



SUPPLEMENTARY REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

1650 Sheppard Avenue East - Request for Direction Regarding LPAT Hearing

Date: July 27, 2020

To: City Council

From: City Solicitor

Wards: Ward 17 - Don Valley North

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

On December 23, 2016, the City received an application to amend the Official Plan and Zoning By-laws for 1650 Sheppard Avenue East to facilitate an infill development for this property consisting of the retention of an existing 15-storey (42.72 metre) rental apartment building, and the construction of a new rental building with 343 dwelling units at a proposed building height of 35 storeys (106.8 metres). The proposed building would have a gross floor area of 26, 985 square metres, resulting in a total GFA for the site of 40,374 square metres and a density of 4.46 times the lot area (including the existing apartment building).

The applicant appealed City Council's neglect or failure to make a decision on its applications for Official Plan and Zoning By-law Amendment (the "**Appeals**") to the Ontario Municipal Board, now continued as the Local Planning Appeal Tribunal (the "**LPAT**") on May 30, 2017.

In a report to City Council dated March 15, 2018, City Planning recommended opposition to the Appeals at the LPAT. City Planning concluded in the Request for Direction Report that the proposal was inconsistent with the Provincial Policy Statement, 2014, conflicted with and did not conform to the Growth Plan for the Greater Golden Horseshoe (2017), and did not conform to the Official Plan as amended by OPA 320 or the Sheppard East Subway Corridor Secondary Plan, all for the reasons set out in the Request for Direction Report.

City Council adopted the recommendations in the March 15, 2018 Request for Direction Report to oppose the Appeals, but to continue discussions with the applicant to address

the issues outlined in that report, and to report back to City Council on any substantive revisions.

In June, 2019, the applicant submitted a revised development proposal for the site (the "**Revised Proposal**"). The Revised Proposal is explained and analyzed in a report to City Council dated February 24, 2020, amended on February 28, 2020; which report was considered by North York Community Council on March 12, 2020 and adopted with amendments. The Revised Proposal consists of an Official Plan Amendment that is a Context Plan (the "**Context Plan OPA**") for the entire north-west quadrant of Don Mills Road and Sheppard Avenue East, along with amendments to the Zoning By-law Amendment application. City Council considered the item on June 29, 2020 and postponed its consideration to a later date. This item is on the agenda for the July 29 and 30 meeting of City Council as Item NY14.5.

Macs Convenience Stores Inc. ("**Macs**") owns the property known municipally as 2500 Don Mills Road, which is the property in the south-east corner of the lands subject to the Context Plan OPA. Despite being provided notice that the Official Plan and Zoning By-law amendment applications had been made; despite being provided notice of the LPAT proceedings and Macs' franchisee participating in those proceedings; and despite the two occasions at which North York Community Council considered these matters in 2017 and 2018, Macs failed to express an interest in the outcome of these matters to North York Community Council until the March 11, 2020 correspondence from Urban Strategies Inc. regarding 2600 Don Mills Road; and to City Council until its June 25, 2020 correspondence regarding 1650 Sheppard Avenue East. Both 1650 Sheppard Avenue East and 2600 Don Mills Road are within the Context Plan OPA area. Macs' correspondence to the City is attached to this report as Public Appendices "A," "B," and "C."

The purpose of this report is to request further instructions for the LPAT hearing that is scheduled to commence October 26, 2020.

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 (July 27, 2020) from the City Solicitor.
2. City Council authorize the public release of Confidential Recommendations in Confidential Attachment 1 and Confidential Appendix "B", including any part thereof, to this report (July 27, 2020) from the City Solicitor at the sole discretion of the City Solicitor.
3. City Council direct that all other information contained in Confidential Attachment 1, and Confidential Appendix "A" to the report (July 27, 2020) from the City Solicitor is to

remain confidential, as it contains without prejudice information and 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 owner submitted a re-zoning application on December 23, 2016. On April 4, 2017 North York Community Council adopted a Preliminary Report on the rezoning application. Included within the recommendations is the requirement for the applicant to develop a Context Plan for consideration by the City, in collaboration with area landowners and City staff. The Preliminary Report is available at:

<https://www.toronto.ca/legdocs/mmis/2017/ny/bgrd/backgroundfile-102131.pdf>

North York Community Council and City Council considered a Request for Direction Report on April 4, 2018 and April 24, 2018 respectively, and adopted it. City Council's decision to oppose the application is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.NY29.6>

North York Community Council considered a further Request for Direction Report on March 12, 2020 and adopted it with amendments. The Request for Direction recommends that City Council support revisions to the Context Plan OPA and the rezoning application, along with a Section 37 contribution. City Council considered the item on June 29, 2020 and postponed its consideration to the July 29 and 30, 2020 meeting of City Council. North York Community Council's recommendations and City Council's decision to defer are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.NY14.5>

The Report from the Director, Community Planning, North York District, may be found here: <https://www.toronto.ca/legdocs/mmis/2020/ny/bgrd/backgroundfile-146505.pdf>

The applicant appealed to the Ontario Municipal Board on May 30, 2017. Pre-hearing conferences were conducted on January 26, 2018, June 5, 2018, September 21, 2018 and December 3, 2019. LPAT-sponsored mediation took place in January and March, 2019. A five-day LPAT hearing is scheduled to commence on October 26, 2020.

COMMENTS

Since the applications for 1650 Sheppard Avenue East were made almost four years ago, there have been extensive reviews by staff, the community, Community Council and City Council of the proposal and revisions to it, and a lengthy mediation and litigation process at the LPAT. Notice has been given to Macs of every opportunity to participate in the City and LPAT processes, and the opportunities for engagement have been numerous. In particular, the following non-comprehensive list of notices were

provided to the owner of 2500 Don Mills Road with respect to the 1650 Sheppard Avenue East applications:

- **March 7, 2017:** Planning Act notice posted on the property.
- **April 4, 2017:** North York Community Council considers Preliminary Report.
- **May 26, 2017:** City Planning provided notice of the proposal for 1650 Sheppard Avenue East and the context plan study for the block.
- Notice given for first Pre-Hearing Conference ("**PHC**"), as directed by the OMB, in advance of the first PHC. As an adjacent landowner, Macs would have received notice.
- **January 26, 2018:** First LPAT Pre-Hearing Conference re: 1650 Sheppard Avenue East.
- **February 2, 2018:** The LPAT issued a Decision from the first Pre-hearing Conference directing notice to landowners for the draft context plan.
- **March 8, 2018:** City Planning held a community consultation meeting for the development site at 1650 Sheppard and discussed the emerging context plan.
- **April 4, 2018:** North York Community Council considers Request for Direction Report and Notice of the meeting was provided in accordance with the City's typical procedures and Notice By-laws.
- **April 24, 2018:** City council considers Request for Direction Report.
- **June 5, 2018:** Second LPAT Pre-Hearing Conference re: 1650 Sheppard Avenue East.
- **June 21, 2018:** LPAT issues a Decision expanding the scope of the requested Context Plan Official Plan Amendment to the entire north-west quadrant of Don Mills Road and Sheppard Avenue East, and directs that notice of the expanded Official Plan Amendment be given to all landowners in the quadrant, including the owner of 2500 Don Mills Road.
- **August 17, 2018:** Solicitor for the applicant at 1650 Sheppard Avenue East provided notice of the third pre-hearing conference and identified that the appellants, parties and participants to be identified and that leave would be required to be added as a party to the proceedings.
- **September 21, 2018:** Third LPAT Pre-Hearing Conference re: 1650 Sheppard Avenue East, attended by Sean Vardoulis, representative of the operator/franchisee of the ESSO Gas Station at 2500 Don Mills Road.
- **September 21, 2018:** City Planning provided notice of the applications for 2600 Don Mills Road in addition to 1650 Sheppard Avenue East and context plan process.
- **September 28, 2018:** A master context plan, showing building heights, placement and location was presented by the applicant.
- **October 3, 2018:** the LPAT granted participant status to Sean Vardoulis, representative of the operator/franchisee of the ESSO Gas Station at 2500 Don Mills Road and he was granted party status for the purposes of mediation with the parties.
- On or about **October 16, 2018:** correspondence exchanged between City Planning and the owner of 2500 Don Mills Road regarding the block planning work currently underway. Information regarding workshops, timing, date of November 2018 North York Community Council meeting/Open House, and information about how to provide feedback on documents was provided by City Planning. The Owner of 2500 Don Mills Road did not provide any feedback on the documents provided, nor did it attend the Community Meeting/Open House in November, 2018.

- **November 15, 2018:** LPAT issues the Procedural Order identifying the parties and participants to the hearing.
- **November 29, 2018:** City Planning held a Community Consultation Meeting for the Context Plan for the Block, and identified various matters, including lands to be included in the Context Plan.
- **March 27 and 28, 2019:** LPAT-led mediation related to 1650 Sheppard Avenue East and 2600 Don Mills Road applications conducted; attended by Sean Vardoulas.
- **December 3, 2019:** LPAT Pre-Hearing Conference re: 1650 Sheppard Avenue East
- **January 23, 2020:** City Planning held a Community Consultation Meeting for the Context Plan for the Block.
- **March 12, 2020:** North York Community Council considers further Request for Direction Report.
- **June 29, 2020:** City Council considers further Request for Direction Report.

The applications for 1650 Sheppard Avenue East are closely related to the applications at 2600 Don Mills Road by virtue of the LPAT's decision to extend the boundary of the Context Plan OPA to include all of the lands in the north-west quadrant of Don Mills Road and Sheppard Avenue East. The owner of 2600 Don Mills Road has also made applications to amend the Official Plan and Zoning By-laws for its site. Its Zoning By-law Amendment application has been appealed to the LPAT and was contingently consolidated by the LPAT in December, 2019, with the appeals related to 1650 Sheppard Avenue East. The Official Plan Amendment application (OPA 490) by the Owner of 2600 Don Mills Road is before City Council for decision at its July 28 and 29, 2020 meeting; see Item NY14.1.

Notice has been given to Macs of every opportunity to participate in the City and LPAT processes related to the 2600 Don Mills Road applications as well, and the opportunities for engagement with these applications as well have been numerous. In particular, the following non-comprehensive list of notices were provided to the owner of 2500 Don Mills Road with respect to the 2600 Don Mills Road applications:

- **December 20, 2017:** Planning Act notice posted on the property.
- **February 21, 2018:** North York Community Council considers Preliminary Report
- Community consultation.
- **November 22, 2018:** First LPAT Pre-Hearing Conference re: 2600 Don Mills Road.
- **February 14, 2019:** North York Community Council considers Request for Direction Report.
- **February 26, 2019:** City Council considers Request for Direction Report.
- **March 27 and 28, 2019:** LPAT-led mediation related to 1650 Sheppard Avenue East and 2600 Don Mills Road applications conducted; attended by Sean Vardoulas.
- **June 4, 2019:** Second LPAT Pre-Hearing Conference re: 2600 Don Mills Road.
- **February, 2020:** Notice given for statutory public meeting regarding Official Plan Amendment 490.
- **March 12, 2020:** North York Community Council considers Final Report (Official Plan Amendment) and Request for Direction Report (Zoning By-law Amendment).
- **June 29, 2020:** City Council considers Final Report (Official Plan Amendment) and Request for Direction Report (Zoning By-law Amendment).

In addition to all of the opportunities for Macs to engage with these matters listed above, two five-day hearing events were scheduled and then cancelled by the LPAT for December 3-7, 2019 (cancelled to allow without prejudice discussions to continue between the parties) and May 11-15, 2020 (cancelled due to COVID-19 public health emergency). Were it not for the COVID-19 public health emergency, the LPAT hearing in relation to the applications for both 1650 Sheppard Avenue East and 2600 Don Mills Road would have taken place before Macs identified its interest in the proceedings to City Council.

Notwithstanding the various notices, community consultation meetings, and scheduled and cancelled LPAT hearing events, Macs conveyed no interest in the Context Plan OPA until its correspondence to North York Community Council dated March 11, 2020. Staff, along with the other landowners of the Block, worked collaboratively to refine the Context Plan OPA and OPA 490 (2600 Don Mills Road) such that these instruments would not prejudice the development potential of 2500 Don Mills Road and such that any redevelopment of the 2500 Don Mills Road site would fit seamlessly into the redeveloped quadrant. In particular, the Context Plan OPA shows an onsite parkland dedication for 2500 Don Mills Road that will add to the parkland identified on the other properties in the quadrant; the required right-of-way widening is minimal, providing only for a boulevard and sidewalk on the 2500 Don Mills Road lands; and the only applicable policy objectives relate to transition to Neighbourhoods, and built form and density. In addition, the technical justification work underlying the Context Plan OPA and OPA 490 (2600 Don Mills Road) makes reasonable and defensible assumptions about the potential redevelopment of the 2500 Don Mills Road site, in the absence of concrete data produced by Macs in the context of a development application.

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. 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

Appendix "A" to Public Report - Correspondence from Urban Strategies Inc., dated March 11, 2020.

Appendix "B" to Public Report - Correspondence from Goodmans LLP, dated June 25, 2020.

Appendix "C" to Public Report - E-mail correspondence from Goodmans LLP, dated June 25, 2020.

Confidential Attachment 1 - Confidential Recommendations and Confidential Information.

Confidential Appendix "A" to Confidential Attachment 1 - Confidential Information.

Confidential Appendix "B" to Confidential Attachment 1 - Confidential Information.