

859 The Queensway – Zoning By-law Amendment Application – Request for Further Direction Regarding LPAT Decision

Date: March 30, 2021

To: City Council

From: City Solicitor

Wards: Ward 3 - Etobicoke-Lakeshore

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

Latch Developments Ltd. (the "**Applicant**") is the owner of the property municipally known as 859 The Queensway (the "**Subject Property**"). The Applicant applied for a Zoning By-law Amendment in order to facilitate a proposed mixed-use redevelopment of the Subject Property (the "**Original Application**"). The Application proposes a 14-storey mixed use building. The proposed building is "L" shaped, with an 8-storey component along The Queensway that wraps around the corner onto Plastics Avenue and then rises to a tall building height of 14-storeys.

On January 24, 2018, the Applicant appealed the Zoning By-law Amendment application to the Ontario Municipal Board (the "**OMB**") now known as the Local Planning Appeal Tribunal (the "**LPAT**") due to City Council's failure to make a decision. The rezoning appeal is known as LPAT Case No. PL180105.

On November 30, 2018, the Applicant submitted a related Site Plan Approval application with revised plans for a 14-storey mixed-use building that modified certain elements of the original proposal. The Site Plan Approval application is not under appeal and remains with the City for review.

On August 19, 2019, the Applicant's legal counsel Goodmans LLP submitted a "with prejudice" settlement offer that included a slightly revised design for the proposed development (the "**LPAT Plans**"). The LPAT Plans still proposed a 14-storey building "L" shaped building, however, incorporated certain minor changes to the design of the development. The LPAT Plans proposed 237 units, with only 9 units (or 4 percent of the overall unit mix) proposed to be 3-bedroom units, and had an overall gross floor area of 20,038 square metres and a floor space index of 5.22. The Applicant confirmed that they would be seeking approval of the LPAT Plans at the LPAT hearing related to their appeal. City Council ultimately refused the proposed "with prejudice" settlement offer at its meeting of October 2 and 3, 2019. Notwithstanding, the Applicant continued to seek approval of the LPAT Plans through its LPAT appeal.

On November 26 to 30, 2020, a 5-day LPAT hearing was held regarding the Applicant's rezoning appeal and sought approval of the LPAT Plans (the "**LPAT Hearing**"). The City attended the LPAT Hearing in opposition to the proposal reflected in the LPAT Plans.

On December 21, 2020, the LPAT issued its written decision and interim order from the LPAT Hearing (the "**LPAT Decision**"). The LPAT Decision is included as **Public Attachment 1** to this report. The Tribunal found that the proposal reflected in the LPAT Plans did not satisfy the applicable planning policies. The Tribunal continued with its decision, writing:

"[15] Rather than deny the development application and force the Applicant to restart the process, the Tribunal will instead enable the parties to have the opportunity to see if a settlement might be arrived at through the following directions from the Tribunal.

[16] The Tribunal finds that a development proposal based on the L shaped design in Exhibit 11, of up to and including 12 storeys in height, with an increased rear yard setback from the south property line of about 7.5 metres, with a south elevation setback of 2.5 metres above the fourth floor, and the application of the angular plane to the Plastics Avenue frontage would satisfy the policy regime, provided of course that it achieves the angular plane to The Queensway and minimizes shadowing.

[140] Accordingly as the Subject Lands are appropriate for intensification, rather than refusing this application and requiring the Applicant to start all over again, the Tribunal is prepared to consider a revised development proposal that hopefully would come with consent of the City and would take into account the findings in this decision."

(LPAT Decision, paragraphs 14, 15, and 140)

Finally, the LPAT Decision directed the Applicant and the City to engage in discussions in order to achieve a settlement based on changes to the rezoning application that follow the parameters set out in paragraph 16 of the Tribunal's decision, cited above. The LPAT Decision provided a deadline of 6 months for the Applicant to provide a revised proposal to City and a deadline of 3 months once the revised proposal is received for the City to provide responding comments to the Applicant to resolve any

outstanding matters. Within 6 months of the City receiving the revised proposal, both the City and the Applicant are required to provide final written submissions to the Tribunal and the LPAT will then issue its final order.

The purpose of this report is to request instructions in relation to the LPAT Decision and interim order.

City Planning staff have been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 to this report, as well as Confidential Attachments 2 and 3, 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

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

In 2002, the City undertook an Avenues Study for The Queensway between Kipling Avenue and Mimico Creek (The Queensway Avenue Study). The Subject Property falls within the study area. The purpose of the study was to identify a vision and develop implementation strategies to revitalize The Queensway as an *Avenue* consistent with the objective of the Official Plan to re-urbanize corridors along major streets in the City. Generally, the Avenues Zoning By-law permits a mix of uses at a maximum density of 3.0 times the lot area and building heights of 6 and 8 storeys. In June 2003, City Council enacted The Queensway Avenues By-law (By-law No. 514-2003) to implement The Queensway Avenue Study. A copy of By-law No. 514-2003 can be found at the following link:

<https://www.toronto.ca/legdocs/bylaws/2003/law0514.pdf>

On November 14, 2017, Etobicoke York Community Council considered Item EY26.12 pertaining to a Preliminary Report from the Director, Community Planning, Etobicoke York District dated October 23, 2017 regarding the proposed 14-storey mixed use development (the "**Preliminary Report**"). For more information, see the Preliminary Report at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EY26.12>

On February 26, 2019, City Council considered Item CC3.2 pertaining to a Request for Direction Report from the City Solicitor dated February 15, 2019 regarding a without prejudice settlement offer from the Applicant. City Council's decision refusing that without prejudice settlement offer and providing instructions to the City Solicitor and City staff to attend the LPAT to oppose the appeal can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC3.2>

On October 2, 2019, City Council considered Item CC10.5 pertaining to a Request for Directions Report from the City Solicitor dated September 24, 2019 regarding a with prejudice settlement offer from the Applicant proposing a settlement of the LPAT appeal based on the LPAT Plans. City Council's decision refusing the with prejudice settlement offer and providing instructions to the City Solicitor and City staff to attend the LPAT to oppose the LPAT Plans and the appeal can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC10.5>

On November 26, 2019, City Council considered Item CC12.6 pertaining to a Request for Directions Report from the City Solicitor dated November 14, 2019 regarding a without prejudice settlement offer from the Applicant. City Council's decision refusing the without prejudice settlement offer and providing instructions to the City Solicitor and City staff to attend the LPAT to oppose the LPAT Plans and the appeal can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC12.6>

On December 21, 2020, the LPAT issued its decision and interim order regarding LPAT Case No. PL180105 (the "**LPAT Decision**") refusing the applicant's rezoning application reflected in the LPAT Plans but allowing the Applicant to continue discussions with the City to achieve a revised proposal that achieves a built form up to a maximum of 12-storeys and with other such changes as outlined in the decision. A copy of the LPAT Decision is included as Public Attachment 1 to this report and can also be found at the following link:

<https://www.omb.gov.on.ca/e-decisions/pl180105-Dec-21-2020.pdf>

COMMENTS

The City Solicitor requires instructions related to the LPAT Decision. 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

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 – LPAT Decision and Interim Order regarding LPAT Case No. PL180105 (December 21, 2020)
2. Confidential Attachment 1 – Confidential Recommendations and Confidential Information
3. Confidential Attachment 2 – Confidential Information
4. Confidential Attachment 3 – Confidential Information