

**1911 and 1921 Eglinton Avenue East – Ontario Land
Tribunal Hearing – Request for Directions**

Date: June 2, 2023

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

Samuel Sarick Limited (the "Appellant") appealed Official Plan Amendment 231 ("OPA 231") to the Ontario Land Tribunal ("Appeal 151") regarding the property known as 1911 and 1921 Eglinton Avenue East (the "Lands"). City Council adopted OPA 231 in 2013 following the Five-Year Official Plan and Municipal Comprehensive Review regarding employment lands. OPA 231 re-designates the Lands as General Employment Areas and the Appellant sought the Mixed Use Areas designation.

On June 15, 2022, City Council accepted a without prejudice offer from the Appellant to settle Appeal 151, dated June 7, 2022, and attached as Confidential Attachment 2 to the report (June 7, 2022) from the City Solicitor. SASP 777 formed the basis of the accepted settlement offer, and a settlement hearing date at the Ontario Land Tribunal ("OLT") in respect of Appeal 151 has not yet been set.

The City Solicitor requires further directions for upcoming OLT hearings scheduled to resolve outstanding OPA 231 appeals.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report from the City Solicitor.

2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 and Confidential Appendix "A" to this Report (June 2, 2023) from the City Solicitor only at the discretion of the City Solicitor.
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice and information which is subject to solicitor-client privilege.

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

At its meeting on December 16, 17 and 18, 2013, City Council adopted OPA 231 with respect to the economic health policies and the policies, designations and mapping for Employment Areas following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. In July 2014, the Minister approved the majority of OPA 231 with some modifications. The City's decision can be accessed at this link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

The Minister approved the majority of OPA 231 with limited modifications in July 2014. The OLT received a total of 178 appeals to OPA 231. The OLT has issued two Orders partially approving OPA 231. The December 2016 Order brought into force the Core Employment Areas and General Employment Areas designations, except for sites under appeal and regarding particular uses that remain contested. OLT Decisions can be accessed at this link: <https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL140860>

On May 8, 2020, the OLT issued an order approving OPA 231 Employment Land Conversion and Forecasting policies as modified by City Council on June 18, 2019.

The remaining citywide policy matters before the OLT relate to retail matters and office replacement. Approximately 80 site and area specific appeals remain to be resolved. The OLT's webpage on the OPA 231 proceedings can be accessed at this link: <https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL140860>

The Appellant has also requested that the Lands be considered for a conversion as part of the current MCR (Conversion Request 084). At its meeting on January 30, 2022, Planning and Housing Committee authorized City Planning to use Preliminary Assessments as a basis for consultation, including for these lands. As provided in Attachment 1 of that report, based on staff's preliminary review, further analysis was required to inform a preliminary assessment for these lands. One of the issues

identified was resolution of the site specific appeal to OPA 231 regarding the lands to which the Growth Plan 2006 is applicable and the OLT is the approval authority.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH30.5>

The Lands are located within the Golden Mile Secondary Plan Area and the Appellant has also appealed Council's decision on OPA 499 the Golden Mile Secondary Plan, to the OLT. City Council's decision on that matter can be found at the following link:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.SC18.1>

The Appellant submitted a without prejudice settlement offer dated June 7, 2022. On June 15, 2022, City Council accepted a without prejudice settlement offer from the Appellant to settle Appeal 155 to OPA 231, dated June 7, 2022, and attached as Confidential Attachment 2 to the report (June 7, 2022) from the City Solicitor. SASP 777 formed the basis of the accepted settlement offer, including a redesignation of the Subject Lands from General Employment Areas to Regeneration Areas. City Council's decision can be found at the following link:
<https://secure.toronto.ca/council/agenda-item.do?item=2022.CC45.16>

COMMENTS

Although under appeal, the Lands are designated General Employment Areas in OPA 231. Employment Areas are places of business and economic activities, with General Employment Areas generally located on the periphery on major roads where retail, service and restaurant uses can serve workers and would also benefit from the visibility and access to draw the broader public.

The Lands are approximately 3.9 hectares in size and are located on the south side of Eglinton Avenue East between Lebovic Avenue and Warden Avenue. The Lands presently accommodate two large buildings: one occupied by a Provincial Ontario Court of Justice which is planned to close in 2023 and another with service commercial and retail tenants.

The Appellant is also a party to the OPA 499 Golden Mile Secondary Plan proceedings. No development applications have been submitted for this property.

On June 7, 2022, the Appellant submitted a draft SASP 777 to the City for the Subject Lands, which resulted in a settlement in principle of the Appellant's appeal of Official Plan Amendment 231 ("OPA 231"). At its meeting on June 15 and 16, 2022, City Council adopted confidential instructions that City Council accept the without prejudice offer to settle site specific Appeal 155 to OPA 231 dated June 7, 2022 and City Council direct the City Solicitor, City Planning, and other staff to attend at the OLT in support of the settlement. An OLT settlement hearing date has not yet been set.

City staff have undertaken a review of the second batch of Employment Area Conversion Requests through the Municipal Comprehensive Review ("MCR"). City staff provided recommendations on these conversion requests to the Planning and Housing

Committee on June 1, 2023, and then to City Council at its June 14, 2023 meeting. The sites being recommended for conversion are subject to OPA 644.

The sites being recommended for conversion through OPA 644 include 2001, 2007, 2043 and 2201 Eglinton Avenue East and 1941 Eglinton Avenue East (request 043 and 067). City staff are recommending conversion of these sites from General Employment Areas to Regeneration Areas. The recommended conversions contain policies within proposed SASP 798, which applies to the "Lands Generally South of Eglinton Avenue within the Golden Mile Secondary Plan, East of 1891 Eglinton Avenue East to Birchmount Road (excluding 1911 and 1921 Eglinton Avenue East)."

The Subject Lands were not included in SASP 798. They are the subject of an outstanding OPA 231 appeal for which a settlement has been accepted by City Council, and are already included in SASP 777.

Outstanding employment area conversion requests (Conversion Requests 043, 067) will be considered by City Council at its June 14, 2023 meeting, as part of the city-initiated MCR. The Minister is the approval authority for the Official Plan Amendment that will result from the MCR, and has authority to make a decision on the Official Plan Amendment in his own time.

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.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

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