



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

TOcore: Updating Tall Building Setbacks in the Downtown - City Initiated Official Plan Amendment and Zoning By-law Amendments - Update and Request for Directions for LPAT Hearing

Date: February 15, 2019

To: City Council

From: City Solicitor

Wards: 10, 11, 13, 14

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

At its meeting of October 5, 6, and 7, 2016, City Council adopted the recommendations of the Final and Supplementary Reports on TOcore: Updating Tall Building Setbacks in the Downtown - City-Initiated Official Plan Amendment and Zoning By-law Amendment, as amended by Toronto and East York Community Council. It enacted By-law 1105-2016 ("OPA 352") and By-laws 1106-2016 and 1107-2016 (the "Zoning By-law Amendments"). These instruments were the outcome of a six-month study providing policy and updating the setback requirements for tall buildings in the Downtown.

There were over two hundred appeals of Council's decision to enact OPA 352 and the Zoning By-law Amendments made to the Ontario Municipal Board (the "OMB"), now continued as the Local Planning Appeal Tribunal (the "LPAT"), by numerous landowners and stakeholders.

The LPAT has conducted three Pre-Hearing Conferences to date in relation to OPA 352 and the Zoning By-law Amendments, at which parties have been identified, and procedural directions have been issued, with the aim of rendering the eventual hearing of the appeals efficient and cost-effective.

The purpose of this report is to request further instructions with respect to the appeals of the Zoning By-law Amendments.

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

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council authorize the City Solicitor to request that the Local Planning Appeal Tribunal amend and partially approve Zoning By-laws 1106-2016 and 1107-2017 in accordance with Public Attachment 1 to this report.
2. City Council authorize the repeal of Zoning By-laws 238-2017 and 239-2017, should the LPAT amend Zoning By-laws 1106-2016 and 1107-2017 to incorporate the contents of Zoning By-laws 238-2017 and 239-2017.
3. City Council authorize and direct the City Solicitor to take the necessary action to give effect to recommendations 1 and 2.
4. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
5. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 and Confidential Attachment 2, if adopted by City Council.
6. 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

At its meeting of December 9, 2015, City Council adopted the recommendations in the staff report entitled "TOcore: Planning Toronto's Downtown - Phase 1 Summary Report and Phase 2 Directions." This report summarized the work completed for Phase 1 of TOcore and provided directions for Phase 2. This report can be found at the following link:

Report for Action with Confidential Attachment - TOCore: Updating Tall Building Setbacks in the Downtown – City-Initiated Official Plan Amendment and Zoning By-law Amendments - Update and Request for Directions for LPAT Hearing

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE12.43>

One of the recommendations of that report requested City Staff to begin stakeholder and public consultation on tower separation requirements for the Downtown and bring forward a proposed Official Plan Amendment and/or Zoning By-law Amendment to Toronto East York Community Council in 2016. City Staff fulfilled this request by way of a Final Report dated May 27, 2016, and a Supplementary Report dated August 31, 2016.

Toronto and East York Community Council commenced a statutory public meeting in relation to the Final and Supplementary Reports on June 14, 2016, but then adjourned it until September 7, 2016. The Final Report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE17.14>

The statutory public meeting was continued on September 7, 2016. Staff's recommendations were adopted, as amended by Toronto and East York Community Council. City Council adopted the item without amendments on October 5, 2016. The Supplementary Report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE18.7>

COMMENTS

General Update

The City Solicitor and City Planning Staff have been working with the appellants of OPA 352 and the Zoning By-law Amendments to scope and resolve issues. The City Solicitor successfully brought a motion to the LPAT on November 29, 2018 that allowed one hundred and four (104) appeals to be adjourned or partially adjourned *sine die* with tower setback and separation issues to be determined by way of site specific processes that are already underway either through the City Council approval process, or through the LPAT hearing process. The adjournments were granted on terms that contemplated that the City Solicitor would seek direction from Council to request that the LPAT make amendments to the Zoning By-law Amendments.

In addition, forty-one (41) appeals have been withdrawn or partially withdrawn. At the next LPAT Pre-Hearing Conference, scheduled for March 26, 2019, the City Solicitor will be requesting that a Procedural Order and Issues List be issued, and that hearing dates be scheduled for the adjudication of all remaining appeals. The City Solicitor has requested LPAT-sponsored mediation, and will continue to pursue that request, so as to further scope or resolve the remaining issues.

Proposed Amendments to the Zoning By-law Amendments

Public Attachment 1 contains lists of site and/or area specific by-laws that are proposed by staff to be added to the prevailing lists in the Zoning By-law Amendments; along with a deletion to correct a typographical error. Public Attachment 1 also contains lists of minor variances authorized by the former OMB, since the Zoning By-law Amendments were enacted, which are proposed to be added to the lists in the Zoning By-law Amendments.

These site specific Zoning By-laws and minor variances were either omitted from the Zoning By-law Amendments at the time of the enactment of the Zoning By-law Amendments, or have been enacted by the City, or authorized by the LPAT, since the Zoning By-law Amendments were enacted. They should be recognized in the instruments to ensure consistency between the instruments and the site and/or area specific by-laws and authorized minor variances, and to ensure that building permits can be issued for those City, OMB or LPAT approved developments. In staff's view, the site and/or area specific by-laws and minor variances listed in Public Attachment 1 do not strictly fall within the authority previously given to staff as a result of the appeals to the LPAT, and the passage of time.

Council's intent to avoid conflicting by-laws for developments that have been approved by Council or the LPAT is maintained with the proposed further amendments to the Zoning By-law Amendments.

Should Council authorize staff to request that the LPAT amend and partially approve the Zoning By-law Amendments in accordance with Public Attachment 1, fourteen (14) more appellants will either withdraw their appeals of the Zoning By-law Amendments, or withdraw as parties to the proceedings; or the City Solicitor will request that those appeals be dismissed by the LPAT, and those appellants will not oppose such a request, in accordance with the terms of adjournment approved by the LPAT.

Future Repeal of By-laws 238-2017 and 239-2017

On March 9, 2017, after the Zoning By-law Amendments had already been appealed to the then OMB, Council enacted by-laws 238-2017 and 239-2017, which clarified the language of the Zoning By-law Amendments, and made additions to the prevailing lists in each of the Zoning By-law Amendments. The City Solicitor will be asking the Tribunal, at the Pre-Hearing Conference scheduled for March 26, 2019, to amend the Zoning By-law Amendments in accordance with by-laws 238-2017 and 239-2017. If the Tribunal grants this relief, by-laws 238-2017 and 239-2017 will be redundant and can be repealed. The City Solicitor will ask Council to enact repealing by-laws at the appropriate time in the future, if the Tribunal grants this relief.

Further Instructions

The City Solicitor also requires further instructions about litigation before the LPAT. This report contains advice or communications that are subject to solicitor-client privilege. Confidential 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. Public Attachment 1 - Proposed Amendments to Zoning By-laws 1106-2016 and 1107-2016.
2. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
3. Confidential Attachment 2 - Confidential Information