

ONTARIO

Court file no. 422/17

BETWEEN:

SUPERIOR COURT OF JUSTICE

DANFORTH (LONDON) LTD.

PLAINTIFF(S)

and

THE CORPORATION OF THE CITY OF LONDON

DEFENDANT(S)

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND



WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: ^{CB} 27 February 2017

Issued by: Colleen Barden
Local registrar

Address of court office:
80 Dundas Street
London, Ontario
N6A 6A3

TO:

The Corporation of the
City of London
City Hall,
300 Dufferin Avenue
London, Ontario
N6A 4L9

CLAIM

1. The plaintiff claims:
 - a) damages of \$53,000,000.00;
 - b) pre-judgment and post judgment interest in accordance with the Courts of Justice Act;
 - c) costs.

2. The plaintiff is the owner of a parcel of land in the City of London municipally known as 195 Dundas Street ("195 Dundas," or "the Property").

3. The area of the Property is approximately 0.66 hectare (1.6 acres). The Property consists of a rectangular parcel at the southeast corner of King Street and Clarence Street plus a narrow strip running north to Dundas Street. The frontage on King Street is 86.7 m (284 ft), on Clarence Street 60.3 m (198 ft) and on Dundas Street 15.2 m (50 ft).

4. The Property was once the location of the London Mews. That was a shopping centre that closed in the late 1980's. Thereafter that shopping centre was demolished and the Property was used

as a commercial parking lot. Due to the actions of the defendant City that use of the Property as a parking lot continues to this day rather than as a mixed use complex featuring high-rise apartment buildings, commercial/office space, and underground parking. "Significant" is the appropriate word to describe the financial loss to the plaintiff by reason of the actions of the City (which actions and which financial loss will be described in the ensuing paragraphs of this statement of claim).

The Legal Basis of the City's Liability

5. The plaintiff states that the City is liable to it for damages on the basis of negligence and on the basis of a failure to act fairly and in good faith towards the plaintiff in the exercise of its discretionary authority regarding planning and transit.
6. Regarding negligence, the plaintiff pleads that the requisite elements of liability on the part of the City are fulfilled:
 - a) the harm to the plaintiff is reasonably foreseeable;
 - b) there is sufficient proximity between the City and the plaintiff that it is fair and just to impose a duty of care upon the City;

- c) there is no residual policy reason for declining to impose such a duty;
 - d) the City has breached its duty of care to the plaintiff and has caused damage to the plaintiff.
7. Regarding the second basis for liability the plaintiff pleads that the City:
- a) has by virtue of the *Municipal Act, 2001* and the *Planning Act* statutory powers regarding zoning and public transit;
 - b) while the City is given discretion in the exercise of its powers regarding zoning and public transit, such discretion does not relieve it of a legal duty to exercise power conferred upon it fairly and in good faith;
 - c) is liable in damages for a breach of that duty to act fairly and in good faith;
 - d) the plaintiff has sustained damages by reason of that breach of duty.

The Factual Basis of the City's Liability

8. At the heart of this matter is the City's proposed public transit initiative (called SHIFT). As regards its transit plans adjacent to

the plaintiff's property the City has delayed, vacillated, and failed to consider the legitimate interests of the plaintiff and the adverse impact that the City's conduct has had, and is having, upon the plaintiff.

9. The plaintiff purchased the Property in 2014 for \$8,450,000.00. The transfer to the plaintiff was registered on 27 October 2014.
10. The City of London Official Plan at the time of the plaintiff's acquisition of the Property designated it as "Downtown Area." The Property was zoned DA1 with a density of 350 units per hectare. That zoning permitted the use of the Property for mixed residential, commercial and office use.
11. The plaintiff submitted its Proposal Summary for a Zoning By-law Amendment to the city on 9 January 2015. The plaintiff sought an increase in density from 350 units to 1,070 units per hectare and an increase in maximum height from 90 metres to 112 metres. The plaintiff proposed one 35-storey, 316 unit apartment building; one 32-storey, 286 unit apartment building; one 19-storey, 96 unit apartment building; and one 4-storey office

building. With this would be a podium with 3 above ground parking levels and commercial and office space on the ground floor. There would be two levels of underground parking. Vehicular access to the parking would be from two ramps off King Street and one ramp off Clarence Street.

12. The plaintiff's proposal was in keeping with the stated intentions of the Official Plan designation for Downtown Area:

"The Downtown will continue to be the major office employment centre and commercial district in the city," and ...

"its function as a location for new medium and high density residential environment will be strengthened over time."
[Section 4.1]

It also was in keeping with the planning objectives in the Official Plan for the Downtown Area:

"to promote the continued development of the Downtown as the primary business, administrative, institutional, entertainment and cultural centre for the City of London," "encourage growth in the residential population of the Downtown and adjacent gateway areas through new development" and "encourage the consolidation and enhancement of a compact, pedestrian-oriented shopping area within the Downtown" [Section 4.1.1(i), (iii) and (iv)]

13. A pre-consultation meeting was held on 27 January 2015 at the City of London Planning Office. At that time the City required a 1.5 metre road widening dedication along Clarence Street. This was prescribed in the zoning by-law and posed no impediment to the plaintiff's proposal.
14. On 30 April 2015 the complete Zoning By-law Amendment Application ["ZBA"] was submitted to the City. The City requested additional information, which was submitted on 28 May 2015.
15. The City requested a meeting for 14 July 2015. At that meeting, and contrary to what the City had previously indicated to the plaintiff, the City now required a 5 metre road widening dedication on both King Street and Clarence Street in order to make that intersection the transit hub and junction point of two new proposed public transit routes as part of SHIFT.
16. While the plaintiff was willing to work with the City to incorporate reasonable and responsible transit stops into the development, the City continued to insist on the 5 metre dedications. That

position by the City has not been retracted. The plaintiff had to retract its ZBA as the City's 5 metre requirement and proposed changes to traffic on King Street and Clarence Street made access to the Property so difficult as to make the Property nearly inaccessible to automobiles.

17. When the plaintiff bought the Property, prepared its plans, and submitted its ZBA application it was on the reasonable, and foreseeable, assumption that King Street and Clarence Street would continue to be arterial roads functionally usable to accommodate vehicular traffic and access to buildings, just as they had been for decades. What the City was proposing to do was turn King Street and Clarence Street in the area of the Property into a three lane street with the outer lanes being dedicated to public transit and the centre lane only being a one-way route available to automobiles. Added to this would be a new plan that would see Dundas Street restricted and periodically closed altogether to automobiles. Making the corner of King and Clarence the hub of the new transit system would mean that thousands of people daily would be waiting for, boarding, and exiting transit vehicles. The required 5 metre

dedication from the Plaintiff would not solve the congestion created by the transit users plus members of the public walking on these two main downtown streets plus residents trying to enter and leave the residential buildings on the Property. This congestion of people in a confined space, with transit vehicles entering and exiting the hub on both King and Clarence Streets plus automobiles using those streets including to try to enter and exit the buildings on the Property, would at best create gridlock and at worst pose a danger to the safety of the pedestrians and transit users.

18. The SHIFT proposal for a transit hub at King and Clarence Streets is just that – a proposal. There is no funding in place for a transit plan that will cost hundreds of millions of dollars. The ability to construct the new transit lines is beyond the financial capability of the City and is dependent on funding from (at least) the Province, for which funding there is no Provincial government commitment. Thus, the City is exercising its discretionary planning powers to render the plaintiff's property virtually unusable for the purposes embodied in the Official Plan and is doing so on the basis of a transit plan that is unfunded and may

never be built. To exercise a discretionary power on this basis breaches the standard of care the City owes to the plaintiff. It also is a failure to treat the plaintiff fairly and to exercise a discretionary power fairly and in good faith.

The Damage

19. The plaintiff is faced with the following:
 - a) Try to continue to use the Property as a parking lot, the permission for which can be discontinued by the City;
 - b) give the City the required 5 metre dedications and proceed with a greatly reduced development that may be nearly inaccessible to automobiles in future.

Both alternatives inflict significant damage upon the plaintiff. The damage is expressed in the difference in value of a parking lot or a possibly inaccessible reduced development compared to the value of the development in the ZBA application. The damage is also expressed in the loss of revenue that the plaintiff would have earned from the proposed mixed-use development the City should have permitted it to commence constructing in or about 2016.

20. These damages are ongoing and will continue to escalate.

Date of issue: *Feb. 22,* 2017

F. SCOTT TURTON
Barrister-at-Law
24 Bridgewater Drive
Richmond Hill, Ontario L4E 3N4
LSUC: 17631C

(905) 508-5821
Fax: (905) 508-0519

Lawyer for the plaintiff

DANFORTH (LONDON) LTD.
PLAINTIFF(S)

and

THE CORPORATION OF THE CITY OF LONDON

DEFENDANTS

Court file no. 422/17

RECEIVED

FEB 24 2017

City Solicitor's Office

11:29 am



SUPERIOR COURT OF JUSTICE
Proceeding commenced at London

STATEMENT OF CLAIM

F. SCOTT TURTON
Barrister-at-Law
24 Bridgewater Drive
Richmond Hill, Ontario
L4E 3N4
scott@scottturtonlaw.com
LSUC: 17631C
(905) 508-5821

Fax: (905) 508-0519

Lawyer for the plaintiff