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October 6, 2016

CORPORATE SERVICES (LEGAL SERVICES) REPORT 2016-10

TO: Committee of the Whole

SUBJECT: Appeal to the Ontario Municipal Board from a decision of the Committee of Adjustment denying an application for Minor Variance re: 84 & 90 Howard Road

ORIGIN: Associate Solicitor, Legal Services

THAT Corporate Services (Legal Services) Report 2016-10 dated October 6, 2016 regarding the appeal to the Ontario Municipal Board by the Owner of 84 & 90 Howard Road ("the lands") from a decision of the Committee of Adjustment to deny an application for Minor Variance be received, and the following recommendations be adopted:

- 1. THAT staff be directed to advise the Ontario Municipal Board that Council does not take a position either in support of or against the Committee of Adjustment's decision to deny an application for Consent and an application for Minor Variance in connection with the lands;**
- 2. AND THAT the Town will not be appearing as Party at the OMB hearing in this matter;**
- 3. AND THAT Staff advise the Ontario Municipal Board and the appellant that in the event the OMB grants the appeal, it is requesting conditions as set out on pages 2 and 3 of this report as part of any Order approving the Minor Variance.**

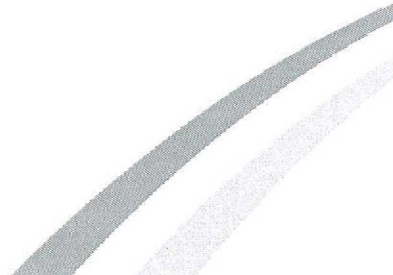
COMMENTS

In April 2016, the Owner of the lands filed an application for Consent and Minor Variance. The lands are located on the west side of Howard Road, north of Davis Drive and south of Wayne Drive as shown on the attached map at Schedule "A".

The purpose of the Consent Application was to convey a portion of the lands at 84 Howard Road to increase the size of the lands at 90 Howard Road. Both properties would be utilized for residential purposes. The property at 84 Howard Road has an existing house and detached garage. The existing home would be demolished and the detached garage would become part of the 90 Howard Road property.

The Minor Variance was required as the existing frontage of 84 Howard Road would reduce from 22.87 meters to 15.247 meters, which is not in conformity with zoning requirements. The minimum zoning requirement is 18 meters.

No building plans were submitted with the applications.



Planning staff reviewed the applications for Consent and Minor Variance and prepared a report dated June 10, 2016 in which staff recommended denial for the variance. On June 15, 2016, the Committee of Adjustment reviewed the applications and denied both the request for Consent and Minor Variance. It was the position of the Committee of Adjustment that the Minor Variance Application did not meet the four tests of the Planning Act and should be considered by means of a rezoning application rather than via the Committee of Adjustment. No other reasons were given by the Committee.

The Owner of the lands subsequently appealed the decision of the Committee of Adjustment to the Ontario Municipal Board. A hearing date of **November 8, 2016** has been scheduled by the OMB.

The Owner of the lands has the burden of proving its case before the OMB through evidence that the following Planning Act criteria for the Consent and Minor Variance Application have been satisfied:

- (a) the Application conforms to the Official Plan;
- (b) the general intent of Zoning By-Law 2010-40 as amended is maintained;
- (c) the proposed development is desirable and permitted by the Official Plan and the Zoning By-Law; and
- (d) the requested variances are minor in nature.

On that basis, it is not necessary for the Town to participate as a party or participant. The Planning staff report submitted to the Committee of Adjustments provided detailed recommendations arguing against granting the requested variances. This report will be considered by the OMB together with any other evidence submitted by the Owner of the lands.

Should Council adopt the recommendations in this report, Town staff will advise the Owner (or its solicitor if it retains one) and the OMB that (a) the Town will not participate in the appeal and (b) in the event that the OMB decides to allow the appeal, the Town will request the following conditions as part of any Order approving the Consent and Minor Variances:

That Consent Application D10-B01-16 and Minor Variance Application D13-A06-16 be approved, subject to the following conditions:

- 1. That the variance pertains only to the requests as submitted with the application;**
- 2. That the owner enter into a Site Plan Agreement with the Town for the future development of the lands;**
- 3. That the applicant be advised that compliance will be required with the provisions of the Town's Tree Preservation, Protection, Replacement and Enhancement Policy; and**
- 4. That the development be substantially in accordance with the Site Plan and Elevations submitted with the application.**

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The recommendations support the well-equipped and managed objectives of the strategic plan by providing for the efficient management of litigation involving the Town.

CONSULTATION

The Planning department was consulted.

HUMAN RESOURCE CONSIDERATIONS

There are no Human Resource requirements as a result of the recommendations in this report. Should Council adopt the recommendations in this report, the OMB hearing can be conducted by the Town's Legal and Planning staff without the need of hiring external consultants.

BUDGET IMPACT

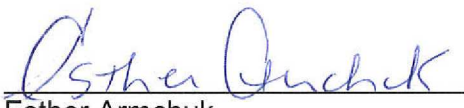
There is no budget impact as a result of the recommendations in this report.

CONTACT

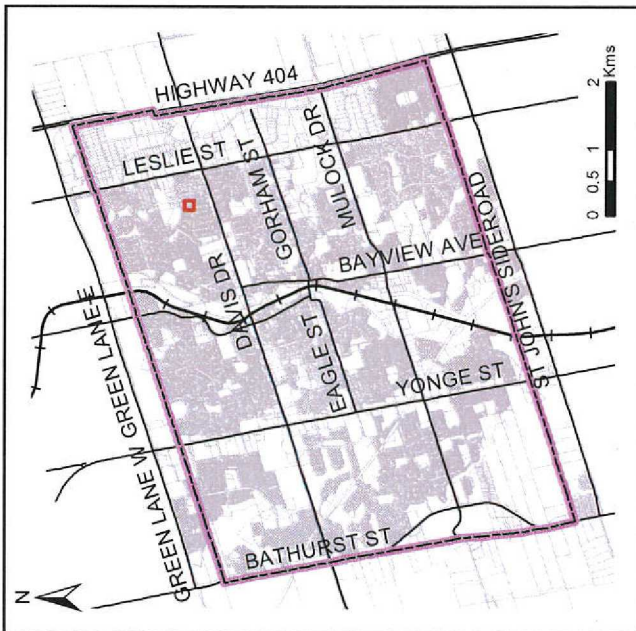
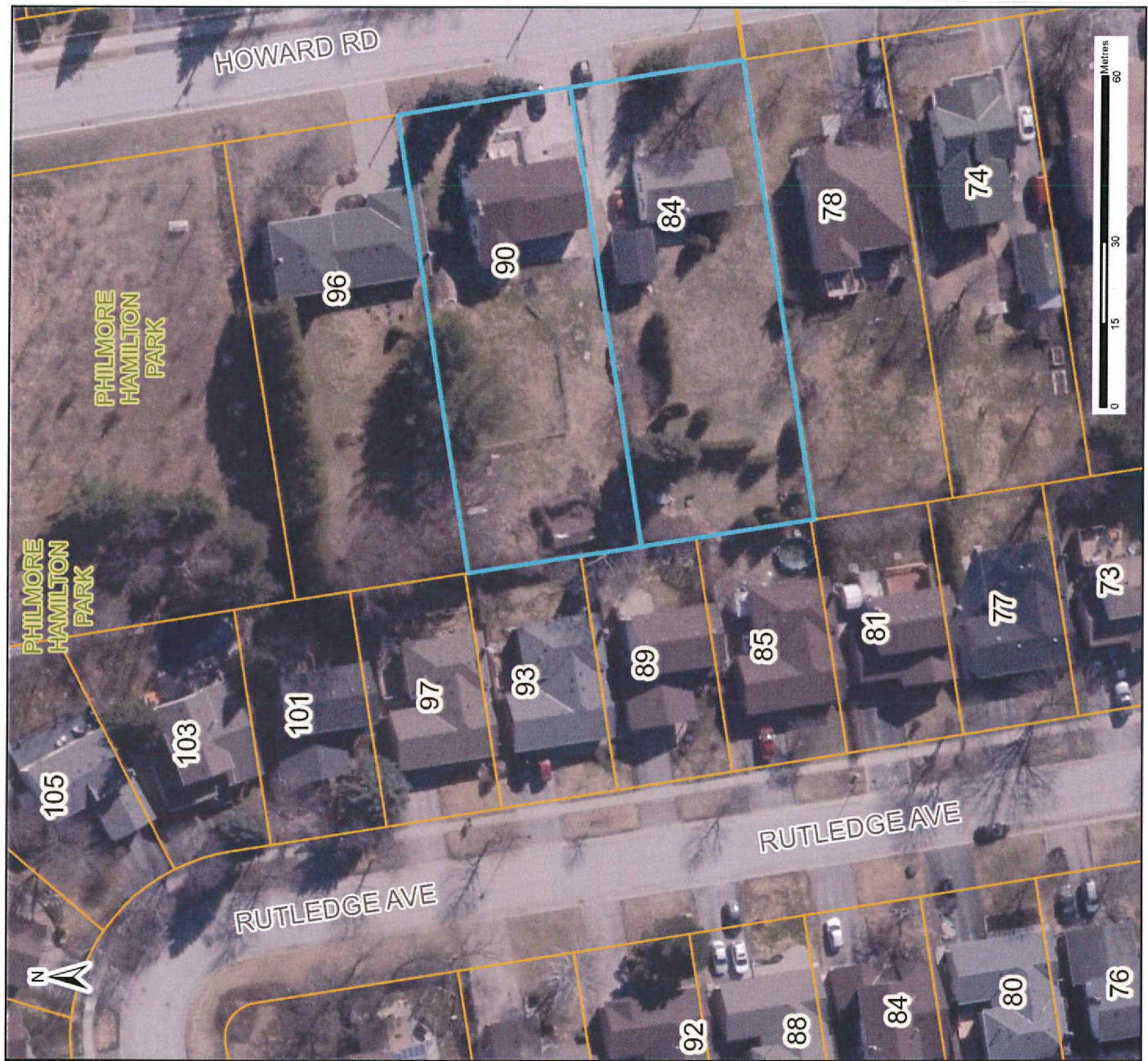
For more information on this report, please contact: Paul Voorn, Associate Solicitor, Legal Services at 905-953-5300, Ext. 2436.



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Esther Armchuk
Commissioner, Corporate Services



Location Map 84 and 90 Howard Road



Designed & produced by Information Technology - GIS
User-generated by Staff Online GIS on: 04/10/2016

- Legend**
- Subject Lands
 - Railway
 - Land Parcel
 - Municipal Boundary