



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

109 Erskine Avenue, 63-91 Montclair Avenue, and 1161 Kingston Road – Ontario Land Tribunal Hearing – Request for Directions

Date: March 7, 2024

To: City Council

From: City Solicitor

Wards: Ward 12 – Toronto-St. Pauls, Ward 15 – Toronto Centre, and Ward 20 – Scarborough Southwest

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

The City of Toronto received complaints from 109 Erskine Inc., Montclair Developments #1 Inc., and 1161 Kingston Road GP Inc. (collectively the "Owners") respecting the development charges paid by each Owner for developments at 109 Erskine Avenue, 63 – 91 Montclair Avenue, and 1161 Kingston Road respectively. Given City Council's failure to make a decision on the complaints within the statutory timelines, the Owners appealed the complaints respecting 109 Erskine Avenue and 63 – 91 Montclair Avenue to the Ontario Land Tribunal (the "OLT") and an appeal respecting 1161 Kingston Road is expected imminently.

A hearing has been scheduled for March 20, 2024, which the City Solicitor expects would address all the Owners' appeals given that the issues in each are identical and all are represented by the same legal counsel

The City Solicitor requires further directions. These matters are urgent and cannot be deferred.

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 direct that the confidential recommendations and all other information contained in Confidential Attachment 1 and Confidential Appendix "A", "B" and "C" to this report from the City Solicitor is to remain confidential as it contains advice and information which is subject to solicitor-client privilege and litigation privilege.

FINANCIAL IMPACT

The financial impact of the proposed settlement is detailed in the Confidential Attachment 1 to this report.

DECISION HISTORY

On December 14, 2022, City Council adopted Item EX1.6, which directed that the general terms and conditions of the below grade conditional permit development charges agreement be amended so that the development charges due and payable to the City, pursuant to the agreement, would be determined based on the higher of the development charge rate in effect at the time of permit issuance or the development charge rate in effect based on section 26.2 of the *Development Charges Act, 1997*. City Council also directed that interest would be payable where development charges are determined based on section 26.2 of the *Development Charges Act, 1997* in the agreement. City Council's resolution for Item EX1.6 can be found at: [Agenda Item History - 2023.EX1.6 \(toronto.ca\)](#)

On September 14, 2023, the City received a complaint from 109 Erskine Inc. pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27, for 109 Erskine Avenue regarding the payment of development charges. On November 30, 2023, pursuant to section 22(2) of the *Development Charges Act, 1997*, the Complainant appealed City Council's neglect or failure to make a decision on its complaint, to the Ontario Land Tribunal (the "OLT"). The Complainant disputed the \$ 7,766,440.00 of development charges it paid to the City and sought a refund in the amount of \$848,830.00.

On September 15, 2023, the City received a complaint from Montclair Developments #1 Inc. pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27, for 63-91 Montclair Avenue regarding the payment of development charges. On November 30, 2023, pursuant to section 22(2) of the *Development Charges Act, 1997*, the Complainant appealed City Council's neglect or failure to make a decision on its complaint to the OLT. The Complainant disputed the \$16,305,105.00 of development charges it paid to the City and sought a refund in the amount of \$855,433.55.

On November 15, 2023, the City received a complaint from 1161 Kingston Road GP Inc. pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27, for 1161 Kinston Road regarding the payment of development charges. An appeal to the OLT is expected imminently. The Complainant disputed the \$2,682,306.00 of development charges it paid to the City and sought a refund in the amount of \$ 246,231.78.

A hearing has been scheduled for March 20, 2024.

COMMENTS

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT, an ongoing complaint, and contains advice or communications 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
3. Confidential Appendix "B" - Confidential Information
4. Confidential Appendix "C" - Confidential Information