



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**1465 Lawrence Avenue West- Ontario Municipal Board
Hearing**

Date:	September 29, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 12 – York South-Weston
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege. It is about litigation that affects the City.
Reference Number:	

SUMMARY

To report on the September 14, 2009 proposal by Councillor Di Giorgio for dealing with the Divisional Court decision allowing the City’s appeal of the Ontario Municipal Board decision and remitting the matter back to the Board for a new hearing before a Board differently constituted, recommending it be received for information.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The September 14, 2009 motion of Councillor Di Giorgio be received for information.

FINANCIAL IMPACT

The recommendations will have no financial impact beyond what has already been approved in the current year’s budget.

DECISION HISTORY

There are staff reports respecting the Site and related matters that have been considered by Council. City Council at its meeting of September 25, 26 and 27, 2006 referred the condominium conversion application back to the Etobicoke York Community Council for further consideration, and at its meeting of February 5, 6, 7 and 8, 2007 refused the Official Plan Amendment and Condominium applications to convert the 161 affordable residential rental units to condominium in accordance with the recommendations of City Planning staff.

A hearing was held by the OMB over a number of days. The OMB issued its Decision on June 17, 2008, allowing the conversion appeal and approving the draft plan of condominium subject to certain conditions

Council at its meeting of July 15, 16 and 17, 2008 confirmed the motion for leave to appeal and instructed the City Solicitor to proceed with the appeal if leave was granted by the court.

ISSUE BACKGROUND

This matter involved an application to convert 161 affordable residential rental units at 1465 Lawrence Avenue West to condominium together with an application for an official plan amendment to permit the conversion.

These lands were previously the subject of an OMB hearing and decisions issued in January and May 2002 approving Official Plan Amendment No. 488 to the former City of North York Official Plan and Section 64.20-A(98) to the North York Zoning By-law No. 7625. These amendments, which were supported by the City, permitted the development of a 10 storey, 63 unit rental apartment building in addition to the retention of the existing 161 rental units, on the property. The zoning amendment requires that the existing affordable rental building be retained as rental for a period of 20 years and that the new building comprise rental housing for a period of 20 years.

Subsequent to the 2002 amendments coming into force under the Board Order, the owner made a consent application to the Committee of Adjustment to sever the property into two separate lots, one for the existing rental building and one for the proposed building. The applicant indicated to the Committee that the purpose of the severance was to create two properties and the proposed severance would ultimately implement the OMB's decision. The Committee approved the severance at its meeting of January 20, 2005.

Subsequent to obtaining the severance, the owner filed an application to convert the existing building to condominium and filed an application for an official plan amendment to the former North York Official Plan. Consistent with the recommendations of City staff, City Council refused the applications and instructed the City Solicitor together with other appropriate City staff to attend the OMB hearing in opposition to the appeals.

The hearing occurred during November and December, 2007. On June 17, 2008, the OMB issued its decision allowing the condominium conversion appeal and determined an official plan amendment was not required.

The City Solicitor filed a motion with the Divisional Court seeking leave to appeal the OMB decision based on errors of law.

The City was successful in obtaining leave to appeal and in a decision issued August 11, 2009, a three member panel of the Divisional Court issued its decision allowing the City's appeal, setting aside the Board decision and remitting the matter back to the OMB for a new hearing by a Board differently constituted. In addition costs were awarded to the City in the amount of \$10,000 for the leave application and \$22,000 for the appeal.

The Court decision states in its conclusion:

“The Board committed fundamental and unreasonable errors with respect to its interpretation of s.3(5) of the *Planning Act* and failed to properly consider whether the proposed conversion conformed with the Official Plan. The nature of these errors is such that they undermine the foundation for the decision as a whole. The decision is unreasonable and cannot stand.”

The Court found amongst other things,

1. that the OMB in coming to its conclusion, referred to the general provisions in the new Official Plan calling for a range of housing types in the City but did not consider the more specific provisions of the Official Plan dealing with condominium conversions and the limited situations in which they will be approved.
2. regarding policy 3.2.1.8(b)(i), noted the mandatory language of the condominium conversion policy which prohibits the conversion of affordable rental housing units into condominiums unless specific requirements are met.
3. the OMB applied the wrong test under s. 3 of the Planning Act which requires decisions be consistent with the Provincial Policy Statement, applying the test of 'having regard to'.
4. that the OMB cited City evidence which did not support the Board's conclusion, and failed to cite any evidence that would refute the evidence of the City's expert evidence.
5. that the Board erred in relying on a test put forward by the applicant which was not a test in the Official Plan. The Board relied on the percentage of rental units in the City of Toronto that this building represented. The Court found the approach taken by the Board illogical as it would erode, bit by bit, the availability of rental housing, since no one building would be statistically significant. It found

this would create precisely the opposite result to the planning purposes underlying the City's Housing Policy.

COMMENTS

A copy of the Court decision has been filed with the Clerk. This report has been prepared in consultation with Planning Staff.

The Confidential Attachment to this report provides further information.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information – Review of September 14, 2009 proposal by Councillor Di Giorgio Re: 1465 Lawrence Avenue West Divisional Court Decision