



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

1913-1951 Yonge Street, 17-21 Millwood Road, and 22 Davisville Avenue - Official Plan and Zoning By-law Amendment Applications - Ontario Land Tribunal Hearing - Request for Further Directions

Date: January 25, 2022

To: City Council

From: City Solicitor

Wards: Ward 12 - Toronto-St. Paul's

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding litigation.

The purpose of this report is to request further instructions for a hearing scheduled to commence on March 28, 2022 before the Ontario Land Tribunal (the "**OLT**").

SUMMARY

Times Group (the "**Applicant**") has applied for an Official Plan Amendment and Zoning By-law Amendment (the "**Application**") for the property municipally known as 1913-1951 Yonge Street, 17-21 Millwood Road, and 22 Davisville Avenue (the "**Site**"). The Official Plan Amendment application was initially submitted on March 29, 2017 and appealed to the Local Planning Appeal Tribunal ("**LPAT**") (now the OLT) on November 2, 2017. A Zoning By-law Amendment application submitted with the Official Plan Amendment application was later withdrawn following the approval by the Minister of Municipal Affairs and Housing of Official Plan Amendment 405 (now known as the current "Yonge Eglinton Secondary Plan" or "**YESP**"). The current Zoning By-law Amendment application was later submitted on September 8, 2020 and appealed on December 16, 2020 to the LPAT. The Application proposed the redevelopment of the Site with two residential towers at 30 and 45-storeys on a shared 8-storey base building with ground floor retail (the "**Development**").

The Site includes a number of heritage properties. The properties at 1913, 1917, 1919, 1919A, 1921, and 1923 Yonge Street are listed on the Toronto Heritage Register, and were all proposed to be demolished as part of the Development. The property at 1913 Yonge Street is currently proposed to be designated by the City under Part IV of the Ontario Heritage Act. On January 24, 2022, the Toronto Preservation Board recommended to City Council that 1913 Yonge Street be designated as a

representative example of a main street commercial row building from the interwar period.

As noted above, both the Official Plan Amendment and the Zoning By-law Amendment, which together form the Application, have been appealed to the OLT for non-decision as OLT case numbers PL171228 and PL210014 respectively. The related appeals of the Official Plan Amendment and Zoning By-law Amendment applications have been consolidated and will be addressed together at the OLT (the "**Appeal**"). Prehearings and Case Management Conferences related to the Appeal were held on the following dates: April 26, 2018, June 15, 2018, February 9, 2021, and June 15, 2021. A 12-day OLT hearing of the Appeal is scheduled to begin on March 28, 2022. In addition to the City and the Applicant, the Toronto District School Board ("**TDSB**"), the South Eglinton Ratepayers' and Residents' Association ("**SERRA**"), and 1131815 Ontario Limited (the owners of the adjacent property at 1909 Yonge Street and 2A Davisville Avenue) are also parties to the Appeal.

On July 19, 21, and 23, 2021, the City attended confidential mediation with the other parties regarding the Appeal.

On January 21, 2022, the City Solicitor received a with prejudice and public settlement offer from the Applicant (the "**Settlement Offer**"). The Settlement Offer proposes to resolve the Appeal based on certain revisions to the proposal. The revisions to the proposal described in the letter include two different options available for City Council to support. The Settlement Offer letter is included as **Public Attachment "1"** to this Solicitor's Report and is discussed in more detail in the "Comments" section below.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the report (January 25, 2022) from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to the report (January 25, 2022) from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to the report (January 25, 2022) from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.
4. City Council authorize the public release of Confidential Attachment 2 to the report (January 25, 2022) from the City Solicitor, if the confidential recommendations contained in Confidential Attachment 1 to the same report are adopted by City Council.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

DECISION HISTORY

On September 6, 2017, Toronto and East York Community Council considered and adopted the recommendations of a Preliminary Report from City Planning regarding the original Official Plan Amendment and Zoning By-law Amendment applications for the Site (Item TE26.57) and authorized staff to conduct a community consultation meeting. A copy of Community Council's decision and the Preliminary Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE26.57>

On April 24, 2018, City Council considered and adopted the recommendations of a Request for Direction Report from City Planning regarding the original Official Plan Amendment and Zoning By-law Amendment applications for the Site that had now been appealed to the LPAT (Item TE31.14). City Council authorized the City Solicitor and appropriate staff to attend the LPAT in opposition to the applications under appeal. A copy of City Council's decision and the Request for Direction Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE31.14>

On November 10, 2020, Toronto and East York Community Council considered and adopted the recommendations of a Preliminary Report from City Planning regarding the new Zoning By-law Amendment application for the Site (Item TE20.24) and authorized staff to conduct a community consultation meeting. A copy of Community Council's decision and the Preliminary Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TE20.24>

On June 8, 2021, City Council considered and adopted the recommendations of a Request for Direction Report from City Planning regarding the new Zoning By-law Amendment application for the Site that had now been appealed to the LPAT (Item TE25.6). City Council authorized the City Solicitor and appropriate staff to attend the LPAT in opposition to the current application under appeal and to continue discussions with the Applicant to resolve the City's outstanding issues with the proposal. A copy of City Council's decision and the Request for Direction Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE25.6>

On January 24, 2022, the Toronto Preservation Board considered and adopted the recommendations of a Notice of Intention to Designate Report from the Senior Manager, Heritage Planning, regarding the currently listed heritage property at 1913 Yonge Street that forms part of the Site (Item PB30.2). The Toronto Preservation Board 1913-1951 Yonge Street, 17-21 Millwood Road, and 22 Davisville Avenue - Official Plan and Zoning By-law Amendment Applications - Ontario Land Tribunal Hearing - Request for Further Directions

recommended that City Council state its intention to designate the property at 1913 Yonge Street under Part IV, Section 29 of the Ontario Heritage Act. A copy of the Toronto Preservation Board's decision and the Notice of Intention to Designate Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PB30.2>

COMMENTS

As noted above, the Applicant has submitted a Settlement Offer to the City proposing a resolution of the OLT Appeal. The offer proposes two revised built form options that the City can elect to support as part of a settlement of this matter. The Settlement Offer and the two settlement options proposed by the Applicant are explained in detail below.

The first revised proposal ("**Settlement Option 1**") is described in the Settlement Offer and shown on the architectural plans by Core Architects Inc. dated January 13, 2022 (the "**Settlement Option 1 Plans**"). The Settlement Option 1 Plans are included as **Public Attachment "2"** to this Solicitor's Report. The Settlement Option 1 plans show the following:

- The height of the base building has been reduced from 8-storeys (34 metres) to 6-storeys (25.6 metres). The heights of the two towers remain at 30 and 45-storeys, and have been slightly reduced from the previous metric height of 102 and 148.5 metres to 100.9 metres and 147.1 metres (exclusive of mechanical penthouse). Both towers have floor plates of 750 square metres. Retail uses are included on the ground floor. The revised development will have a total gross floor area ("**GFA**") of 61,219.71 square metres, comprised of 59,013.21 square metres of residential GFA and 2,206.5 square metres of commercial GFA.
- The maximum number of residential units has decreased from 821 to 802. The proposal will comply with the unit mix policies of the YESP, which ensures larger sized units be included in the development. The unit mix will therefore achieved a minimum of 15 percent two-bedroom units, 10 percent three-bedroom units, and an additional 15 percent of the total number of units to be a combination of two-bedroom and three-bedroom units or units that can be converted to two-bedroom and three-bedroom units through the use of adaptable design measures.
- The revised proposal includes a 4-level underground parking garage containing 442 vehicular parking spaces, comprised of 351 residential parking spaces and 91 commercial and visitor parking spaces. A total of 989 bicycle parking spaces are also being provided.
- A 6 metre wide driveway and 3 metre wide pedestrian and cycling connection are provided along the east side of the Site, abutting the future Davisville Community and Aquatic Centre, and which will connect Davisville Avenue and Millwood Road. The driveway and pedestrian and cycling connection will be secured by way of a public easement provided by the Applicant in favour of the City.

- The Applicant is providing a building setback at grade along Yonge Street of a minimum 1.9 metres from the western property line. Within this setback, the Applicant is now proposing a pedestrian walkway easement to be provided by the Applicant in favour of the City. The Applicant is proposing some outdoor seating within the pedestrian walkway easement to support the adjacent retail uses, as may be acceptable to the Chief Planner. The outdoor seating is not intended to block pedestrians from traversing the walkway easement area.
- A new privately-owned and publically-accessible space ("**POPS**") is proposed to be provided at the southern portion of the site, behind the retained heritage building at 1913 Yonge Street. The POPS area will provide a publically accessible link between Yonge Street and Davisville Avenue. The POPS area will be secured by way of an easement provided by the Applicant in favour of the City. The easement size, location, and design will be determined to the satisfaction of the Chief Planner and secured in a Section 37 Agreement to the satisfaction of the City Solicitor and the Chief Planner. Some outdoor seating supporting the adjacent retail uses is also proposed within the POPS area as may be acceptable to the Chief Planner.
- 961.89 square metres of outdoor amenity space is being provided. This is below the City minimum requirement. However, 2,594.2 square metres of indoor amenity space is being provided.
- The listed heritage property at 1913 Yonge Street, which forms part of the Site, will no longer be demolished. The property will be altered and preserved as a heritage building housing a retail use. The proposed preservation of the building at 1913 Yonge Street is described in the Heritage Impact Assessment Addendum by GBCA Architects dated December 24, 2021 (the "**HIA Addendum**"), which is included as **Public Attachment "5"** to this Solicitor's Report. As a condition of the proposed settlement, the Applicant has agreed to not object to the City designating 1913 Yonge Street pursuant to Part IV of the Ontario Heritage Act.
- The Applicant proposes to satisfy its parkland dedication requirement in part through the application of a credit available to Times Group. The credit is from a previous over-dedication of off-site parkland through the redevelopment of 55-65 Broadway Avenue, where the properties at 70, 72, 74, and 76 Soudan Avenue were conveyed to the City. The amount of the over-dedication is 185.5 square metres. Any parkland dedication required in excess of the credit is proposed to be satisfied through the payment of cash-in-lieu or additional off-site parkland dedication acceptable to the City.
- Finally, the Applicant is proposing to provide a Section 37 cash contribution of ten million dollars (\$10,000,000.00) to the City.

The Settlement Offer also contains a second revised proposal ("**Settlement Option 2**") that is shown on the architectural plans by Core Architects Inc. dated January 24, 2022 (the "**Settlement Option 2 Plans**"). The Settlement Option 2 Plans are included as **Public Attachment "7"** to this Solicitor's Report. The Applicant states that Settlement Option 2 is intended to address the desire of the local community to have a grocery 1913-1951 Yonge Street, 17-21 Millwood Road, and 22 Davisville Avenue - Official Plan and Zoning By-law Amendment Applications - Ontario Land Tribunal Hearing - Request for Further Directions

store use included in the new development on the Site. Settlement Option 2 is the same as Settlement Option 1, with the exception of the following changes:

- The base building of the proposed development now contains a retail space on the second floor intended for a new grocery store within the development. The area of the grocery store use is a minimum size of 1,858 square metres and will be secured in the zoning by-law amendment implementing the revised development.
- The building will now have an increased north tower height of 38 storeys (129.8 metres) to replace the residential GFA in the base building now occupied by the grocery store use.
- One additional residential dwelling unit is added to the development bringing the total maximum units to 803. The dwelling unit mix continues to conform with the policies of the YESP.
- The revised development with a grocery store use will have an increased total gross floor area ("GFA") of 65,388.59 square metres, comprised of 59,620.21 square metres of residential GFA and 5,757.83 square metres of commercial GFA.
- The total vehicular parking spaces provided increases slightly to 443, comprised of an increased total of 355 residential parking spaces and a decreased total of 88 commercial parking spaces. Bicycle parking remains the same.

As noted in the Settlement Offer, the Applicant is proposing to settle the Appeal on the basis of either Settlement Option 1 or Settlement Option 2.

If City Council accepts the proposed settlement then it is anticipated that the currently scheduled OLT hearing commencing on March 28, 2022 will be converted into a settlement hearing. If City Council does not accept the proposed settlement, it is the City Solicitor's understanding that the Applicant will seek approval of the revised proposal shown in Settlement Option 1 at the OLT.

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 to this report contains confidential advice and should be considered by City Council *in camera*.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - Letter from Kagan Shastri LLP dated January 21, 2022 containing the with prejudice Settlement Offer
2. Public Attachment 2 - Settlement Option 1 Plans
3. Public Attachment 3 - Settlement Option 1 Shadow Study
4. Public Attachment 4 - Public Easement Plans
5. Public Attachment 5 - Heritage Impact Assessment Addendum
6. Public Attachment 6 - 3 Dimensional Views and Elevation Drawings for Settlement Option 1 and Settlement Option 2
7. Public Attachment 7 - Settlement Option 2 Plans
8. Public Attachment 8 - Settlement Option 2 Shadow Study
9. Confidential Attachment 1 - Confidential Information
10. Confidential Attachment 2 - Confidential Information