



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

438-440 Avenue Road and 169-173 Balmoral Avenue – Ontario Land Tribunal Hearing – Request for Direction Report

Date: September 24, 2024

To: City Council

From: City Solicitor

Wards: Ward 12 - St. Paul's

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 July 9, 2021 the City received an Official Plan and Zoning By-law Amendment application for 438-440 Avenue Road and 169-171B Balmoral Avenue to permit a 24-storey residential apartment building containing 223 dwelling units. A settlement hearing was held on May 18, 2023 with the OLT approving the settlement for a 21 storey residential building in principle (the "Original Approval"). No final order has been issued.

Since the Original Approval, the applicant has acquired the neighbouring property at 173 Balmoral Avenue. The City Solicitor requires further direction.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 and Confidential Appendices A and B 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 contains advice 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

On July 9, 2021 the City received an Official Plan and Zoning By-law Amendment application to permit a 24-storey residential apartment building containing 223 dwelling units. A Rental Housing Demolition application was submitted to permit the demolition of 10 rental dwelling units on the site.

A Preliminary Report was adopted by Toronto and East York Community Council on October 14, 2021, authorizing staff to conduct a community consultation meeting with an expanded notification area. The decision of the Toronto and East York Community Council can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE28.24>

On March 3, 2022 the applicant appealed City Council's neglect or failure to make a decision on the Official Plan Amendment and Zoning By-law Amendment to the OLT. The OLT held the first Case Management Conference on June 28, 2022. BANA (the Balmoral and Avenue Neighbourhood Alliance) as well as two other residents who live in proximity to the Site were accorded party status in the proceeding. The Toronto District School Board (TDSB) was a party to the proceedings as well, but subsequently advised the OLT that all their concerns in relation to the proposal had been resolved and that they would only be monitoring the hearing.

A Request for Direction Report on the appeal was adopted by City Council on June 15 and 16, 2022 directing the City Solicitor and appropriate City Staff to attend the OLT to oppose the Official Plan Amendment and Zoning By-law Amendment application for 438-440 Avenue Road and 169-171B Balmoral Avenue and to continue discussions with the applicant in an attempt to resolve outstanding issues. The Request for Direction Report can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.TE33.9>

On January 23, 2023, the Applicant submitted a revised proposal to the OLT. This revised proposal would have formed the basis for the hearing scheduled to commence May 15, 2023. At its meeting on March 29, 30, and 31, 2023 City Council adopted item CC5.15 - the City Solicitor's report requesting that Council accept a without prejudice offer to settle dated March 15, 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC5.15>

A settlement hearing was held on May 18, 2023 with the OLT approving the settlement for a 21 storey residential building on June 26, 2023. BANA and the other parties settled with the applicant as well. No final order was issued by the OLT. Since the Original Approval, the applicant has acquired the neighbouring property at 173 Balmoral Avenue.

The purpose of this report is to request further instructions in respect of this matter.

COMMENTS

The City Solicitor requires further instructions on this matter. This report is about 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
3. Confidential Appendix "B" - Confidential Information