

Don Mills Centre - Request for Instructions

Date: October 19, 2020

To: City Council

From: City Solicitor

Wards: Ward 16 - Don Valley East

SUMMARY

This report responds to Item NY18.23 adopted by the North York Community Council at its meeting of October 7, 2020. The motion requested the City Solicitor and the Chief Planner to report back on the Section 37 agreement for the Don Mills Centre to the October 27, 2020 meeting of City Council. This report has been prepared by the City Solicitor in consultation with the Chief Planner and Executive Director, City Planning.

On March 2, 2011, Official Plan Amendment No. 587 to the former City of North York Official Plan and Zoning By-law 342-2011(OMB) were approved by the Ontario Municipal Board (OMB) now continued as the Local Planning Appeal Tribunal (LPAT). The planning instruments implement City Council's settlement on the redevelopment of the southern portion of the Don Mills Centre lands (Phase 2) with a mixed use development including a Local Park and a public community centre, to be located at 966 Don Mills Road (the "Community Centre").

A Section 37 Agreement was entered into between the owner of the lands, C/F Realty Holdings Limited (Cadillac Fairview) and the City. The City Solicitor is seeking instructions from City Council with respect to several deadlines in the Section 37 Agreement.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council authorize the City Solicitor to extend several deadlines in the Section 37 Agreement related to Don Mills Centre as follows:
 - a. extend the deadline for conveyance of 966 Don Mills to the City until July 31, 2021;

- b. extend the deadline to grant Cadillac Fairview the option to purchase the Civitan Arena to July 31, 2021;
 - c. extend the deadline to enter into an option agreement for the Civitan Arena until July 31, 2021; and
 - d. extend the substantial completion date of the Community Centre building until July 31, 2021.
2. City Council authorize the City Solicitor to extend the deadlines in Recommendation 1 for a further 6 months, to January 31, 2022, if necessary.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the confidential instructions to staff.

DECISION HISTORY

On March 2, 2011, Official Plan Amendment No. 587 to the former City of North York Official Plan and Zoning By-law 342-2011(OMB) were approved by the Ontario Municipal Board (OMB) now continued as the Local Planning Appeal Tribunal (LPAT). The planning instruments implemented City Council's settlement on the redevelopment of the southern portion of the Don Mills Centre (Phase 2).

The redevelopment called for the demolition of a commercial building at 49 The Donway West, the conversion of an office building at 75 The Donway West to a residential condominium building, and the construction of 2,050 condominium units in a series of mixed use buildings ranging from 6 to 32 storeys in height. As part of the redevelopment, Cadillac Fairview was to construct a 4,512 square metres public community centre at the northwest corner of Don Mills Road and The Donway West known municipally as 966 Don Mills Road. The development was planned to be developed in phases over a number of years. The City entered into the Section 37 Agreement to, among other matters, secure the conveyance of the lands at 966 Don Mills Road to the City and construction of the Community Centre.

By Item CC31.14, adopted by City Council on July 4, 5, 6 and 7, 2017, City Council adopted the confidential instructions to staff contained in a report from the City Solicitor, which instructions are now public, and thereby extended the deadline for the conveyance of 966 Don Mills Road to the City for the Community Centre until April 30, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CC31.14>

By Item CC5.8, adopted by City Council on March 27 and 28, 2019, City Council adopted the confidential instructions to staff contained in a report from the City Solicitor,

which instructions are now public, and thereby extended the deadline for the conveyance of land to the City for the Community Centre until April 30, 2020.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC5.8>

On July 16, 17 and 18, 2019, City Council adopted item EX7.5, thereby endorsing the Preferred Facility Community Recreation Centre at 844 Don Mills Road, which proposed consolidating the community centres approved through each of the developments at the Don Mills Centre and on the former Celestica lands. City Council instructed staff to initiate amendments to the Section 37 Agreement for Don Mills Centre as it pertains to the provisions of the Community Centre at 966 Don Mills Road. City Council also directed the City Solicitor and appropriate City staff to work with Cadillac Fairview to negotiate the extension of the Don Mills Civitan Arena (at 1030 Don Mills Rd.) in an effort to minimize disruption while the new arena at 844 Don Mills Rd. is constructed.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX7.5>

On October 7, 2020, Item NY18.23 was adopted by the North York Community Council. The motion requested the City Solicitor and the Chief Planner report back on the Section 37 agreement for the Don Mills Centre to the October 27, 2020 meeting of City Council.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.NY18.23>

COMMENTS

In 2011, the Section 37 Agreement was entered into between Cadillac Fairview and the City (the "Agreement"), which among other matters, set out the timing for the conveyance of a parcel at 966 Don Mills to the City and the related construction of a community centre on that parcel (the "Community Centre Lands"). The Community Centre Lands were originally required to be conveyed to the City on October 12, 2011 (the "Transfer Date"). The Community Centre was required to be completed by October 12, 2020.

The Agreement contemplated that concurrent with the transfer of the Community Centre Lands, the City would provide the owner with an option to purchase a City-owned parcel of land located in the middle of the subject block with associated mutual driveway rights that extend to Don Mills Road (the "Option"). The Civitan Arena is currently situated on these City-owned lands. In the event that the owner exercised its option to purchase the Civitan Arena Lands, the agreement further required the owner to lease the lands back to the City until October 31, 2020. The purpose of the lease-back arrangement was to permit the Civitan Arena to operate until such time as the Community Centre was completed.

The Agreement permits extensions to the Transfer Date on consent of the parties' solicitors, and, accordingly, it was extended by Cadillac Fairview's solicitors and the City Solicitor on several occasions to February 28, 2017. The transfer was delayed for several reasons, including issues with the environmental remediation of the Community Centre Lands, as well as difficulties finding an appropriate operator for the Community Centre.

A further extension of the Transfer Date was required in the summer of 2017. However, as the Transfer Date had been extended multiple times, the City Solicitor sought and obtained instructions from Council for a further extension until April 30, 2019. In March 2019, the City Solicitor subsequently requested a further extension of the Transfer Date until April 30, 2020, as a further extension was required. One further extension, until October 30, 2020 was agreed to by the solicitors for the Parties in April 2020.

In June 2018, City Council adopted a without prejudice settlement offer for a mixed use development including a community centre, related to development applications at 844 Don Mills Road, 1150 and 1155 Eglinton Avenue East (the former Celestica Lands). The LPAT issued a final order on January 28, 2019, approving the proposed development.

In July 2019, City Council adopted Item EX7.5 and instructed staff to initiate amendments to the Agreement as it pertains to provisions in respect of the community centre at 966 Don Mills Road. In adopting the report related to that item, Council endorsed what is referred to in the report as the "Preferred Facility community centre" which envisions a large twin-pad arena/multi-sport indoor courts, gymnasium with walking track, aquatic centre, and community and program space, located on the large community park on the former Celestica Lands. This Preferred Facility community centre would serve the larger Don Mills area and would replace the Community Centre envisioned at 966 Don Mills Road.

Accordingly, Staff have engaged in ongoing confidential and without prejudice negotiations with Cadillac Fairview regarding potential amendments to the Section 37 Agreement. However, the parties have not yet concluded their negotiations with respect to amendments to the agreement. While negotiations continue, the deadlines in the Section 37 Agreement pertaining to the Transfer Date of the Community Centre lands to the City, the granting of the Option to purchase the Civitan Lands to Cadillac Fairview and substantial completion of a Community Centre building will expire. The agreement provisions with respect to the Transfer Date, Option and substantial completion of a community centre building will need to be continued to facilitate the continuing negotiations to amend the agreement.

It is recommended that, for the time being, Council authorize an extension of the Transfer Date for the Community Centre Lands, deadlines for the Option and the substantial completion date under the Section 37 Agreement to July 21, 2021, with an option to extend to January 21, 2022. An extension of the these deadlines would allow City staff time to negotiate an amendment of the Section 37 Agreement in pursuit of its previous instruction with respect to Preferred Facility approach in the Don Mills corridor.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor