



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Sherway Area Secondary Plan - City-initiated Official Plan Amendment - Ontario Land Tribunal Hearing - Request for Directions

Date: July 4, 2023

To: City Council

From: City Solicitor

Wards: Ward 3 - Etobicoke Lakeshore

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

On October 29 and 30, 2019, City Council adopted Official Plan Amendment 469 ("OPA 469"), which, among other matters, created Chapter 6, Section 43, Sherway Area Secondary Plan (the "Secondary Plan"). The Secondary Plan was appealed to the Ontario Land Tribunal (the "OLT") by 9 appellants. On March 9, 2022 and February 8, 2023, City Council provided instructions to the City Solicitor regarding the appeals of OPA 469 which, following implementation of those instructions at the OLT by the City Solicitor, completely resolved some and significantly scoped other appeals. One of the nine appeals has been withdrawn.

A 12-day hearing is scheduled to commence on November 20, 2023 with witness statements due on September 15, 2023. Given this timing, this item is urgent and cannot be deferred.

The purpose of this report is to request further instructions on this matter which is the subject of appeals to the OLT.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff contained in the Confidential Attachment 1 to this report from the City Solicitor.

2. City Council authorize the public release of the confidential instructions to staff contained in the Confidential Attachment 1, Confidential Appendix "A", Confidential Appendix "B" and Confidential Appendix "C" to this report from the City Solicitor, if adopted by City Council.

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 is about litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

FINANCIAL IMPACT

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

DECISION HISTORY

Official Plan Amendment 469

On September 10, 2013, Etobicoke York Community Council deferred adoption of the recommendations of a staff report dated August 23, 2013, which sought direction to undertake a review and update of the planning policy framework for the Sherway Area, to its October 17, 2013 meeting. The Community Council decision can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY26.8>

On October 17, 2013, Etobicoke York Community Council adopted the recommendations of the August 23, 2013 staff report and also requested the Director, Community Planning, Etobicoke York District, to report to the November 19, 2013 meeting of Etobicoke York Community Council, with a preliminary study terms of reference. The City Council decision to adopt Community Council's recommendations can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY28.4>

On November 19, 2013, Etobicoke York Community Council adopted the preliminary study terms of reference from the Director, Community Planning, Etobicoke York District, as the basis for preparing and issuing a formal study terms of reference for the City-initiated Sherway Area Study. The City Council decision to adopt Community Council's recommendations can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY29.8>

On December 13, 2016 City Council adopted the recommendations of the Request for Directions Report on the City-initiated Sherway Area Study, which directed staff to update the existing planning framework for the Sherway Area with a Secondary Plan based on the key findings of the Study, bring forward Urban Design and Streetscape Guidelines for the Sherway Area, and finalize the Transportation and Servicing Master Plans.

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The Directions Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EY18.8>

On October 29 and 30, 2019, City Council adopted Official Plan Amendment 469, which contains the Sherway Area Secondary Plan. City Council also adopted the Sherway Area Urban Design and Streetscape Guidelines. City Council's decision may be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EY9.1>

By-law 1535-2019 adopting OPA 469 may be found here:

<https://www.toronto.ca/legdocs/bylaws/2019/law1535.pdf>

On March 9, 2022, City Council directed the City Solicitor and appropriate staff to request the OLT modify and partially approve OPA 469. City Council's decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.CC41.5>

On February 7 and 8, 2023, City Council accepted a without prejudice settlement offer to settle the appeal of OPA 469 by Amexon Realty Inc. City Council's decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC3.12>

COMMENTS

On September 9, 2022, the Tribunal approved the modifications to OPA 469, which were endorsed by City Council on March 9, 2022. The modifications completely resolved 3 of the appeals, resulted in adjournments of 3 appeals to dates to be determined in the future, and significantly scoped the issues of the two remaining appellants of OPA 469.

On June 8, 2023 the Tribunal conducted a settlement hearing in respect of the appeals by Amexon Realty Inc. of Official Plan Amendment 231 and OPA 469 (one of the adjourned appeals). The Tribunal approved the settlement in a written decision dated June 22, 2023, thereby modifying OPA 469 in respect of 701-703 Evans Avenue.

A hearing of the two remaining un-adjourned appeals is scheduled to commence on November 20, 2023 for 12 days, with witness statements due on September 15, 2023.

The OLT Webpage regarding the OPA 469 proceedings can be accessed at this link:

<https://jus-olt-prod.powerappsportals.com/en/e-status/details/?id=b6224660-c573-ec11-8943-000d3ae8e2b2>

The City Solicitor requires further instructions. This report is about litigation before the OLT and contains advice or communications that are subject to litigation and solicitor-client privilege.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Instructions to Staff and Confidential Information
2. Confidential Appendix "A" - Confidential Information
3. Confidential Appendix "B" - Confidential Information
4. Confidential Appendix "C" - Confidential Information