

**SUBJECT: Appeal with respect to Official Plan Amendment and Zoning By-law
Amendment - 1186, 1188, and 1194 Wellington Street West**

File Number ACS2022-ICS-LEG-0005

Report to Planning Committee on 8 September 2022

and Council 21 September 2022

Submitted on August 29, 2022 by David White, City Solicitor

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Ward: KITCHISSIPPI (15)

**OBJET : Appel concernant la modification du Plan officiel et la modification
du Règlement de zonage — 1186, 1188 et 1194, rue Wellington Ouest**

Dossier : ACS2022-ICS-LEG-0005

Rapport au Comité de l'urbanisme

le 8 septembre 2022

et au Conseil le 21 septembre 2022

Soumis le August 29, 2022 par David White avocat général

**Personne ressource : Garrett Schromm, conseiller juridique associé, Services
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Quartier : KITCHISSIPPI (15)

REPORT RECOMMENDATION(S)

That Planning Committee recommend that Council:

- 1. Subject to recommendation 2, endorse the position recommended by the
Planning, Real Estate and Economic Development Department in Report
ACS2022-PIE-PS-0044;**

2. That the details of the zoning (Document 3 in Report ACS2022-PIE-PS-0044) be in accordance with Document 2 to this report;
3. Instruct Legal Services to seek a resolution to the appeals concerning the zoning and official plan amendment applications in respect of 1186, 1188 and 1194 Wellington West in accordance with this report.

RECOMMANDATION(S) DU RAPPORT

Que le Comité de l'urbanisme recommande au Conseil :

1. d'entériner, sous réserve de la recommandation 2, la position recommandée par la Direction générale de la planification, de l'immobilier et du développement économique dans le rapport ACS2022-PIE-PS-0044;
2. de voir à ce que les détails du zonage (document 3 joint au rapport ACS2022-PIE-PS-0044) cadrent avec le document 2 du présent rapport;
3. de demander aux Services juridiques de s'employer à régler les appels concernant les demandes de modification du *Règlement de zonage* et du Plan officiel visant le 1186, le 1188 et le 1194, rue Wellington Ouest, conformément au présent rapport.

BACKGROUND

An appeal has been filed with the Ontario Land Tribunal (OLT) for failure to make a decision in an application by Minto Communities Inc. (the "Applicant") for an Official Plan and Zoning By-law Amendment within the time frame required under the *Planning Act*. A staff report was prepared and the application was considered by Planning Committee on May 12, 2022 but deferred. As no decision on the application has been made, Legal Services requires Council's instruction as to the position to be taken in the appeal.

DISCUSSION

The Application in Issue and the Appeal

The subject applications for Official Plan and Zoning By-law amendments were deemed complete by July 8, 2021.

The applicant sought an amendment to the Official Plan and the Wellington Street West Secondary Plan for 1186, 1188, and 1194 Wellington Street West to permit a 16-story

mixed use building containing 212 units. The proposed Official Plan Amendment would add a site-specific policy to the Wellington Street West Secondary Plan for 1186, 1188, and 1194 Wellington Street West.

The proposed Zoning By-law amendment sought to rezone the entire property to Traditional Mainstreet Zone, Subzone 11, with a site-specific exception and schedule to address site-specific conditions of development. The proposed site-specific provisions would provide relief with regards to the maximum building height, front yard, corner side yard, rear yard setbacks, building stepbacks, parking, bicycle parking, building entrance, and permitted projections.

At the time the application was sent to Planning Committee, staff were recommending that conditions requiring provision of certain community benefits under section 37 of the *Act* be included in the Zoning By-law Amendment.

Planning Report, [ACS2022-PIE-PS-0044](#) contains full details of the Official Plan and Zoning By-law amendments sought in the application.

The staff report recommended adoption of the Official Plan and Zoning By-law amendments as described in Documents 1 through 4 to that report.

The staff report was considered by Planning Committee on May 12, 2022. Planning Committee voted to defer the item to a later unspecified date.

Following attendance at Planning Committee, the Applicant elected to file an appeal under subsections 22 (7) and 34 (11) which provide a right of appeal if Council fails to make a decision on an application for an Official Plan Amendment or Zoning By-law Amendment (respectively) within 120 days of receipt of the complete application. The Applicant is seeking, through the appeal, the amendments which would permit the same development sought at Planning Committee.

A case management conference, at which the next steps for the resolution of the appeal will be discussed, has been scheduled by the Tribunal for September 13, 2022.

Instructions Sought

Legal Services requires Council's instruction as to how to seek to resolve the current appeal. The recommendation asks that Council instruct Legal Services to seek a resolution (either through settlement or an order resulting from a hearing) which accords with the staff recommendation in the Planning Report (Document 1).

However, as the statutory authority to enact a Zoning By-law amendment that includes

a requirement for a Section 37 agreement will expire on September 18, 2022 (pursuant to recent amendments to the *Planning Act*), at the September 21, 2022 meeting Council will no longer have statutory authority to include the provisions related to a Section 37 agreement which staff originally recommended. Recommendation of this report includes a revised Details of Recommended Zoning, Document 2 hereto, which would seek the imposition of a holding zone to require that the Applicant provide the same community benefits, which would have been provided through the Section 37 agreement, as a condition of Site Plan Approval. The holding provision would ensure that development of the site could not proceed until these benefits were secured.

Legal Services has been advised that, if Council approves the current recommendation, the Applicant would agree to the imposition of such a holding zone and it is expected that the City and the Applicant could enter into a settlement agreement to resolve the appeal on that basis.

The OLT has discretion to add persons as participants or parties to the current appeal. If Council were to approve the recommendation, and if a community member or community group were to oppose the development and be granted party status, the Tribunal may order a hearing to hear evidence from that party and consider the planning merits of the development regardless of the Applicant and the City being amenable to a settlement. It is not currently known whether a person or community group would oppose the development. Any such hearing could be conducted with available Legal Services resources and utilizing in-house planning and other subject-matter expert witnesses.

If Planning Committee or Council were to amend the recommendation of this report, by motion, to instruct Legal Services to take the position in the appeal that the application should be refused, it is likely that the Applicant would seek a hearing of the appeal before the OLT. Such a hearing would be estimated to be scheduled for two weeks in length. Legal Services would have adequate resources to conduct this hearing. An external expert planner would need to be retained to support this position.

If Planning Committee or Council were to amend the recommendation of this report, by motion, to instruct Legal Services to take a position in the appeal that the application should be approved but with changes to the Official Plan or Zoning permissions, such that the design of the building would need to change (e.g. reducing the height of the building or another performance standard), it is likely that a hearing would be required but may be less involved as the issues would be narrower. An external expert planner would still be required in this circumstance.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the recommendation of this report. Any amendments may result in additional costs to retain an external expert planner, which would be funded from within Planning Services' operating budget. There is no expected impact to the community benefits previously secured through a Section 37 agreement of the *Planning Act*.

LEGAL IMPLICATIONS

Legal Services requires instruction in order to represent the City in the subject appeal.

If the recommendation of the report is approved, Legal Services will seek a resolution of the appeal on the basis of the staff report, as modified by Document 2 hereto. Legal Services believes the appeal would be resolved with minutes of settlement with the applicant on that basis, provided no community group or community member seeks party status and requires a full hearing on the merits of the appeal.

The implications, should Council instruct Legal Services differently (either to ask that the OLT refuse the amendments sought or approve them with different performance standards), are discussed in detail in the discussion section above.

COMMENTS BY THE WARD COUNCILLOR(S)

The Councillor is opposed to approving the planning department's recommendation on the grounds that the scale of the development is significantly out of proportion to that foreseen by the area secondary plan, and for the reasons outlined by the Hintonburg Community Association as outlined in their oral and written submissions, including that the applicant cannot rely on an argument of density transfer within the assembled parcels.

CONSULTATION

Community members who have requested notice will receive notice of the appeal and instructions for participation from the Applicant on behalf of the Tribunal.

ACCESSIBILITY IMPACTS

Legal Services supports and considers the Accessibility for Ontarians with Disabilities Act, (2005) in its operations.

RISK MANAGEMENT IMPLICATIONS

There are no risk management concerns arising from this report.

RURAL IMPLICATIONS

There are no rural implications to this report.

TERM OF COUNCIL PRIORITIES

This report supports the strategic priority of Council of providing Service Excellence Through Innovation with improved service delivery through data analysis and innovation in service design.

SUPPORTING DOCUMENTATION

Document 1- Planning Report [ACS2022-PIE-PS-0044](#)

Document 2- Details of Recommended Zoning to Replace Document 3 in Report
ACS2022-PIE-PS-0044

DISPOSITION

Legal Services to seek resolution of the appeal (through settlement or a hearing on the merits) in accordance with the recommendations.