

50, 60 and 90 Eglinton Avenue West and 17 to 19 Henning Avenue – Zoning By-law Amendment Application – Request for Further Directions Regarding Ontario Land Tribunal Hearing

Date: May 2, 2022

To: City Council

From: City Solicitor

Wards: Ward 8 – Eglinton-Lawrence

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

2498703 Ontario Inc., 2498704 Ontario Inc., 60 Eglinton West Limited, and 90 Eglinton Avenue West Limited (the "Applicant" or "Madison") are the owner of the properties municipally known as 50, 60 and 90 Eglinton Avenue West and 17 to 19 Henning Avenue (the "Subject Site"), occupying the block between Duplex Avenue and Henning Avenue and fronting onto Eglinton Avenue West. The Subject Site is one block west of the intersection of Yonge Street and Eglinton Avenue.

The Subject Site is currently occupied by a former-Toronto Hydro heritage building at 50 Eglinton Avenue West, a vacant 3-storey hydro depot building at 60 Eglinton Avenue West, a 6-storey office building with one level of underground parking at 90 Eglinton Avenue West, and two 2-storey semi-detached dwellings at 17 and 19 Henning Avenue. North of the Subject Site are predominantly residential Neighbourhoods designated lands. East of the site is the Yonge-Eglinton Centre and the Yonge Street and Eglinton Avenue intersection. South of the Subject Property is a 4-storey building housing the

Toronto Police Services headquarters for 53 Division. Finally, west of the Subject Site along Eglinton Avenue West are various office buildings and residential apartment buildings ranging from 4-storeys to 13-storeys and Eglinton Park.

The Subject Site is a consolidation of two previously separate development sites: 90 Eglinton Avenue West and 17 and 19 Henning Avenue ("90 Eglinton") and 50 and 60 Eglinton Avenue West ("50-60 Eglinton"). Both 90 Eglinton and 50-60 Eglinton have existing development approvals.

In 2017, City Council approved official plan and zoning by-law amendment applications for 90 Eglinton to permit the development of a 24-storey mixed-use building. As part of the 90 Eglinton approval, an indexed Section 37 contribution of \$1,000,000 was required to be provided by the owner to the City for the purpose of improvements to Eglinton Park. In addition, the developer agreed to provide an off-site parkland dedication at 61 Montgomery Avenue to satisfy its parkland contribution requirements. The 90 Eglinton approvals are in-force as site-specific by-laws 824-2017, 825-2017, and 826-2017.

In 2019, the Local Planning Appeal Tribunal (the "LPAT", now continuing as the Ontario Land Tribunal "OLT") approved a settlement regarding a zoning by-law amendment application for 50-60 Eglinton to permit the development of a 32-storey mixed-use building with a 2-3 storey base podium element. The 50-60 Eglinton settlement included a conservation strategy for the Toronto Hydro heritage building at 50 Eglinton Avenue West that included the provision of a minimum 3 metre wide double height walkway/colonnade within the existing building along Eglinton Avenue West and Duplex Avenue. As part of the 50-60 Eglinton approval, an indexed Section 37 contribution of \$2,500,000 was required to be provided by the owner to the City. The Section 37 contribution was intended to be allocated as follows: \$1,500,000 to public realm improvements in the previous Ward 16 (now Ward 8) and \$1,000,000 to local park improvements in Ward 16 (now Ward 8), including Eglinton Park. In addition, the developer agreed to provide an off-site parkland dedication at 58 Helendale Avenue and an indexed cash-in-lieu contribution of \$900,000 to satisfy its parkland contribution requirements. The LPAT withheld its final order pending the completion of certain pre-approval conditions to the satisfaction of the City. The conditions have not been completed at this time.

The Applicant has now consolidated 90 Eglinton and 50-60 Eglinton under single ownership. On December 15, 2020 the Applicant submitted a revised zoning by-law amendment application (the "Application") for the entire consolidated Subject Site. The new development proposes two residential towers of 34 storeys (west tower at 90 Eglinton) and 39 storeys (east tower at 50-60 Eglinton) (the "Development"). The towers are joined by a combined 4-storey podium building containing retail and office uses. The Development includes 688 residential units and a total gross floor area ("GFA") of 54,806 square metres, comprised of 47,809 square metre or residential uses, 2,919 square metres of retail uses, and 4,078 square metres of office uses. The proposed FSI is 13.73 times the area of the lot. A total of 292 parking spaces would be provided within the new proposal, consisting of 204 residential spaces and 88 shared

visitor/office/retail spaces. A total of 727 bicycle parking spaces are also proposed. Vehicular access to the Subject Site is proposed from Henning Avenue and Duplex Avenue by way of an east-west private lane running along the north end of the site. The lane will provide access to the vehicular entrance to the below grade parking levels and the loading spaces. One Type 'B', two Type 'C', and one Type 'G' loading space would be provided. A total of 2,786 square metres (4.05 square metres per unit) of amenity space is being proposed. A total of 1,502 square metres (2.18 square metres per unit) of indoor amenity space is included in the Development, of which 1,343 square metres would be located on the fourth storey adjacent to the outdoor amenity area and 132 square metres would be located on the fifth storey. A total of 1,284 square metres (1.87 square metres per unit) of outdoor amenity space is proposed on the fourth storey adjacent to the indoor amenity space. The Consolidated Application proposes to remove the pedestrian colonnade along the south and east walls of the designated heritage building at 50 Eglinton Avenue West. The colonnade has been replaced with additional retail GFA.

On March 17, 2021, the Applicant appealed the Application to the LPAT, now the OLT, due to the City's failure to make a decision within the prescribed time period set out in the *Planning Act*. The appeal is known as OLT File PL210193.

To date, the OLT has held one case management conference on September 1, 2021. In addition to the City and the Applicant, the Eglinton Park Residents' Association ("EPRA") is also a party to the appeal.

The appeal is currently scheduled to be heard by the OLT during a 12-day hearing on August 8 to 23, 2022.

The City, Applicant, and EPRA attended formal mediation regarding the OLT appeal on November 3 and December 6, 2022.

The purpose of this report is to request further instructions regarding the OLT appeal and upcoming hearing.

City Planning has 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, if adopted by City Council.

3. City Council authorize public release of Confidential Attachment 2 to this report, if the confidential recommendations contained in Confidential Attachment 1 are adopted by City Council.

4. 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

On July 4, 2017, City Council considered and adopted the recommendations of a Final Report (Item NY22.4) by City Planning regarding the official plan and zoning by-law amendment applications for 90 Eglinton and approved a 24-storey mixed use building on the site. A copy of City Council's decision and City Planning's report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.NY22.4>

On July 23, 2018, City Council considered and adopted the recommendations of a Request for Further Directions Report (Item CC44.40) by the City Solicitor regarding a proposed settlement offer for the appeal of the official plan and zoning by-law amendment applications for 50-60 Eglinton. City Council accepted the applicant's settlement offer and supported a 32-storey mixed-use building on the site. A copy of City Council's decision, the City Solicitor's report, and the applicant's settlement offer can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.CC44.40>

On August 6, 2019, the LPAT (now the OLT) approved the settlement between the applicant and the City regarding 50-60 Eglinton. The LPAT approved the proposed settlement adopted by City Council in Item CC44.40 (above), and withheld its final order until certain pre-approval conditions were fulfilled. A copy of the LPAT's decision can be found at the following link:

<https://www.omb.gov.on.ca/e-decisions/pl180217-Aug-06-2019.pdf>

On July 14, 2021, City Council considered and adopted the recommendations of a Request for Directions Report (Item NY25.7) by City Planning regarding the OLT appeal of the consolidated zoning by-law amendment Application for the Subject Site. City

Council instructed the City Solicitor and City staff to attend the OLT to oppose the Application in its current form. City Council also instructed the City Solicitor to continue discussions with the Applicant in an attempt to resolve the outstanding issues with the Development proposal. A copy of City Council's decision and City Planning's report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.NY25.7>

COMMENTS

The City Solicitor requires further instructions regarding the OLT appeal. This report is about litigation before the OLT 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

Alexander J. Suriano, Solicitor, Planning & Administrative Law; Tel: 416-392-4827, Fax: 416-397-4421, E-mail: Alexander.Suriano@toronto.ca

Gabriela Dedelli, Solicitor, Planning and Administrative Tribunal Law; Tel: 416-392-8087, E-mail: Gabriela.Dedelli@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
2. Confidential Attachment 2 - Confidential Information