

**417-419 Burnhamthorpe Road – Ontario Land Tribunal  
Hearing – Request for Directions**

**Date:** December 5, 2024

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 2 – Etobicoke Centre

**REASON FOR CONFIDENTIAL INFORMATION**

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

**SUMMARY**

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On June 15, 2022, Zoning By-law Amendment and Site Plan Control applications (the "Applications") were submitted to the City for the properties at 417-419 Burnhamthorpe Rd (the "Site") to permit the construction of a four-storey townhouse building containing 11 residential units.

On September 6, 2023, the applicant submitted a revised Zoning By-law Amendment application to the City to permit the construction of a four-storey townhouse building containing 10 residential units.

On January 31, 2024, the applicant appealed City Council's neglect or failure to make a decision on the Applications (the "Appeal") within the prescribed timelines in the *Planning Act*, to the Ontario Land Tribunal (the "OLT").

On March 4, 2024, the applicant submitted a revised Zoning By-law Amendment application (the "Rezoning Application") to the City to permit the construction of a four-storey townhouse building containing 18 back-to-back residential units.

On December 5, 2024, the City Solicitor received a "with prejudice", not confidential, settlement offer, consisting of the correspondence attached to this report as Public Appendix "A" and the architectural plans and drawings attached to this report as Public Appendix "B" (the "Settlement Offer"), which propose to modify the Rezoning Application.

The City Solicitor requires further directions for the upcoming OLT hearing scheduled for April 1-3 and 8-9, 2025. The Settlement Offer is open until the end of the City Council meeting commencing on December 17, 2024, at which point it will be withdrawn. Given the deadline for the Settlement Offer, this matter is urgent and cannot be deferred.

## **RECOMMENDATIONS**

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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 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 contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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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**

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On June 15, 2022, the City received the Applications to permit the construction of a four-storey townhouse building containing 11 residential units on the Site with a total gross floor area of approximately 2,292.60 square metres.

On September 6, 2023, the City received a revised Zoning By-law Amendment application to permit the construction of a four-storey townhouse building containing 10 residential units on the Site with a total gross floor area of approximately 2,093 square metres.

On January 31, 2024, the applicant appealed City Council's neglect or failure to make a decision on the Applications, within the prescribed timelines in the *Planning Act*, to the OLT. The OLT held the first Case Management Conference (the "CMC") on June 10, 2024, and a subsequent CMC on November 7, 2024. A hearing is scheduled for April 1-3 and 8-9, 2025.

On March 4, 2024, the applicant submitted a revised Rezoning Application to the City to permit the construction of a four-storey townhouse building containing 18 back-to-back residential units with a total gross floor area of approximately 2,978 square metres.

At its meeting on May 22-23, 2024, City Council adopted Item PH12.3 to permit gentle intensification in the form of townhouses and small-scale apartment buildings along Major Streets in *Neighbourhoods* areas across the City as part of the City's Expanding Housing Options in Neighbourhoods project. City Council's Decision can be found at: [Agenda Item History - 2024.PH12.3](#)

A Request for Direction Report on the Rezoning Application was adopted by City Council on May 22-23, 2024, directing the City Solicitor and appropriate City staff to attend the OLT hearing to oppose the Rezoning Application, and to continue discussions with the applicant in an attempt to resolve outstanding issues. The Request for Direction Report can be found at: [Agenda Item History - 2024.EY13.3 \(toronto.ca\)](#)

On December 5, 2024, the City received the Settlement Offer from the applicant's lawyers, Bennett Jones LLP, which is attached as Public Attachment "A" to this report (the letter), and Public Appendix "B" (the architectural drawings and plans). The Settlement Offer is open until the end of City Council's meeting commencing on December 17, 2024. Should City Council accept the Settlement Offer, the applicant intends to present the revised plans to the OLT for approval; otherwise, the offer will become null and void.

In response to the concerns raised by City staff with the applicant, the revised plans include a number of modifications. This table provides a comparison of the Zoning By-law Amendment application, as originally submitted, the Rezoning Application (the third Zoning By-law Amendment application submission), and the Settlement Offer:

<b>Category</b>	<b>Original Application Submitted on June 15, 2022</b>	<b>Third Application Submitted on March 4, 2024</b>	<b>Settlement Offer Submitted on December 5, 2024</b>
Gross Floor Area	2,292.60 square metres	2,977.70 square metres	2,977.70 square metres
Building Height	12.4 metres	12.04 metres	12.04 metres
Residential Units	11	18	18
Vehicular Parking Supply	22 residential 4 visitor	36 residential 5 visitor	18 residential 3 visitor

<b>Category</b>	<b>Original Application Submitted on June 15, 2022</b>	<b>Third Application Submitted on March 4, 2024</b>	<b>Settlement Offer Submitted on December 5, 2024</b>
Visitor Parking location	Within east setback	Within front yard setback	Within rear yard setback
Front yard setback	5 metres - 7.29 metres	9.73 metres - 12.02 metres	5.36 metres - 7.65 metres
Rear Yard setback	1.92 metres - 2.13 metres	3.0 metres - 3.21 metres	7.37 metres - 7.58 metres
West side yard setback	6.0 metres	6.0 metres	6.0 metres
East side yard setback	10.75 metres	6.0 metres	6.0 metres
Walkway width	1.5 metres	1.5 metres	2.1 metres
Unit width	4.54 metres - 4.7 metres	4.9 metres - 5.09 metres	4.9 metres - 5.09 metres
Vehicular turnaround area	Not provided	Not provided	Provided
Centralized waste storage room	Not provided	Not provided	Provided internal to parking garage
Main building entrances fronting onto public street	Not provided	Not provided	Provided

## **COMMENTS**

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**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Public Appendix "A" - With Prejudice Settlement Offer from Bennett Jones LLP, dated December 5, 2024
2. Public Appendix "B" - Architectural Plans prepared by Otto Palfy Design Inc., dated December 5, 2024
3. Confidential Attachment 1 - Confidential Information