



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**330 Queens Plate Drive – Ontario Municipal Board  
Appeal, EY5.3, Request for Direction with Prejudice  
Settlement Offer**

<b>Date:</b>	June 2, 2015
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 2
<b>Reason for Confidential Information:</b>	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.
<b>Reference Number:</b>	A779/14EYK

**SUMMARY**

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On February 12, 2015 the Etobicoke York panel of the Committee of Adjustment (the "Committee) approved a minor variance application for the property at 330 Queens Plate Drive. One of the variances approved permits a drive-through facility associated with a bank, whereas a drive through is not permitted on a commercial lot that permits residential dwelling units. A second variance approved permits the building associated with the drive-through facility or the associated stacking lanes to be 26 metres from an abutting residential or commercial lot when the By-law requires 30 metres. At the request of City Planning staff, the City Solicitor appealed the Committee of Adjustment decision to the Ontario Municipal Board (OMB), and City Council at its meeting on May 5, 6 and 7, 2015 authorized the City's appeal of the Committee decision and instructed the City Solicitor and staff to attend the OMB to support the appeal. On May 15, 2015 the City received a with prejudice offer to settle the appeal consisting of a condition to be attached to a variance approval prohibiting any residential units on the subject lot until the drive through facility has ceased to operate. This report seeks Council's instruction on the settlement offer.

This matter is urgent as the hearing at the OMB is scheduled for June 25 and 26, 2015.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
2. The recommendations contained in the Confidential Attachment 1 to this report be made public at the discretion of the City Solicitor. All other information contained in the Confidential Attachment 1 is 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**

At its meeting on May 5, 6 and 7, 2015 City Council authorized the City Solicitor to continue the City's appeal of the Etobicoke York Committee of Adjustment panel's approval of a Minor Variance application at 330 Queens Plate Drive that permitted a drive-through facility associated with a bank to be permitted on a commercially zoned lot that permits residential units. Council also authorized the City Solicitor and staff to attend at the Ontario Municipal Board to support of the City's appeal of the Committee's approval of the variance application. Below is a link to EY5.3.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EY5.3>

### **ISSUE BACKGROUND**

The with prejudice settlement offer is comprised of adding a condition to the approval of the minor variance as follows:

No dwelling units shall be permitted on the lot above a business unless and until any drive-through facility located on the lot has ceased to operate.

We have been advised by the applicant that in the event that the settlement is not accepted by the City and the City's appeal is not successful at the OMB the applicant will be asking that the Board award costs against the City. Advice regarding costs is contained in Attachment 1.

### **COMMENTS**

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 regarding the with prejudice settlement office and should be considered by Council in camera.

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## **SIGNATURE**

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Anna Kinastowski, City Solicitor

## **ATTACHMENTS**

Attachment 1: Confidential Information