

July 24, 2018

His Worship Mayor John Tory,
Members of Toronto City Council,
c/o City Clerk's Office,
100 Queen St. W.,
Toronto, Ontario
M5H 2N2

Dear Mayor Tory and Members of Toronto City Council:

RE: Item No. TE34.54 (Site Plan Control Application Final Report (Ward 22) City Council's agenda for its July 23, 24, 25 meeting. This item is currently being held by Councillor Josh Matlow.

Item 34.54 concerns an application for site plan approval for a proposed 9-storey residential building at 281-289 Avenue Road. Davies Development Corp is the developer and proponent of this project. Normally, the approval of applications for site plan approval are within the delegated authority of staff. However, Councillor Matlow previously requested, pursuant to By-law No. 438-2000, that the site plan for 281-289 Avenue Road be "bumped up" to Toronto and East York Community Council ("TECC") for approval.

The site plan application itself was reviewed and modified with input from City planning staff and was recommended for approval, presented and deferred by TECC at the request of Councillor Matlow (Item TE31.9 at the April 4, TECC meeting.) Subsequently, Councillor Matlow, at the July 4, 2018 meeting of TECC recommended approval of the Site Plan Report (Item TE34.54). TECC accepted the staff recommendation and adopted a resolution that City Council approve the site plan with conditions. TECC also recommended that City Council delegate back to staff the authority to issue final Site Plan Approval for the development.

However, at the request of Councillor Matlow, a third recommendation was added to Item 34.54, reading as follows:

"3. City Council direct that, notwithstanding any delegation powers given by City Council to the General Manager, Transportation Services in relation to temporarily closing to vehicular and pedestrian traffic any highway or portion of highway during the 2018 City Council break, the General Manager, Transportation Services not be permitted to authorize the temporary closure of any northbound traffic lanes on Avenue Road between Cottingham Street and Macpherson Avenue to pedestrian and vehicular traffic from July 26, 2018 to January 31, 2019 for construction, repair or improvement work which is privately initiated other than by a utility company with statutory rights or a municipal access agreement with the City of Toronto allowing occupancy of the highway."

This recommendation No. 3, passed without foundation, discussion or input and without benefit of

a staff recommendation report on the issue, indicates that Councillor Matlow is once again seeking to remove the project at 281-289 Avenue Road from the City's normal approval procedures. Instead of allowing staff to receive, evaluate and approve requests for temporary road closures to permit construction staging associated with the proposed development during the election break, Councillor Matlow proposes that staff not be given this authority for the portion of Avenue Road where construction for 281-289 Avenue Road may be staged. This is a narrow, targeted direction that is intended to cause significant, expensive delay to the project.

The reason for the distinct treatment of the 281-289 Avenue Road project by Councillor Matlow relates to a disagreement between the Councillor's office and the developer respecting how the construction of the project will proceed. More particularly, the disagreement arises from an informal proposal by the developer to locate its staging in the adjacent nearby Robertson Davies Park – a proposal that Councillor Matlow has vehemently opposed. This opposition has led to the above-noted Recommendation No. 3, which the developer believes is intended as a punishment for having disagreed with the Councillor. (It should be noted that the developer has entered into a section 37 agreement obliging it to beautify and improve the park at the exact location that was being proposed for staging. The landscaping construction work requires that part of this area is to be re-built making the space a natural for staging.)

As City Council is aware, section 213 of the *City of Toronto Act, 2006* empowers the Superior Court of Justice to quash a by-law or resolution of City Council if such by-law or resolution was passed in bad faith. It is the developer's firm belief that Recommendation No. 3 has been put before City Council in bad faith as a means of punishing the developer for matters not related to the merits of the developer's site plan (the approval of which is the actual purpose of Item 34.54, not dealing with potential road closures). Should Recommendation No. 3 be approved by City Council, the developer will have no choice but to apply to have the recommendation quashed by the Superior Court, with cost consequences to the City if the application if it is successful. The developer would also consider whether a claim for damages associated with the unreasonable delay to the project would be appropriate.

In order to avoid the any potential litigation, costs and unnecessary delay, the developer hereby asks the members of City Council to amend the recommendations in Item 34.54 to delete Recommendation No. 3.

Your attention to this matter is greatly appreciated.

Yours truly,
Davies Development Corp
Per:



David Hirsh

July 24, 2018

His Worship Mayor John Tory,
Members of Toronto City Council,
c/o City Clerk's Office,
100 Queen St. W.,
Toronto, Ontario
M5H 2N2

Request for Amendment to Toronto and East York Community Recommendation to City Council, Item No. TE34.54 (Site Plan Control Application Final Report, Ward 22); specifically, the deletion of Recommendation #3 for the reasons below. This item is currently being held by Councillor Josh Matlow.

Item 34.54 concerns an application for site plan approval for a proposed 9-storey residential building at 281-289 Avenue Road. Davies Development Corp is the developer and proponent of this project. The Planning Staff Report dated March 12, 2018 recommends approval of the Site Plan.

Councillor Matlow was content to recommend the Site Plan Report be approved. (Please see Community Council archive video for TECC July 4, 2018, Part 2 of 2; timeline reference 7:55.10.) For convenience, the following video link starts precisely when the subject planning report is being heard by TECC and his remarks: <https://youtu.be/LwUMul7cKvU?t=28518>. However, without opportunity for the developer to speak or the benefit of a staff recommendation report, Councillor Matlow amended the recommendation approving the site plan by adding Recommendation #3 now before you. The Councillor proposes to specifically take away delegation power for temporary road closures to the General Manager, Transportation Services with respect to only that part of Avenue Road that relates to the developer's project. The developer is at a loss to understand his motivation.

"3. City Council direct that, notwithstanding any delegation powers given by City Council to the General Manager, Transportation Services in relation to temporarily closing to vehicular and pedestrian traffic any highway or portion of highway during the 2018 City Council break, the General Manager, Transportation Services not be permitted to authorize the temporary closure of any northbound traffic lanes on Avenue Road between Cottingham Street and Macpherson Avenue to pedestrian and vehicular traffic from July 26, 2018 to January 31, 2019 for construction, repair or improvement work which is privately initiated other than by a utility company with statutory rights or a municipal access agreement with the City of Toronto allowing occupancy of the highway."

Councillor Matlow is seeking to amend the Final Report from Staff regarding the Site Plan Control Application unfairly and in inexplicably bad faith.

Staff has not made any recommendation with respect to lane closures for staging the project. However, Councillor Matlow prefers that the report be revised to accommodate his own recommendation and seeks to contemplate an issue that does not yet exist. The Councillor refuses to meet with the developer despite numerous e-mails and numerous telephone calls from the developer and its staff seeking a meeting or to offer some other resolution to his consternation respecting *this* particular project.

The proponent respectfully asks that Toronto City Council amend Agenda Item No. TE34.54 so that recommendation #3 thereof is deleted.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council approve, in principle, the conditions set out in Attachment 7 to report dated March 12, 2018 for the proposed 9-storey residential building at 281-289 Avenue Road.
2. City Council delegate back to the Acting Chief Planner or his designate the authority to issue final Site Plan Approval.



Construction Mitigation Plan

The applicant is currently in discussions with Transportation Services to determine if the utilization of a lane on Avenue Road is possible to allow for the construction of the building. The Construction Mitigation Plan (CMP), also referred to as a Construction Management Plan, has not been finalized.