvements will be developed to enhance the pedestrian environment and measures undertaken to make it safer to walk and cycle in the Downtown." Policy 6 in Section 5.1.1 of the Official Plan, discussing eligible Section 37 community benefits for a development project, identifies "streetscape improvements on the public boulevard not abutting the site". The proposed Market Street Streetscape Improvement Project as well as Scott Street and Scott Lane improvements do not abut the Subject Lands and are Council approved streetscape improvements.

The recommended amendment to the Official Plan is included in the draft Official Plan Amendment attached as Attachment No. 1 of this report.

Zoning By-law No. 26-7007 (OMB)

Section 1 (15) of the site specific Zoning By-law (By-law No. 26-2007) contains specific reference to the nature and amount of the community benefits to be provided and to be secured in the Section 37 Agreement. Accordingly, amendments to both the Section 37 Agreement and Section 1 (15) of site specific Zoning By-law No. 26-2007 are required in order to reallocate the Section 37 funds from the park to local parkland creation or improvements and/or the Market Street Streetscape Improvement Project and/or improvements to Scott Lane and Scott Street in the vicinity of the Subject Lands, as recommended in this report.

The revised community benefits recommended to be secured through amendments to the Section 37 Agreement and the site specific Official Plan Amendment and Zoning By-law are as follows:

a cash contribution in the amount of \$700,000 to local parkland creation or improvements and/or local streetscape enhancement projects, including in particular:

- (a) the Market Street Streetscape Improvement project; and
- (b) improvements to Scott Lane and Scott Street in the vicinity of the Subject Lands.

The recommended amendments to Zoning By-law No. 26-2007 are included in the draft Zoning By-law Amendment attached as Attachment No. 2 of this report.

CONTACT

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SIGNATURE

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

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ATTACHMENTS

Attachment 1: Draft Official Plan Amendment
Attachment 2: Draft Zoning By-law Amendment
Attachment 3: Market Street – Proposed Roadway Alteration

Attachment 1: Draft Official Plan Amendment

Authority: Toronto and East York Community Council Item ~ as adopted by City of Toronto Council on ~, 20~

Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW No. ~-20~

**To adopt an amendment to the Official Plan
for the City of Toronto
respecting the lands municipally known as
22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street (formerly 40 The
Esplanade)**

WHEREAS authority is given to Council under the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law;

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The attached Amendment No. ___ to the Official Plan is hereby adopted pursuant to the *Planning Act*, as amended.

ENACTED AND PASSED this ~ day of ~, A.D. 20~.

ROB FORD,
Mayor

ULLI S. WATKISS,
City Clerk

(Corporate Seal)

AMENDMENT NO. 342 TO THE OFFICIAL PLAN

**LANDS MUNICIPALLY KNOWN AS
22, 26, 38 AND 42 THE ESPLANADE AND 1 AND 5 SCOTT STREET
(FORMERLY 40 THE ESPLANADE)**

The Official Plan of the City of Toronto is amended as follows:

1. Official Plan Amendment 342, is amended by deleting subsection (a) of Section (4) and replacing with:
 - (a) pays to the City the sum of \$700,000 towards local parkland creation or improvements and/or local streetscape enhancement projects, including in particular:
 - (i) the Market Street Streetscape Improvement project; and
 - (ii) improvements to Scott Lane and Scott Street in the vicinity of 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street (formerly 40 The Esplanade).

Attachment 2: Draft Zoning By-law Amendment

Authority: Toronto and East York Community Council Item ~ as adopted by City of
Toronto Council on ~, 20~
Enacted by Council: ~, 20~

CITY OF TORONTO

BY-LAW No. _____

To further amend By-law No. 438-86 of the former City of Toronto with respect to lands municipally known as 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street (formerly 40 The Esplanade).

WHEREAS authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Section 1. (15) of By-law No. 26-2007 is amended by:
 - (1) deleting the text of subsection (a) and replacing it with the following:
 - (a) “pays to the City the sum of \$700,000 prior to the issuance of the first *foundation building permit*, towards local parkland creation or improvements and/or local streetscape enhancement projects, including in particular:
 - (i) the Market Street Streetscape Improvement Project; and
 - (ii) improvements to Scott Lane and Scott Street in the vicinity of 22, 26, 38 and 42 The Esplanade and 1 and 5 Scott Street (formerly 40 The Esplanade).

ENACTED AND PASSED this ~ day of ~, A.D. 2013.

Rob Ford,
Mayor

ULLI S. WATKISS
City Clerk

(Corporate Seal)

