

## **Appeal of OMB Decision - 1 York St and 90 Harbour St**

**Date:** March 1, 2017

**To:** City Council

**From:** City Solicitor

**Wards:** Ward(s) affected or All

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege.

### **SUMMARY**

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On February 13, 2017 the Ontario Municipal Board (the "OMB") issued a decision on a Park Levy appeal made pursuant to Section 42(10) of the *Planning Act*. The OMB in its decision ordered that the City return a Park Levy cash-in-lieu payment to the owner of the development site in the amount of \$1,633,157.72 plus interest at the prime rate. The *Ontario Municipal Board Act* allows the parties to a hearing to seek leave to appeal a decision of the OMB to the Divisional Court. The information in the Confidential Attachment to this report discusses the OMB decision and seeks Council's direction regarding a potential appeal.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of Confidential Recommendation 1 in Attachment 1 if adopted by Council and the balance of Confidential Attachment 1 to remain confidential.

## **FINANCIAL IMPACT**

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The financial implications are set out in Attachment 1.

## **DECISION HISTORY**

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The City is statutorily entitled to collect cash-in-lieu of parkland at the time of building permit issuance from all development applications. The City makes the determination as to whether it will seek an on-site park land dedication or a cash-in-lieu of parkland financial contribution. If a cash-in-lieu of parkland contribution is sought then an appraisal of the subject property is undertaken by the City's Facilities and Real Estate Division. This appraisal is used by the City's Building Division to determine the appropriate amount of cash-in-lieu of parkland to be collected from the developer at the time of building permit issuance. If the developer is of the view that the City's valuation of their property is too high for cash-in-lieu purposes, section 42 of the *Planning Act* allows them to make the contested payment "under protest" and then seek a full hearing to determine the value of the land before the OMB. That is what occurred in this instance.

## **COMMENTS**

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The OMB hearing to determine the value of the subject property took place for 3 days in September of 2016. The City produced evidence from a qualified land appraiser and a qualified land use planner. The subject site had zoning and site plan permissions for two residential towers of 66 and 62 storeys in height as well as for a commercial tower. The City's appraiser produced an appraisal report and provided oral testimony that the value of the site was \$114,200,000.00 on the valuation date. The appellant's appraiser provided evidence that the site was worth \$100,000,000.00. The OMB accepted the appellant's appraiser's opinion of value.

The Confidential Attachment to this report provides further information.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Information Appeal of OMB Decision - 1 York St. and 90 Harbour St.