

Appeals of City-wide Zoning By-law 569-2013 - Request for Direction

Date: November 29, 2022

To: City Council

From: City Solicitor

Wards: All

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

On May 8, 2019 the Local Planning Appeal Tribunal, now the Ontario Land Tribunal ("OLT"), issued its Decision and Order (the "Decision" or "Order") on the Phase 3 Hearing of the appeals of the city-wide Zoning By-law 569-2013 ("By-law 569-2013") concerning the regulations of the Chapter 15 Residential Apartment Zone Category and the Chapter 30 Commercial Zone Category. The Conservatory Group was the lone appellant at the Hearing (the "Appellant" or "Conservatory Group").

The main issue in the Phase 3 Hearing concerned whether townhouses are a permitted building type in the Residential Apartment ("RA"), Residential Apartment Commercial ("RAC") and Commercial Residential ("CR") Zones. Additionally, the Phase 3 Hearing considered whether townhouse-related regulations concerning driveway access and dimensions, and parking space locations are appropriate and thereby conform to the City's Official Plan.

As part of its Order, the OLT ordered the City to prepare revised regulations to include townhouses as a permitted building type in the Residential Apartment Zone, in consultation with the Appellant.

The OLT also ordered the City to advise the Tribunal of the revised regulations and any other provisions or changes to By-law 569-2013 that are required to give effect to the permissions for townhouses in the RA Zone. These other regulations concerning townhouses pertain to driveway access and dimensions, and parking space locations. As a result of this Order, settlement discussions with the Conservatory Group ensued in

order to resolve the issues pertaining to driveway access and dimensions, and parking space locations for townhouse uses in the RA Zone of By-law 569-2013.

The Tribunal's May 08, 2019 Decision and Order (the "Decision" or "Order") did not specifically consider nor approve By-law 569-2013 regulations concerning driveway access and dimensions, and parking space locations pertaining to townhouse uses in the RA Zone. As a result, Planning Staff and Legal Services engaged in resolution discussions with the Appellant (Conservatory Group) in order to resolve differences pertaining to the drafting of these regulations, with the end of goal of implementing the Tribunal's Order.

The City Solicitor is seeking direction from City Council, as a result of these settlement discussions.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1 of this report.
2. City Council authorize the public release of the confidential instructions to staff in Confidential Attachment 1 and Confidential Appendix "A" to Confidential Attachment 1, if they are adopted by City Council.
3. City Council direct that all other information in Confidential Attachment 1 is to remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The recommendations in this report have no financial impact.

DECISION HISTORY

The City-wide Zoning By-law 569-2013 was approved by City Council at its meeting on April 3 and 4, 2013 and enacted on May 9, 2013. The Council decision of Item 2013.PG21.1 - Final Report on the City-wide Zoning By-law can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG21.1>

A total of 323 appeals were filed under Subsection 34(19) of the *Planning Act* from various appellants. Approximately 201 of these appeals have been settled or withdrawn. The majority of the remaining appeals are site specific. There are 45 appeals that have City-wide objections to regulations in By-law 569-2013 with many concerning specific uses or issues.

On May 3, 2016, City Council authorized the City Solicitor to proceed with settlements of By-law 569-2013 by way of motion if the settlement results in changes that, in the opinion of the City Solicitor and in consultation with the Chief Planner and Executive Director, City Planning, are minor and substantially in accordance with Council's approved intent in By-law 569-2013. The Council decision of Item 2016.PG11.2 - Directions Report with Respect to By-law 569-2013 and Settlements can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PG11.2>

COMMENTS

The Phase 3 Hearing of the appeals of regulations of Chapter 15 Residential Zone Category and Chapter 30 Commercial Zone Category of By-law 569-2013 was heard by the OLT on May 14 to 18, 2018. The only appellant participating in the hearing was the Conservatory Group.

As it was enacted by City Council, By-law 569-2013 only permits dwelling units to be in apartment buildings in the RA Zone. However, the OLT determined that townhouses should also be permitted as-of-right in the RA Zone, subject to conditions that assist in alleviating the City's concerns about permitting townhouses in the RA Zone. These concerns included restrictions on the location of parking spaces so as to prevent numerous curb-cuts for driveways leading directly to individual townhouse units.

As part of the OLT's Order, it ordered that the City bring forward regulations concerning driveway access and dimensions, and parking space locations for townhouse uses in the RA Zone. These regulations regarding driveway access and parking spaces for townhouse uses were not considered by the Tribunal at the Hearing. Therefore, no evidence regarding these regulations was led by either the City or the Appellant. To comply with the OLT's Order, the City and the Appellant engaged in resolution discussions in an attempt to resolve the form and substance of the driveway access and parking space regulations.

The Phase 3 Hearing was chaired by Vice-Chair C. Conti who issued his Decision and Order on May 8, 2019. The Decision can be found at this link:

<http://www.omb.gov.on.ca/e-decisions/pl130592-May-08-2019.pdf>

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Information
2. Confidential Appendix A to Confidential Attachment 1 - Confidential Information