

**TO:** MAYOR J. LEHMAN AND MEMBERS OF COUNCIL **FILE: D18-DUN**

**FROM:** S. NAYLOR, M.E.S., M.C.I.P., R.P.P., DIRECTOR OF PLANNING SERVICES *SN*  
AND  
I. PETERS, DIRECTOR OF LEGAL SERVICES *IP*

**NOTED:** R. W. McARTHUR, P. ENG. *RWM*  
GENERAL MANAGER OF INFRASTRUCTURE, DEVELOPMENT & CULTURE

E. ARCHER  
GENERAL MANAGER OF CORPORATE SERVICES *on behalf of EA*

C. LADD, CHIEF ADMINISTRATIVE OFFICER *CL*

**RE:** 155 DUNLOP STREET EAST (PORTION OF BAYVIEW PARK)  
ADDITIONAL INFORMATION

**DATE:** OCTOBER 22, 2012

This memo provides information in follow up to discussion and questions raised at the October 1, 2012 Council meeting regarding 155 Dunlop Street East. The memo is structured into 2 sections; the first provides information related to the potential for ownership options on the 155 Dunlop Street East parcel (the Lands). The second provides further planning related information with regard to Official Plan policy and zoning procedures. In addition, staff provided information on how the Lands are regulated by the Conservation Authority and what approvals are required for their redevelopment.

**1. Options to Convey Underground Parking while Retaining Public Open Space**

It is theoretically possible to register a strata plan (a three dimensional reference plan) and convey ownership of underground levels to a third party while retaining ownership of the surface and airspace. Staff investigated this option and, given the slope of the lands and the requirements of the underground parking structure, such an arrangement is not feasible in this instance.

There are, however, two options which would be both legally and practically effective in permitting the developer to build underground parking on the site while retaining open space for use by the public. A cross section of how the open space and parking structure could co-exist is attached as Appendix "A".

Appendix "A" includes both the park and the structured parking. The cross section depicts the existing grade situation where the site slopes downward from Dunlop Street to the North Shore Trail. If a park were developed on top of a parking structure, the slope of the lands would no longer be pronounced as in the existing situation.

**i. Transfer and Easement**

The City could sell and transfer a fee simple interest in the Lands to the developer at the fair market value of \$600,000 and then have the developer transfer an easement over the surface and airspace of the underground parking structure back to the City. The easement would grant a public right of use for open space in perpetuity.

Under this option, the developer initially, and then the condominium corporation, would be responsible for the creation and maintenance of the public open space. There would be no cost to the City other than ensuring that the City's insurance included the easement lands. The developer would merge in title the Lands with the lands it already owns at 149-153 Dunlop Street East. The agreement of purchase and

sale would be conditional on the developer receiving acceptable planning approvals with respect to the entire development.

ii. Ground Lease

The City could enter into a 99 year ground lease with the developer with respect to the underground volume of space required for the parking garage. The City would retain ownership of the Lands and have a right of reversion after the 99 year term of the lease. Again, the City would have a right of use for open space for the term of the lease.

Under this model, the developer would prepay the fair market value of \$600,000 as its lease payment, and would be responsible for the creation and maintenance of the public open space. Since the City would retain ownership of the Lands, the developer would require the City's consent to make planning applications with respect to the Lands provided such applications would not affect the surface open space. The obligation to enter into the lease would also be conditional on the developer receiving acceptable planning approvals with respect to the entire development.

**2. Planning Related Information**

There was discussion at the Council meeting concerning Official Plan policies and zoning of the subject Lands. The following provides further information and clarification.

i. Official Plan Policy Interpretation

The Official Plan is a long range planning document intended to be a public statement by the Council of the City of Barrie setting out land use and development goals, objectives and policies for the guidance of public and private development decisions within the City.

The Official Plan, since at least 1985 and up until 2006, designated the 149-153 Dunlop Street East (Hooters) property, all of Bayview Park, including the westerly 23m (75'), and all lands easterly to Berczy Street, as City Centre. In 2006, the City undertook an Official Plan update which redesignated the majority of Bayview Park as Open Space, but maintained the westerly 75' of Bayview Park as City Centre.

Section 4.6 of the Official Plan sets out land use policies specific to lands designated Open Space. Section 4.6.2.5, The Waterfront, is a subsection of Section 4.6, Open Space. Parts (a) and (b) state:

- (a) "Where lands are designated Open Space along the waterfront within the Lakeshore, South Shore, Bayshore, Innis-Shore and Little Lake Planning Areas, permitted uses may incorporate public and private recreational uses and ancillary uses, which include but are not restricted to public and private boat docking, public picnicking, trails and bikeways and ancillary commercial uses provided such uses clearly serve the major recreational function.
- (b) The City shall promote the development of the waterfront lands along Kempenfelt Bay and Little Lake as a continuous major public open space system. No City owned land will be disposed of or leased in these areas and Council will endeavour to acquire privately owned lands."

In Planning staff's opinion, subsection 4.6.2.5 (b) does not restrict the sale of the subject parcel as it is not designated Open Space in accordance with 4.6.2.5 (a). The Official Plan is structured such that policies applying to all lands across the City are located in Section 3.0 General Policies and policies applying to specific land use designation are located in Section 4.0 Land Use Policies.

It is Planning staff's opinion that the Official Plan policies contained in 4.6.2.5 (b) only apply to those lands designated Open Space. The 75' portion of Bayview Park is not designated Open Space but rather is designated City Centre and was recognized as such through the 2006 Official Plan update.

ii. Zoning of the Subject Parcel (the Lands) being the westerly 75 feet of Bayview Park

The Zoning By-law is a regulatory document which prescribes permitted land uses in various zone categories and sets out performance standards and requirements to be adhered to when developing a parcel of land. The Zoning By-law regulates standards and uses at the site specific level.

The subject lands are zoned Central Area Commercial C1-1 by Comprehensive Zoning By-law 2009-141. The notification process for comprehensive updates to municipal zoning by-laws typically consists of general notices posted in local newspapers given the scale of the process. This is common practice across Ontario municipalities and in accordance with the statutory provisions of the Planning Act. Several public meetings and open houses were held for this update.

iii. Rezoning of the Lands from Central Area Commercial C1-1 to Open Space OS

If the subject parcel were proposed to be rezoned from C1-1 to OS, a public process would be required in accordance with the Planning Act. A decision of Council on any Planning Act application is subject to appeal.

If the Lands were rezoned to Open Space, the structured parking would not be permitted as of right, as parking within an Open Space zone must be accessory to the main use as a park. The Rezoning of the Lands to Open Space would require the addition of a site specific Special Provision (SP) to allow for a structured parking lot.

Conservation Authority Regulations

The subject 75' portion of Bayview Park and the adjacent property (Hooters building) are regulated by the Lake Simcoe Region Conservation Authority. Staff met with Conservation Authority staff who advised that a permit would be required for redevelopment on the combined lands. Conservation Authority staff have confirmed that the high water mark from the wave uprush does not extend onto or adversely affect the subject lands. A Coastal Engineering study would be required at the site plan stage to demonstrate that the lands would not be subject to long term erosion.

Further Information

There has been a considerable amount of public comment at the October 1, 2012 Council meeting and by way of written correspondence, some of which was only received late last week. If the Council decision is to refer the matter back to staff for a report back to General Committee, staff will take the opportunity to address the comments from the public when reporting back.

Appendix "A" - Cross Section of the Lands – Park and Parking Structure

**APPENDIX "A"**

**Cross Section of the Lands – Park and Parking Structure**

