

Minto (Mimico) Inc. v Toronto (City) – Appeal of Ontario Land Tribunal Decision

Date: March 7, 2024

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 litigation or potential litigation.

SUMMARY

On December 12, 2023, the Ontario Land Tribunal (the "OLT") issued a decision in respect of a motion brought by the applicant, Minto (Mimico) Inc., relating to its attempted 2023 site plan control application under Section 114 of the *City of Toronto Act* relating to various properties under the municipal address of 1 Audley Street and 8 Newcastle Street ("Block D Lands") and for the property municipally known as 2 and 10 Audley Street and 29, 31, and 59 Portland Street ("Block E" Lands). The *Ontario Land Tribunal Act* allows the parties to a hearing to seek leave to appeal a decision of the OLT to the Divisional Court. The City Solicitor requires further directions.

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 Confidential Attachment 1 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 Ontario Land Tribunal and contains advice or communications that are subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are set out in Confidential Attachment 1.

DECISION HISTORY

Mandatory Pre-Application Consultation

On February 2, 2022, City Council adopted By-law 46-2022 amending Chapter 415 of the Toronto Municipal Code to establish new Section 415-19.2 which requires Mandatory Pre-Application Consultation meetings for Official Plan Amendment, Zoning By-law Amendment, Plan of Subdivision and Site Plan Control as authorized under the *Planning Act* and the *City of Toronto Act*.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH30.1>

On May 11, 2022, City Council amended the effective date of the Mandatory Pre-Application Consultation by-law from November 3, 2022 to April 3, 2023. City Council's Decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH33.4>

On October 11, 2023, City Council adopted By-law 965-2023 which further amends Section 415-19.2 of the Toronto Municipal Code to establish consistent application of the Mandatory Pre-Application Consultation requirements across the City to ensure that effective engagement between the City and applicant has occurred in a reasonable period of time before and after a pre-application consultation meeting and to ensure effective and efficient decision making respecting the prescribed application types. City Council's Decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH6.2>

Development Applications and OLT Process

On July 16, 2019, City Council considered a report from the City Solicitor regarding the site specific appeals to the Mimico-Judson Secondary Plan for 25 Audley Street, 23 Buckingham Street, 1, 2 and 10 Audley Street, 8 Newcastle Street, and 29, 31, 59 and 71 Portland Street (the "Site"). City Council's Decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2019.CC9.15>

On August 12, 2022, the Ontario Land Tribunal issued its Decision and Order approving the Zoning By-law Amendment for the Site. The Tribunal approved Zoning Amendment By-law 683-2023(OLT) may be found here:

<https://www.toronto.ca/legdocs/bylaws/2023/law0683.pdf>

On February 28, 2022, the City received a request from Minto to hold a (then non-mandatory) Pre-Application Consultation Meeting. On April 6, 2022, the City and Minto held a PAC meeting for the 2022 SPAs. On April 27 and 28, 2022, Minto submitted the two Site Plan Control Applications for the Block D Lands and Block E Lands (the "2022 SPAs"). On May 10, 2022, the City deemed Minto's 2022 SPAs complete. The 2022 SPAs are not subject to the December 12, 2023 OLT Decision that is the subject of this Report. The 2022 SPAs remain active applications with no decision to date from City Planning.

On or about April 27, 2023, Minto attempted to submit new Site Plan Control Applications for the same Block D Lands and the Block E Lands (the "Attempted 2023 SPAs"). Minto did not have a Mandatory Pre-Application Consultation Meeting with City staff in accordance with Chapter 415-19.2. Minto proceeded to bring a motion to the OLT with respect to their Attempted 2023 SPAs, seeking an order that their applications were complete.

COMMENTS

The City Solicitor opposed the motion brought by Minto on their Attempted 2023 SPAs to the OLT as Minto did not have a Mandatory Pre-Application Consultation Meeting in accordance with the City's By-law, and therefore Minto had no ability to have filed the Attempted 2023 SPAs and the subsequent motion to the OLT for a determination of completeness was not within the OLT's jurisdiction.

The attached Confidential Attachment 1 from the City Solicitor provides legal advice and seeks direction from City Council with respect to the OLT decision.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 – Confidential Information