



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**591 and 593 Sheppard Avenue East – Zoning By-law  
Amendment, Official Plan Amendment, and Site Plan  
Control Applications, Request for Directions Report**

<b>Date:</b>	February 4, 2016
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	24 (Willowdale)
<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>	12 298398 NNY 24 OZ, 12 298406 NNY 24 SA

**SUMMARY**

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Further direction from City Council is required on a matter that is subject to an ongoing Ontario Municipal Board ("OMB") process. Additional direction from City Council is required to finalize planning documents relating to the settlement of the appeal. This report was prepared in conjunction with City Planning.

**RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the Confidential Recommendations to staff in Confidential Attachment 1; and
2. City Council authorize the public release of the Confidential Recommendations, if adopted, with the balance of the Confidential Attachment 1 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 of August 25, 26, 27, and 28, 2014, City Council considered Item NY34.88 dealing with an application to construct a six to ten storey mixed-use building and new free-standing place of worship. The total proposed floor space was 18,513 square metres, resulting in a density of 3.97 FSI.

City Council directed the following:

1. City Council authorize the City Solicitor, together with City Planning staff and any other staff as appropriate, to attend the Ontario Municipal Board (OMB) hearing in support of the applications on the basis of the following matters which have been agreed to by the applicant:
  - a. revising the treatment of bulk and mass along the south elevation of the residential building so that the upper floors are stepped back from the main building wall and such floors include detailed elevation articulation such as material changes and/or glazing to address the 1:1 building height to street width ratio policy of the Secondary Plan and revise the design of the lower floors of the south elevation to include a stronger base expression to complement the scale of the place of worship;
  - b. providing a 2.5 metre wide landscaped pedestrian walkway by way of easement along the entire west property line to accommodate a mid-block pedestrian connection between Sheppard Avenue East and the future east-west public street, such walkway to be free and clear of any obstruction and designed so as not to preclude incorporating it with a 2.5 metre wide future walkway to be negotiated when development applications are submitted on the adjoining lands to the west, and that the northwest corner of the site be designed to include a "Gateway" feature in keeping with the objectives of the Southeast Bayview Node Context Plan, it is agreed that a zero setback provision will still apply to the underground garage and for the upper floors of the building;
  - c. a corresponding reduction in the gross floor area as a result of addressing Parts a. and b. above to a maximum net density of 3.49x FSI;
  - d. modifications to the design of the proposed place of worship building to give it a stronger civic presence and that such modifications incorporate a pedestrian entrance on the south elevation that is clearly visible and

- connected to the future public road as well as providing a continuous weather protection and seating opportunities within the front yard;
- e. providing common indoor and outdoor recreational amenity areas at a rate of 1.5 square metres per dwelling unit;
  - f. the submission of a Heritage Impact Statement to the satisfaction of the Manager, Heritage Preservation Services;
  - g. the owner addressing the outstanding comments outlined in the memorandum dated July 16, 2014 from the Manager, Engineering and Construction Services, North York District;
  - h. the owner addressing the requirements outlined in the memorandum dated June 27, 2014 to the satisfaction of the Acting General Manager, Parks, Forestry and Recreation including the following:
    - i. providing an on-site parkland dedication in the amount of 406 square metres across the Sheppard Avenue East frontage of the site to form part of the linear greenway indicated in the Conceptual Parks Plan in the Sheppard east Subway Corridor Secondary Plan, such land to be conveyed to the City after the initial residential occupancy and prior to condominium registration;
    - ii. doors to the main entrance of the building and the individual retail units opening into the building and units and not into the park; and
    - iii. entering into a Limiting Distance Agreement and providing easement over the park to provide pedestrian access to the development to the satisfaction of the Acting General Manager, Parks, Forestry and Recreation, all at a nominal cost to the owner;
  - i. the building will be set back no less than 7.825 metres from the Sheppard Avenue East property line to accommodate the on-site parkland dedication and to align with the building to the east; and
  - j. City Council authorize a 2 metre encroachment into the linear park to accommodate a weather protection canopy along the face of the building to be designed in consultation with the Acting General Manager, Parks, Forestry and Recreation.
2. City Council approve a development charge credit against the Parks and Recreation component of the Development Charges for the design and construction by the owner of Above Base Park Improvements for a 406 square metres linear park to be conveyed to the City to the satisfaction of the Acting General Manager, Parks, Forestry and Recreation. The development charge credit

shall be an amount that is the lesser of the cost to the owner of designing and constructing the Above Base Park Improvements, as approved by the Acting General Manager, Parks, Forestry and Recreation, and the Parks and Recreation component of development charges payable for the development in accordance with the City's Development Charges By-law.

3. Council authorize the City Solicitor to request the OMB to withhold its Order until such time as:
  - a. an appropriate Official Plan Amendment and Zoning By-law Amendment for the subject lands is prepared to the satisfaction of the Director, Community Planning, North York District and the City Solicitor. The implementing Zoning By-law should incorporate performance standards which include, but not be limited to, regulations on parking and bicycle parking spaces and loading, maximum building heights, maximum gross floor area, minimum building setbacks, maximum number of dwelling units and unit sizes, phasing, minimum common indoor and outdoor recreational amenity areas and appropriate Section 37 contributions (which may involve a Site Specific Official Plan Amendment for the provision of specific uses and facilities not listed in Figure 4.3.3 Incentives in the Sheppard East Subway Corridor Secondary Plan);
  - b. the Owner has entered into an agreement with the City to secure community benefits pursuant to Section 37 of the *Planning Act* to the satisfaction of the Director, Community Planning, North York District and City Solicitor requiring the Owner to:
    - i. provide a cash contribution of \$500,000 to be allocated to capital improvements that will benefit the community in the vicinity of the project such as but not limited to community centres, recreation facilities, parks, local streetscape or traffic calming measures, and public art, in consultation with the appropriate City division and the ward Councillor;

The above contribution is to be paid prior to the issuance of the first above-grade building permit for the development, with such amounts to be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Index for Toronto, calculated from the date of the Section 37 Agreement to the date of payment.

The following matters are also recommended to be secured in the Section 37 Agreement in support of the development:

- i. the gross floor area of the common indoor recreational amenity area exempted from the calculation of gross floor area;

- ii. the gross floor area of the Place of Worship exempted from the calculation of gross floor area; and
  - iii. The Owner shall construct and maintain the development in accordance with Tier 1 performance measures of the Toronto Green Standard, as adopted by Toronto City Council at its meeting held on October 26 and 27, 2009;
- c. the OMB has been advised by the City Solicitor that the City's Notice of Approval Conditions on the Site Plan Control application have been finalized and any pre-approval conditions satisfied; and
  - d. the City accepts from the owner a conveyance of a parcel on the southern portion of the lands for the public right of way as set out in the Staff Report prepared by City Planning dated July 24, 2014, the owner being entitled to occupy at no charge that portion of the parcel that will be used as a boulevard of the future public right of way for the purposes of construction staging, subject to obtaining a permit from City of Toronto Transportation, Right of Way Management.
4. City Council direct the Director, Transportation Services, North York District to report back to North York Community Council in the first quarter of 2015 on a plan to incorporate traffic calming measures and pedestrianization strategy for the future public road between Rean Drive and Barberry Place including funding sources for its implementation, including but not limited to a raised pedestrian walkway at the meeting point of the driveway from this proposed development and the current garage exits from the buildings to the south.

### **Revised Plan and Attendance at the Ontario Municipal Board**

The City Solicitor, together with City Planning staff attended the Ontario Municipal Board (OMB) hearing on April 9, 2015 in support of the applications on the basis of the settlement supported by City Council. The Board was presented with a revised proposal that addressed the matters set out in the City Council settlement including built form and massing changes along the Sheppard Avenue East frontage, increased building setbacks along the Sheppard Avenue East frontage and the south property line where the site abuts City owned lands that are intended to be dedicated in the future as an east-west road. Revisions also included built form and architectural changes to the upper floors on the south elevation, architectural changes to the proposed place of worship and the provision of a 2.5 metre wide pedestrian walkway along the west property line.

On May 12, 2015, the OMB issued an Interim Order allowing, in part, the appeal of the proposed Official Plan and Zoning By-law Amendment applications and approved in principle the proposed amendments that were filed as Exhibits. As requested by the City Solicitor, the Board withheld its Order on the appeals pending confirmation of the following matters:

1. Final form of the OPA and ZBA that are acceptable to the City;
2. An executed s. 37 Agreement which is registered on title;
3. Confirmation by the City of its notice of approval of site plan conditions and satisfaction of any pre-approval conditions; and
4. Confirmation by the City that it has accepted from the owner a conveyance of a parcel on the southern portion of the lands for the public right of way.

With respect to the site plan appeal, the Board adjourned that component of the hearing pending the City's review of the revised site plan.

City staff are now require further authority from City Council on matters to be addressed in the zoning by-law and site plan approval.

## **COMMENTS**

This report is about litigation and contains advice or communications that are subject to solicitor-client privilege. The attachment to this report contains confidential information and should be considered by Council in camera.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski, City Solicitor

## **ATTACHMENTS**

Confidential Attachment 1 - Confidential Information and Recommendations