



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**440-444 Dufferin Street and 41 Alma Avenue – OMB
Hearing – Settlement Offer**

Date:	10 June 2015
To:	City Council
From:	City Solicitor
Wards:	Ward 18 - Davenport
Reason for Confidential Information:	This report contains advice or communications that is 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. [Litigation includes matters before administrative tribunals.]
Reference Number:	

SUMMARY

The owners of 440-444 Dufferin Street and 41 Alma Avenue have appealed their Official Plan Amendment and Zoning By-law Amendment applications to the Ontario Municipal Board (OMB) due to a lack of decision by the City within the statutory timeframe. A two week hearing is scheduled to commence on June 15, 2015.

On April 28, 2015 the owners of the subject lands, through their solicitor, presented a “with prejudice” offer to settle to the City Solicitor. The revised proposal will now be the subject of the OMB hearing. The City Solicitor requires further directions.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 2.
2. Council authorize the public release of the recommendations in Attachment 2 if adopted, with the remainder of Attachment 2 to remain confidential, at the discretion of the City Solicitor.

Financial Impact

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

DECISION HISTORY

At its meeting on March 22, 2012, Planning and Growth Management Committee considered the following preliminary report from the Chief Planner:

<http://www.toronto.ca/legdocs/mmis/2012/pg/bgrd/backgroundfile-45783.pdf>

At its meeting of December 16, 17 and 18, 2013, City Council considered a request to convert these employment lands for non-employment uses as part of the Municipal Comprehensive Review (MCR). Under Section 2.2.6.5 of the Provincial Growth Plan for the Greater Golden Horseshoe, the City may convert employment lands for non-employment uses only through an MCR. At the same meeting, City Council adopted Official Plan Amendment 231 (OPA 231), which designated the subject lands as *General Employment Areas*. The decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

In January 2014, the City submitted OPA 231 to the Minister of Municipal Affairs and Housing for approval. On July 9, 2014, the Minister of Municipal Affairs and Housing issued a decision confirming Council's action to retain the property for employment purposes only. The applicant subsequently submitted an appeal to the Minister's decision of OPA 231. The OMB received 178 appeals to OPA 231 and the first pre-hearing conference was held on March 12-13, 2015. The Minister's decision can be accessed at this link:

<http://www1.toronto.ca/City%20Of%20Toronto/City%20Planning/SIPA/Files/pdf/O/ministers%20decision%20on%20opa%20231.pdf>

At its meeting on August 25, 2014 City Council adopted a further report from the Chief Planner and directed staff to attend at the OMB in opposition to the proposal before it at that time:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG35.9>

On March 31, 2015, City Council requested the Chief Planner to conduct a review of the lands known as the Dufferin Triangle Lands. The subject site is part of these lands. A copy of the Decision Document can be found at

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG2.11>

ISSUE BACKGROUND

At the first pre-hearing conference at the OMB, it was requested of all parties to attend non-binding mediation. City staff attended with the developer and representatives from Active 18 Community Organization at the OMB for this purpose. Following mediation,

the owner made further revisions to their proposal and on April 28, 2015 provided a with prejudice letter to the City Solicitor proposing settlement of the appeals. Attachment 1 to this report is the letter.

The revised proposal is for two development blocks separated by a future public street. The northern block would hold an eight storey building containing a minimum of 5,550 square metres of non-residential gross floor area and a maximum of 4,150 square metres of residential gross floor area. Although sharing an underground parking garage with 63 parking spaces, the two uses in the building would be self-contained. The non-residential gross floor area would replace all of the existing employment space on the site and would be built prior to or concurrent with residential uses on the site.

The southern development block would contain two buildings. One at eight storeys with 178 dwelling units and the other at twelve storeys with 150 dwelling units. These buildings would also share an underground parking garage with 218 parking spaces.

The proposal would also provide for a Section 37 contribution in the form of a lease to the City of some of the space in the non-residential building at below market rent for the creation of a small business incubator program.

COMMENTS

The applicant has appealed their Official Plan Amendment and Zoning By-law Amendment applications to the Ontario Municipal Board due to Council's failure to make a decision on the applications within the time prescribed by the *Planning Act*. A hearing has been scheduled to commence June 15, 2015. A with prejudice offer to settle has been provided to the City and is appended to this report as Attachment 1. This report requests direction from City Council for the OMB hearing.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment No. 1: Letter from Aird & Berlis LLP dated April 28, 2015
Attachment No. 2: Confidential Information