



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

LPAT Appeal of OPA 231 – 85 Hanna Avenue – Request for Directions

Date: November 16, 2020
To: City Council
From: City Solicitor
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

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

City Council adopted Official Plan Amendment No. 231 (OPA 231) policies for the entire city following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. First Capital REIT ("FCR"), the owner of the property municipally known 85 Hanna Avenue, has appealed OPA 231 regarding the land use designation for 85 Hanna Avenue (the Lands) to the Local Planning Appeal Tribunal (LPAT). The appeal sought to have the *Mixed Use Areas* designation on the Lands while OPA 231 re-designates the Lands as *General Employment Areas*.

FCR also appealed Policy 3.5.2.6 of OPA 231 respecting cultural industry uses within the King Parliament Secondary Plan area, the King Spadina Secondary Plan area and the Liberty Village area of the Garrison Common North Secondary Plan on a city-wide basis. The City Solicitor requires further directions.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. If the confidential instructions in Confidential Attachment 1 are adopted, City Council authorize the public release of:

- a. the recommendations contained in the Confidential Attachment 1, with the remainder of the Confidential Attachment 1 to remain confidential, as it contains advice subject to solicitor-client privilege; and
- b. Confidential Attachment 2.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the recommendations in this report.

DECISION HISTORY

At its meeting on December 16, 17 and 18, 2013, City Council adopted OPA 231 with respect to the economic health policies and the policies, designations and mapping for *Employment Areas* following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. The City's decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

The Minister approved the majority of OPA 231 with some modifications in July 2014. The LPAT received a total of 178 appeals to OPA 231, including a site-specific appeal on July 28, 2014 regarding the Lands by FCR. The LPAT has issued several Orders partially approving OPA 231. An Order in December 2016 brought into force the *Core Employment Areas* and *General Employment Areas* designations, except for sites under appeal and regarding particular uses that remained contested. An Order in January 2019 brought into force the remainder of the policies for the two *Employment Areas* designations, except with respect to retail policies that remain subject to appeal. LPAT Decisions can be accessed at this link:

<https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL140860>

COMMENTS

On November 3, 2020 FCR sent a with prejudice letter through their solicitor to the City offering to settle both outstanding OPA 231 appeals on the following basis:

- Maintain the majority of the Lands as *General Employment Areas*, including the portion currently being used for office, restaurant and retail uses;
- Re-designate the rear portion of the Lands that extends behind 75 Hanna Avenue from *General Employment Areas* to *Mixed Use Areas*; and

- Modifying Policy 3.5.2.6 to clarify that the intent of the policy is to preserve or expand non-residential gross floor area associated with Cultural Industry uses, as opposed to all non-residential uses.

The Lands about the Kitchener GO/UP Express railway line to the north. To the south and east, the Subject Lands are adjacent to a *Mixed Use Areas* designation that contains a mix of uses, including residential, restaurant, retail and service commercial uses. To the west, the lands about a *General Employment Areas* designation that contains a mix of office, restaurant, retail and services uses.

The Lands are irregular in shape with an extension at the rear of the property that projects into 75 Hanna Avenue. 75 Hanna Avenue is designated *Mixed Use Areas*. The majority of 85 Hanna Avenue contains a four-storey office building with retail and restaurant uses. The extension projecting behind 75 Hanna Avenue contains an entrance to underground parking for 85 Hanna Avenue and a drive aisle for the surface parking on 75 Hanna Avenue.

FCR is seeking to have the rear portion of 85 Hanna Avenue designated *Mixed Use Areas*. The remainder of 85 Hanna Avenue would be designated *General Employment Areas* as set out in OPA 231.

The with prejudice settlement offer also proposes a withdrawal of FCR's appeal of Policy 3.5.2.6 relating to the growth of cultural industries subject to slight modification to the policy language in order to clarify its intent. Cultural Industries are defined in the Official Plan to include "design, broadcasting, film video and photography, music and the visual and performing arts, publishing, software, computer games and electronic publishing".

The policy under appeal currently reads:

Cultural enterprises and employment are significantly clustered within *King Spadina Secondary Plan area, King Parliament Secondary Plan area* and the Liberty Village Area of the *Garrison Common North Secondary Plan*. The stock of non-residential floor space in these areas will be preserved and expanded to encourage the continued growth of cultural industries.

FCR has proposed the following modification:

Cultural enterprises industries and employment are significantly clustered within the *King Spadina Secondary Plan area, King Parliament Secondary Plan area* and the Liberty Village Area of the *Garrison Common North Secondary Plan*. The stock of non-residential floor space associated with cultural industries in these areas will be preserved or expanded to encourage the continued growth for cultural industry uses.

This report requests further direction from City Council for the outstanding LPAT appeals.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Public Attachment 1- With Prejudice letter from Aird Berlis LLP dated November 3, 2020

Confidential Attachment 1 - Confidential Instructions to Staff and Confidential Advice
Subject to Solicitor-Client Privilege

Confidential Attachment 2 - Confidential Information