



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### **847, 849, 851, 853, 855, 857, 859, 861, 863, 865, 867, 869, 871 and 873 Sheppard Avenue West – Official Plan Amendment, Zoning Amendment, Site Plan and Rental Housing Demolition Applications – Direction Report**

**Date:** July 16, 2018

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 10 – York Centre

**Planning Application Number:** 16 262666 NNY 10 OZ

**Rental Housing Demolition Application Number:** 17 107822 NNY 10 RH

#### **REASON FOR CONFIDENTIAL INFORMATION**

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

#### **SUMMARY**

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The applicant has appealed the Official Plan, Zoning By-law Amendment and Site Plan applications to the Local Planning Appeal Tribunal (LPAT) due to Council's failure to make a decision within the time frames prescribed by the *Planning Act*. A pre-hearing conference has been scheduled for November 5, 2018.

Since filing the appeals, the applicant has continued to work with City staff to address staff concerns. On July 13, 2018, the City received a with prejudice settlement offer from Aird Berlis which is attached as Appendix 2 (the Settlement Offer), and which addresses the concerns raised by City staff.

The Settlement Offer proposes 131, 5-storey stacked, back-to-back townhouses with roof decks, arranged in 7 blocks perpendicular to Sheppard Avenue West. The two westerly blocks would be connected at the rear by eight 3-storey townhouses, situated

parallel to the rear lot line. The three middle blocks would be connected at the rear by thirteen 3-storey townhouses, situated parallel to the rear lot line. The 62-square metre indoor amenity space is also contained within this row, on the ground floor. The two easterly blocks would be connected at the rear by nine 3-storey (townhouses with roof decks, situated parallel to the rear lot line (see Attachment 5, as modified by the sketch attached to the Settlement Offer dated July 12, 2018). See Public Appendix 1 for a more detailed description of the proposal.

This report seeks direction from City Council with respect to the Settlement Offer.

City Planning staff have been involved in the preparation of this report.

## **RECOMMENDATIONS**

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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, 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**

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

## **DECISION HISTORY**

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Three properties within the development site (865 – 869 Sheppard Avenue West) were subject to an Official Plan and Zoning By-law Amendment application submitted in 2005. The application sought permission to construct a 6-storey mixed-use building with ground floor commercial uses and 54 dwelling units above at a density of 2.5 times the area of the lot. City Council approved the application at its meeting of September 28, 29 and 30, 2005. The approval included the adoption of a recommendation that prior to introducing the Bills enacting the Official Plan and Zoning By-law Amendments, the owner be required to obtain a Notice of Approval Conditions from the Director of Community Planning, North York District. A copy of the decision of City Council can be found at the following link:

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050928/ny7rpt/cl037.pdf>

The previous owner of the property did not obtain the required Notice of Approval Conditions and the Bills to enact the Official Plan and Zoning By-law Amendments were

never put before Council. Because the approval had not yet been enacted by the passing of a Bill by City Council, the Ontario Municipal Board listed 865 – 869 Sheppard Avenue West in Attachment 6 of its July 5, 2006 Order that brought the majority of the Toronto Official Plan into force and effect.

The listing of these properties in Attachment 6 meant that the policies and land use designations of the Toronto Official Plan did not apply to these lands when the previous application was made and the Official Plan of the former City of North York was the in force Plan for the subject lands. The former owner consented to the previous application being dismissed by the Ontario Municipal Board. On December 14, 2010, the Board issued an Order removing 865 – 869 Sheppard Avenue West from Attachment 6, thereby bringing the Toronto Official Plan into force for the subject lands. The property was subsequently sold to a new owner.

On November 12, 2009, an application was submitted to amend the Official Plan and Zoning By-law 7625 to permit two 9-storey (30.4 metres) mixed use buildings above a 2- storey underground parking garage on the subject lands. A total gross floor area of 27,957 square metres was proposed, resulting in a density of 3.0 times the area of the lot. Retail/commercial uses were proposed on the ground floor of the building on the western part of the site and 13 live/work units were proposed on the ground floor of the building on the eastern part of the site. A total of 296 residential dwelling units were proposed, including seven (7) replacement rental housing units. A total of 415 parking spaces was proposed to serve the development.

The application was appealed to the Ontario Municipal Board (OMB) on May 25, 2012, based on the lack of decision by City Council within the timeframe provided for by the *Planning Act*. The OMB issued a written decision approving the proposal in principle on October 25, 2012 ([https://www.omb.gov.on.ca/e-decisions\\_old/pl120593-oct-25-2012.pdf](https://www.omb.gov.on.ca/e-decisions_old/pl120593-oct-25-2012.pdf)). The parties asked the Board to withhold its Order pending provision of the final form of the Official Plan Amendment, Zoning By-law Amendment and finalization of the content of the Section 37 Agreement.

On August 15, 2014, a Site Plan Application was submitted for the proposal that was approved in principle at the OMB. However, this application was never finalized. Moreover, the Section 37 Agreement was not signed and a Section 111 Agreement was never finalized. The Board's Final Order on the Official Plan and Zoning By-law Amendments was never issued. The property was sold to the current owner and the current application was submitted.

A pre-application meeting was held on August 16, 2016. The current application was submitted on December 9, 2016 and deemed complete on December 9, 2016. A Preliminary Report on the application(s) was adopted by North York Community Council on May 2, 2017 authorizing staff to conduct a community consultation meeting with an expanded notification area. A community consultation meeting was held on June 8, 2017. The preliminary report can be found here:

<https://www.toronto.ca/legdocs/mmis/2017/ny/bgrd/backgroundfile-102917.pdf>

On April 6, 2018, the owner appealed the Official Plan, Zoning By-law Amendment and Site Plan applications to the Local Planning Appeal Tribunal (LPAT), citing City Council's failure to make a decision within the time frame prescribed by the *Planning Act*. The applicant has continued to work with City staff on revisions to the proposal that have resulted in the Settlement Proposal that is the subject of this report. A pre-hearing conference has been scheduled for November 5, 2018.

## **COMMENTS**

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Detailed Planning staff comments on the application are found in Appendix 1 attached to this Report. This report is about litigation before the LPAT and contains advice that is 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**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Public Appendix 1 - Planning Comments & Analysis  
Public Attachments 1 -8 to Public Appendix 1 - On file with City Clerk for purpose of the July 23, 24 and 25, 2018 City Council Meeting  
Public Appendix 2 - With Prejudice Settlement Offer from Aird Berlis dated July 13, 2018  
Confidential Attachment 1 - Confidential Recommendations and Information