

City Council**Notice of Motion**

MM34.13	ACTION			Ward: 11
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11-25 Yorkville Avenue and 16-18 Cumberland Street - Amendment to Section 37 Agreement - by Councillor Mike Layton, seconded by Councillor Kristyn Wong-Tam

** Notice of this Motion has been given.*

** This Motion is subject to referral to the Toronto and East York Community Council. A two-thirds vote is required to waive referral.*

Recommendations

Councillor Mike Layton, seconded by Councillor Kristyn Wong-Tam, recommends that:

1. City Council require the owner of the lands at 11-25 Yorkville Avenue and 16-18 Cumberland Street to enter into and register, in priority, against title to the respective lands an Amended Section 37 Agreement, to the satisfaction of the General Manager, Parks, Forestry and Recreation and the City Solicitor, in accordance with the following terms:

a. prior to the issuance of the any above grade building permit(s), including any conditional above-grade building permits the Owner shall:

i. post Financial Security to secure the Above Base Park Improvements in the amount of 120 percent of the value of the Parks and Recreation component of the Development Charges; this Financial Security shall be held for the installation and warranty of the Park Improvements; and no credit shall be given towards the Parks and Recreation component of the Development Charges for costs associated with the Base Park Improvements;

ii. post Financial Security in the amount of the value of the parkland as appraised by the Executive Director, Corporate and Real Estate Management in the form of a Letter of Credit and such security shall not be released until the parkland is conveyed to the City in a manner satisfactory to the General Manager, Parks, Forestry and Recreation; and

iii. register in priority a Section 118 Restriction pursuant to the Land Titles Act against title to said parcel of land prohibiting the transfer or charge of the parkland without the prior written consent of the General Manager, Parks, Forestry and Recreation, to the satisfaction of the City Solicitor, concurrent with the registration of amending Section 37 Agreement for 11-21 Yorkville Avenue and 16-18 Cumberland Street; and

b. within six (6) months after the issuance of the first Above-Grade Building Permit, including any conditional above-grade building permits, the Owner shall:

i. convey a minimum 306 square metres of the Lands for public parkland purposes, to the satisfaction of General Manager, Parks, Forestry and Recreation, pursuant to Section 42 of the Planning Act, which shall satisfy the Owner's Statutory Parkland Dedication requirement;

ii. convey an additional 149 square metres of the Lands for public parkland purposes, to the satisfaction of the General Manager, Parks, Forestry and Recreation, pursuant to Section 37 of the Planning Act;

iii. where the conveyance of Parts 1.b.i. and ii. above, combined together form a minimum of 455 square metres of land for public parkland purposes ("Public Park");

iv. complete the conveyance referred to above to be free and clear above-grade and below-grade of all physical obstructions and easements, encumbrances and encroachments, including surface and subsurface easements, to the satisfaction of General Manager, Parks, Forestry and Recreation and the City Solicitor;

v. complete the environmental obligations as outlined in the Section 37 Agreement registered on title; and

vi. in no event shall there be any residential occupancy or registration of any condominium on any part of the lands under the Condominium Act until such a time as the Public Park is conveyed to the City.

2. City Council direct the City Solicitor to prepare such amendments to the registered Section 37 Agreement and any other such amendments determined necessary to implement City Council's decision on this matter to the satisfaction of the General Manager, Parks Forestry and Recreation and the City Solicitor.

Summary

City Council adopted amending Zoning By-laws 1683-2019, 1684-2019, and 1685-2019 on July 16, 2019 without amendments and without debate to permit the development of a 62-storey mixed-use building on the development site located at 11-25 Yorkville Avenue and 16-18 Cumberland Street (Item TE17.13).

A Section 37 Agreement was entered into between the Owner and the City and was registered against title. The Agreement was entered into on November 20, 2019 and registered on title on November 27, 2019.

The Zoning By-laws and the Agreement require the owner to convey to the City the fee simple interest of a minimum 455 square metres of land for public park purposes prior to the issuance of the first above-grade building permit for the development site in order to satisfy the owner's parkland dedication obligations for the development. Prior to the conveyance to the City, the owner must complete their environmental obligations in accordance with the City's Policy for Accepting Potentially Contaminated Lands to the City under the Planning Act, to the satisfaction of the City. The Owner understood such obligations and agreed to them within the Agreement registered on title.

The subject parkland is located along the western side of the development site, approximately 9 metres wide and 51 metres deep. It is adjacent to the future on-site dedication of the neighbouring development at 27-37 Yorkville Avenue, to create a total combined park size of approximately 1,040 square metres. In late 2019/early 2020, the development at 27-37 Yorkville Avenue fell under receivership, which resulted in the below grade construction work being halted after only partial excavation of its 6-level underground parking garage.

The owner of 11-21 Yorkville Avenue identified some challenges to City staff around tying the parkland dedication process, as well as the design and construction of the Public Park and any aspect of their development to 27-37 Yorkville Avenue and how this is reflected in the Agreement. City Staff, including the City Solicitor, had purposefully drafted the Section 37 Agreement, which was agreed to by the Owner of 11-21 Yorkville Avenue, to address coordination, cost and process efficiencies should the two landowners proceed together, but also established a process that made 11-21 Yorkville Avenue separate, in the event an unexpected event occurred on 27-37 Yorkville Avenue that would delay the conveyance, construction and design of the public park.

Under the current Agreement, the conveyance of the parkland is due prior to the first above grade building permit, consistent with Chapter 415 of the Municipal Code. An above grade building permit will be sought in January/February 2022. However, the City cannot accept lands that have not completed the environmental process under its Policy for Accepting Potentially Contaminated Lands to the City. Completion of this process, including remediation and subsequent Record of Site Condition, is not expected until Spring/Summer of 2022. The City's intended use of this space is parkland, which would connect to the parkland secured at 2 Bloor Street West and therefore would require a Record of Site Condition, consistent with provincial legislative requirements in the change of land use to a more sensitive use, such as Parkland.

However, unbeknownst to City Staff, the Owner of 11-21 Yorkville Avenue originally relied on the completion of an adjacent garage at 27-37 Yorkville Avenue to be able to dig out 60 feet of the parkland and back fill it with clean soil, thereby removing the potentially contaminated soil. Given the lack of an adjacent supported shoring wall at 27-37 Yorkville Avenue, it was no longer feasible to dig 60 feet down. The applicant's new Risk Assessment approach now contemplates excavating only 15 feet in order to deal with the soil and groundwater issues without an adjacent supported shoring wall. The parkland would then be monitored for 12 months thereafter to ensure the 15 feet remediation approach was effective. After the 12 month monitoring period a Record of Site Condition could then be filed for. At this time it is unknown whether this new approach will work until monitoring is complete.

The purpose of this Motion is to direct the City Solicitor to amend the Agreement in order to delay the conveyance of the parkland dedication so that the environmental remediation can be fully completed before conveyance of the lands, thereby reducing the risk to the City and enabling the rest of the development to carry on.

Background Information (City Council)

Member Motion MM34.13