



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### **30 Merton Street – Zoning By-law and Official Plan Amendments – Request for Further Direction Regarding LPAT Hearing**

**Date:** July 21, 2020

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 12 - Toronto-St. Paul's

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

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This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

#### **SUMMARY**

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bcIMC Holdco (2007) Inc. (the "Applicant") is the owner of the property municipally known as 30 Merton Street (the "Subject Site"), located on the north side of Merton Street, east of Yonge Street, in the Davisville area. The Subject Site abuts Al Green Lane to the west. The Subject Site currently contains an existing privately owned 4-storey commercial parking garage.

On June 5, 2017, the Applicant submitted a Zoning By-law and Official Plan Amendment applications to the City proposing to amend the former City of Toronto Zoning By-law 438-86 and City of Toronto Official Plan to permit the development of a new 37-storey residential building with a height of 123.46 metres to the top of the mechanical penthouse (the "Original Proposal"). The residential entrance would front onto Merton Street, and was proposed to be flanked by 4 grade-related townhouse units at 2-storeys. Parking would be provided in 3 levels of underground parking and 3 levels of above-ground parking. A total of 205 commercial parking spaces and 134 residential parking spaces were proposed.

On December 2, 2017, the Applicant appealed its zoning by-law and official plan amendment applications to the Ontario Municipal Board ("OMB"), now known as the Local Planning Appeal Tribunal ("LPAT"), for non-decision by City Council. The appeal is known as LPAT File No. PL180021. A first pre-hearing conference was held on February 13, 2019, a second pre-hearing conference was held on June 11, 2019 and a third pre-hearing conference was held on November 15, 2019.

On December 2 and 3, 2019 and January 24, 2020, the City attended formal mediation before the LPAT regarding the Applicant's appeal. The other parties to the mediation were the Applicant, the South Eglinton Ratepayers and Residents Association ("SERRA"), Toronto Lands Corporation (also known as the Toronto District School Board, or "TDSB"), the Girl Guides of Canada, Abraham J. Green Limited, and G.R. Feldman Investments Ltd.

On July 14, 2020, the Applicant's counsel, McCarthy Tetrault LLP, submitted to the City Solicitor a with prejudice settlement offer (the "Settlement Offer") based on revised architectural plans also dated April 9, 2020 and prepared by Sweeny&Co Architects (the "Revised Plans"). The Revised Plans and Settlement Offer are the result of discussions between the City, the Applicant, and the parties that took place during and following the LPAT mediation.

The Settlement Offer is attached to this report as Public Attachment 1, and includes the Revised Plans as Schedule "A". The Settlement Offer and Revised Plans are described further in the "Comments" section below.

The purpose of this report is to request instructions for the upcoming 10-day LPAT hearing, which is scheduled for September 21 to October 2, 2020.

City Planning has 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 to this report, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to remain confidential at the discretion of the City Solicitor, as it contains advice 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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On September 6, 2017, City Council considered and adopted the recommendations of a Preliminary Report by City Planning regarding the Original Proposal and scheduling a community consultation meeting. A copy of City Council's decision and City Planning's report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE26.56>

On June 18, 2019, City Council considered and adopted the recommendations of a Request for Direction Report by City Planning regarding the Applicant's zoning by-law and official plan amendment application appeals. City Council authorized the City Solicitor and City staff to attend the LPAT to oppose the Original Proposal and authorized the City Solicitor and City staff to continue discussions with the Applicant to resolve the matter. A copy of City Council's decision and City Planning's report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE6.15>

## **COMMENTS**

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Vehicular access to the parking garage was proposed through Al Green Lane. The proposed tower floor plate is 787.1 square metres. The proposal would have a residential gross floor area ("GFA") of 25,498 square metres and a non-residential GFA (for the commercial parking) of 8,260 square metres. This results in a floor space index ("FSI") of 12.55 times the area of the lot.

The Settlement Offer and the Revised Plans show a revised proposal that includes certain changes to the design of the building. The Settlement Offer and Revised Plans include the following:

- The height of the proposed building is 37 storeys and approximately 120 metres (exclusive of mechanical penthouse);
- The tower floorplate of the proposed building has been reduced from 788.4 square metres to 750 square metres;
- The height of the base building has been reduced from 7 storeys to 5 storeys;
- The tower setbacks have been increased to a minimum of 12.5 metres from the north and east property lines and 9 metres from the west property line;

- The residential GFA of the proposal has been reduced from 28,173 square metres to 24,500 square metres;
- The residential townhouse units at grade have been replaced with non-residential space for retail uses. As a result, the Revised Plans now include 326.1 square metres of non-residential retail space fronting onto Merton Street;
- The Revised Plans now include 37 3-bedroom units and 114 2-bedroom units, representing 11 percent and 34 percent, respectively, of the overall unit mix in the proposed development;
- Commercial parking will be provided on 3 floors of below grade parking, with a total of 195 commercial spaces. This parking will serve to satisfy the parking requirements of the existing medical office building next door to the west at 1849 Yonge Street, which was previously serviced by the commercial parking garage that currently exists on the Subject Site;
- Residential amenity space will be provided at 1.9 square metres of indoor space and 2 square metres of outdoor space per dwelling unit. Enhanced pet amenities are proposed to be provided;
- The entrance to the parking garage has been moved from Al Green Lane to the south-east side of the site along Merton Street. Pedestrian entrances to the parking garage will now be provided from Al Green Lane and Merton Street; and
- The base building has now been additionally setback 1.7 metres from Al Green Lane to the east to provide room for a pedestrian walkway and easement. The base building has also been setback 4 metres from the south property line with a deeper 6 metre setback in front of the residential lobby at the south-west corner of the building beside Al Green Lane.

In addition to the built form changes set out above, the following is proposed to be secured as part of the Settlement Offer and the Revised Plans:

- Conveyance to the City of a 0.71 metres lane widening along the east side of the property to extend the public right of way in Al Green Lane;
- Conveyance to the City of a 1.7 metre pedestrian surface easement running north-south of the length of the property along Al Green Lane. The purpose of the pedestrian surface easement is to improve pedestrian connectivity with the Lane and allow safe access from the parking garage entrance to Merton Street. The pedestrian surface easement will have a minimum height of 3 metres;
- The Applicant will upgrade the Merton Street municipal watermain from Yonge Street to just east of the Subject Site to address servicing issues;

- The Applicant has proposed to provide the following as a Section 37 benefit: (a) a cash contribution of \$4.1 million and (b) in-kind laneway improvements to sections of Al Green Lane north of the Subject Site to Balliol Street and south of Merton Street to the Beltline Trail up to a maximum cost of \$400,000 (the "Off-site Laneway Improvements");
- As an additional community benefit, the Applicant has also agreed to provide in-kind laneway improvements to the portion of Al Green Lane directly adjacent to the east side of the Subject Site up to a maximum cost of \$250,000 (the "Adjacent Laneway Improvements"); and
- The design of both the Off-site Laneway Improvements and Adjacent Laneway Improvements will be finalized as part of the Site Plan Approvals process to the satisfaction of the Chief Planner, and may include features such as lighting, public art, and paving. The Owner has additionally agreed to work with the City and the Ward Councillor, in consultation with the community, regarding the design of the Laneway Improvements.

The City Solicitor requires further instructions regarding the Settlement Offer. 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 information 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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1. Public Attachment 1 - Settlement Offer dated July 14, 2020
2. Confidential Attachment 1 - Confidential Recommendations and Confidential Information