



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

859, 861, and 875 Eglinton Avenue West - Zoning Amendment Application - Request for Directions Regarding LPAT Hearing

Date: June 19, 2018
To: City Council
From: City Solicitor
Wards: Ward 21 - St. Paul's West

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

Bateg Investments Limited and Upper Village Investments Limited (collectively, the "Applicant") are the owners of lands municipally known as 859, 861, and 875 Eglinton Avenue West (the "Subject Site"). The Subject Site is located at the southwestern corner of Bathurst Street and Eglinton Avenue West.

The Applicant initially submitted a Zoning By-law Amendment application to the City in March 2011, proposing to develop a mixed-use residential and retail building at 875 Eglinton Avenue West. Following the acquisition of additional properties at 859 and 861 Eglinton Avenue West, the Applicant submitted a revised proposal to the City on June 23, 2016 (the "Application"). The Application proposes to demolish the existing two-storey commercial plaza located on the Subject Site and to construct a 16-storey mixed use building with commercial uses at grade.

On August 8, 2014, the Applicant appealed Official Plan Amendment No. 253 ("OPA 253") as it applies to the Subject Property to the Ontario Municipal Board (the "OMB") (now known as the Local Planning Appeal Tribunal) (the "LPAT"). On September 18, 2014, the Applicant appealed By-law No. 1040-2014, the implementing by-law for OPA 253, to the OMB/LPAT. OPA 253 and By-law No. 1040-2014 are two of the planning instruments that implement the Eglinton Connects Planning Study. On April 10, 2017, the Applicant appealed the Application to the OMB/LPAT due to City Council's failure to

make a decision. These appeals have been consolidated for the purpose of the LPAT hearing scheduled to commence on July 25, 2018.

On May 16, 2017, City Council adopted a Request for Directions Report authorizing the City Solicitor, together with appropriate staff, to attend the OMB/LPAT hearing to oppose the Applicant's appeal, to continue discussions with the applicant to address the issues outlined in the report, and to report back to City Council on the outcome of discussions, if necessary.

Discussions with the applicant have continued, and Tribunal-led mediation was held on May 17, 2018.

The purpose of this report is to request further instructions for the upcoming LPAT hearing.

City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1, Confidential Attachment 2, Confidential Attachment 2, Appendix "A", and Confidential Attachment 3 to this report, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

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

DECISION HISTORY

The subject site is within the area of the Eglinton Connects Planning Study. At its meeting of May 6, 7 and 8, 2014, City Council considered the Final Directions Report for the Eglinton Connects Planning Study. City Council adopted 21 recommendations under the themes of Travelling, Greening and Building Eglinton. The report and Council's direction area available on the City's website at:

<http://app.toronto.ca/tmmis/view/viewAgendaItemHistory.do?item+2014.PG32.4>

The Final Directions Report on the Eglinton Connects Planning Study was considered together with a report on the "Eglinton Connects - Environmental Assessment Study" by City Council. The EA Study included information regarding an improved streetscape for Eglinton Avenue. This report is available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item+2014.PW30.7>

The Phase 1 (Part 1) Implementation Report for the Eglinton Connects Planning Study was considered by City Council at its meeting of July 8, 2014. From this report, City Council adopted Official Plan Amendment No. 253 that included, among other things, a Site and Area Specific Policy No. 476 requiring provision of a public laneway extension at the rear of this site as part of a continuous public rear laneway system along most sections of Eglinton Avenue west of Yonge Street. City Council also adopted a resolution directing staff to implement the Eglinton Connects Streetscape Plan as development proceeds along Eglinton Avenue West. The Applicant and other parties have appealed OPA 253 to the OMB/LPAT. The report and Council's direction are available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item+2014.PG34.1>

On August 25, 2014 City Council considered the Phase 1 (Part 2) Implementation Report for the Eglinton Connects Planning Study. City Council adopted an amendment to the City-wide Zoning By-law 569-2013 to permit mixed-use buildings along most of Eglinton Avenue West, west of Duplex Avenue, that conform to the Council-approved Mid-rise Performance Standards. A portion of the Subject Site (859 and 861 Eglinton Avenue West) is included in the amendments. The Applicant and a number of other parties have appealed this by-law to the OMB/LPAT. Council's direction is available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG35.3>

On August 8, 2016 Toronto and East York Community Council adopted the Preliminary Report on the subject Zoning Amendment Application for 859, 861, and 875 Eglinton Avenue West. The report can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2016/te/bgrd/backgroundfile-90014.pdf>

On April 6, 2017 the Applicant appealed the Zoning Amendment Application to the OMB/LPAT for Council's failure to make a decision. On May 16, 2017, City Council adopted a Request for Directions Report authorizing the City Solicitor, together with appropriate staff, to attend the Ontario Municipal Board hearing to oppose the applicant's appeal, to continue discussions with the applicant to address the issues outlined in the report, and to report back to City Council on the outcome of discussions, if necessary. The report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE25.18>

A ten-day hearing is scheduled to commence July 25, 2018.

COMMENTS

The City Solicitor requires further instructions. This report is about litigation before the LPAT and contains advice or communications that are subject to solicitor-client privilege. Attachment 1 to this report contains confidential advice and should be considered by Council in camera.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
2. Confidential Attachment 2
3. Confidential Attachment 2, Appendix "A" on file with the City Clerk for the purpose of the June 26, 27, 28, 2018 City Council meeting.
4. Confidential Attachment 3