



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

36 Lisgar Street - Amendment of s.37 Agreement to Divide s. 37 Agreement Space from Additional Space

Date: April 16, 2018

To: Toronto City Council

From: City Solicitor, General Manager, Economic Development and Chief Planner and
Executive Director, City Planning

Wards: Ward 18 - Davenport

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation that affects the City, and contains advice that is subject to solicitor-client privilege.

SUMMARY

This report relates to a s. 37 Planning Act Agreement for the property now known municipally as 36 Lisgar Street in the City of Toronto.

The City entered into a s. 37 Planning Act Agreement in 2012 whereby the builder Edge on Triangle Park Inc. ("Triangle") agreed to construct 2,800 square metres of not-for-profit arts and culture space (the "s.37 Cultural Space"). The s.37 Cultural Space was to be conveyed to a designated not-for-profit arts and culture group identified by the City, known as the Toronto Media Arts Cluster ("TMAC"), subject to conditions and restrictions protecting the City's interest in the land or to the City. In exchange, Triangle was granted additional height and density for its condominium development.

TMAC separately contracted with Triangle such that Triangle built an additional approximately 670 square metres of space (the "Additional Space") that is contiguous with the s.37 Cultural Space.

As a result of various developments arising from litigation between the City, TMAC, and Triangle and insolvency proceedings involving Triangle, TMAC no longer wishes to purchase the Additional Space. Certain amendments to the s. 37 Agreement are necessary to facilitate TMAC's proposal to abandon the Additional Space.

RECOMMENDATIONS

The City Solicitor, General Manager, Economic Development and Chief Planner recommend that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council direct that the confidential instructions in Confidential Attachment 1 remain confidential at the discretion of the City Solicitor and the balance of the information contained in Confidential Attachment 1 remain confidential in its entirety, as it relates to litigation against the City and contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There are no financial impacts arising from this report.

DECISION HISTORY

Re-Zoning Application for 2 - 6 Lisgar Street

On January 27, 2009, Toronto City Council adopted a Request for Direction report from the Acting Director, Community Planning, Toronto / East York District, which recommended that City staff be directed to negotiate with Triangle for a zoning by-law amendment. Triangle is an affiliated corporation with Urbancorp Inc.

Included in that report was a recommendation that staff seek to secure benefits under s. 37 of the Planning Act, including affordable arts studios in the West Queen West Triangle.

A full copy of this report is available here:

<https://www.toronto.ca/legdocs/mmis/2009/te/bgrd/backgroundfile-17815.pdf>

On May 8, 2012, Toronto City Council adopted a Zoning By-law Amendment - Zoning Application report from the Chief Planner and Executive Director, City Planning. Included in this report was the requirement for Triangle to construct the s.37 Cultural Space to be conveyed to either TMAC, which had been identified by a local residents association as appropriate to operate the s.37 Cultural Space, or the City. Triangle also provided other benefits, including a \$1 million cash contribution.

A full copy of this report is available here:

<https://www.toronto.ca/legdocs/mmis/2012/te/bgrd/backgroundfile-46273.pdf>

Around this time TMAC negotiated with Triangle for additional space. TMAC contracted with Triangle for it to build the Additional Space, in exchange for a mortgage between Triangle and TMAC.

COMMENTS

The s. 37 Cultural Space was not conveyed to either TMAC or the City in 2015 when the space was constructed.

TMAC commenced litigation against the City and Triangle in May, 2015 alleging its entitlement to ownership of the s.37 Cultural Space.

In addition, on May 20, 2016, Triangle and a number of affiliated Urbancorp corporations filed a Notice of Intention to Make a Proposal under the Bankruptcy and Insolvency Act.

A copy of this certificate is available here:

<http://fullerllp.com/wp-content/uploads/2016/05/Certificate-for-the-Notice-of-Intention-Urbancorp-Cumberland-2-GP-Inc..pdf>

On October 6, 2016, Triangle's insolvency proceedings under the Bankruptcy and Insolvency Act were continued under the Companies' Creditors Arrangements Act.

A copy of the Order of Justice Newbould of the Ontario Superior Court dated October 6, 2016 is available here:

<http://fullerllp.com/wp-content/uploads/2016/05/CCAA-Initial-Order-Newbould-J-October-6-2016-Cumberland.pdf>

Because of these two legal proceedings, the balance of this report is addressed in the confidential attachment.

The s. 37 Cultural Space will not be affected by the recommendations in the Confidential Attachment. Rather, the recommendations concern the Additional Space which TMAC had contracted to purchase from Triangle via a vendor take-back mortgage.

CONTACT

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SIGNATURE

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City Solicitor

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General Manager

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ATTACHMENTS

Confidential Attachment 1 - 36 Lisgar Street - Amendment of s. 37 Agreement to Divide
s. 37 Agreement Space from Purchased Space