

## **35-39 Holmes Avenue – Official Plan and Zoning By-law Amendment Application – Request for Further Direction Regarding LPAT Hearing**

**Date:** March 1, 2021  
**To:** City Council  
**From:** City Solicitor  
**Wards:** Ward 18 - Willowdale

### **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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Holmes Avenue Ltd. (the "Applicant") is the owner of the property municipally known as 35-39 Holmes Avenue (the "Subject Property"). The Applicant applied for an Official Plan Amendment and Zoning By-law Amendment in order to facilitate a proposed residential redevelopment of the Subject Property (the "Original Application"). The Original Application proposed an 18-storey residential building.

On June 26, 2018, City Council considered Item NY31.5 and refused the Original Application. City Council also authorized the City Solicitor and appropriate staff to attend the Local Planning Appeal Tribunal (the "LPAT") to oppose the Original Application in the event the Council's decision to refuse the proposal was appealed.

On July 26, 2018, the Applicant filed appeals against City Council's decision to refuse the Original Application. The first Prehearing Conference for this matter was held on November 5, 2020. A ten day hearing before the LPAT is schedule to commence on July 5, 2021.

On February 8, 2021, the Applicant, through their legal counsel Overland LLP, provided a with prejudice settlement offer regarding the LPAT appeal (the "Settlement Offer"). The Settlement Offer proposes a 17-storey residential building, incorporating changes to the design of the development, as shown on the revised architectural plans dated November 20, 2020 (the "Revised Plans"). The Settlement Offer is included as Public Attachment 1 to this report. The Revised Plans, which include a statistics sheet, are included as Public Attachment 2 to this report. The Settlement Offer also includes a Draft Official Plan Amendment and Draft Zoning By-law Amendment which are included as Public Attachment 3 and 4 to this report respectively. Further details regarding the Settlement Offer and the Revised Plans are provided in the "Comments" section below.

The purpose of this report is to request instructions for the upcoming LPAT Prehearing Hearing.

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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City Council on May 21, 22, and 23, 2002 approved By-law 744-2002 to permit a 28-storey residential building and three townhouses located at what is now known as 60-62 Byng Avenue. The redevelopment included the density permissions of 40, 42, 44, 48, 56, 60, and 62 Byng Avenue, 28 and 35 Holmes Avenue and 426, 430 and 434 Kenneth Avenue. The application utilized the full density permission assigned to 35 Holmes Avenue, which is a total of 897.5 square metres. The Final Report by City Planning

regarding By-law 744-2002 and considered by City Council can be found at the following link:

<https://www.toronto.ca/legdocs/2002/agendas/council/cc020521/ny5rpt/cl019.pdf>

At its meeting on June 26, 2018, City Council considered the Refusal Report by City Planning (Item NY31.5) and decided to adopt the recommendation to refuse the Original Application. City Council also authorized the City Solicitor and appropriate staff to attend the LPAT to oppose the Original Application in the event the Council's decision to refuse the proposal was appealed. City Council's decision and the Refusal Report by City Planning regarding the Original Application can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.NY31.5>

## COMMENTS

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The Subject Property is designated *Mixed Use Areas* and is located within a designated *Centre* in the Toronto Official Plan. In addition, the Subject Property is located within, and subject to the policies of, the North York Centre Secondary Plan (the "NYCSP") and is designated *Mixed Use Area H* in that plan.

The below chart outlines the statistics of the Revised Plans as contained in the Settlement Proposal, as they compare to the Original Application.

	Original Application – January 12, 2018	Revised Plans – February 8, 2021
Site Area	2376.40 square metres	2376.40 square metres
Site Area with available density	1477.40 square metres	1477.40 square metres
Residential GFA	13,301 square metres	11,299.90 square metres
Density	9 x lot area	7.65 x lot area
Height (metres)	55.84 metres	53.30 metres
Height (storeys)	18	17
Coverage	0.47 percent	0.47 percent
Indoor Amenity	308 square metres	238.40 square metres
Outdoor Amenity	327 square metres	431.70 square metres

	Original Application – January 12, 2018	Revised Plans – February 8, 2021
1 bedroom (number and percentage of total units)	100 (64.95 percent)	107 (69.48 percent)
2 bedrooms (number and percentage of total units)	54 (35.06 percent)	31 (20.13 percent)
3 bedrooms (number and percentage of total units)	0 (0 percent)	16 (10.39 percent)
Vehicle Parking	153	96
Vehicle Parking - visitor	15	15
Bicycle Parking	116	116
Bicycle Parking - visitor	11	11
Parking levels (underground)	3 levels	2 levels
Podium	3 storey (12 metres)	3-storey (12 metres)
Podium front setback	3.24-3.42 metres	3.00-3.6 metres
Podium east setback	7.04 metres	7.5 metres
Tower floor plate	519 – 738 square metres	685 square metres
Tower west lot line	14.46 metres	10 metres
Tower front setback	10.6 metres	7.7 metres
Tower rear setback	9.25 metres	12.5 metres
Tower east setback	13.79 metres	14.65 metres

As is identified in the above statistical comparison, amongst other revisions, the Revised Plans reduce the building height from 18-storeys (55.84 metres) to 17-storeys (53.30 metres).

The Revised Plans also proposed a reduction in gross floor area by 2001.10 square metres, resulting in a density reduction from 9 times the lot area to 7.65 times the lot area. It should be noted that due to the inclusion of 35 Holmes Avenue in the previous rezoning application approved for the adjacent site at 60-62 Byng Avenue, the property at 35 Holmes Avenue has zero remaining as-of-right density (as it was used for the

purpose of the 60-62 Byng Avenue approval). Therefore, the as-of-right density identified in the NYCSP is 2.6 times the lot area.

The Revised Plans include a reduction in the size of the tower floor plate and a shift of the building to the east which increases the setback to the property to the west.

The Revised Plans have also revised the proposed residential unit mix, introducing three-bedroom units and increasing the number of two-bedroom units. The proposed percentage of two-bedroom and three-bedroom units are now 20.13 percent and 10.39 percent respectively.

The Settlement Offer confirms that the Applicant will be seeking approval of the Revised Plans at the LPAT hearing set to commence on July 5, 2021.

### **City Solicitor Comments**

The City Solicitor requires instructions regarding the Settlement Offer for the purpose of the upcoming Hearing. 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 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 February 8, 2021
2. Public Attachment 2 - Revised Plans and Statistics Sheet dated November 20, 2020
3. Public Attachment 3 - Draft Official Plan Amendment
4. Public Attachment 4 - Draft Zoning By-law Amendment
5. Confidential Attachment 1 - Confidential Recommendations and Confidential Information