

Sheppard Subway - Bessarion Station Initiation of Civil Lawsuit to Recover Contamination Costs

(City Council on July 4, 5 and 6, 2000, amended this Clause by adding thereto the following:

“It is further recommended that the following motion be adopted:

Moved by: Councillor Shiner

‘WHEREAS the City Solicitor has sought authority to commence legal proceedings in regard to the cost associated with the excavation of petroleum contaminated soil at the Bessarion Station of the Sheppard Subway line; and

WHEREAS, subject to review by the City of Toronto/Toronto Transit Commission (TTC) environmental consultants, further testing may be of assistance in proceeding with the lawsuit;

NOW THEREFORE BE IT RESOLVED THAT *the City Solicitor, in consultation with TTC staff and consultants, be authorized to determine whether additional off-site testing is necessary, and, if so, to carry out such testing, at a cost not to exceed \$15,000.00; such testing to be carried out only in respect of property owners that are prepared to enter into an agreement with the City of Toronto, providing for access, restoration of property to its pre-test condition and such other terms and conditions as are satisfactory to the City Solicitor, in consultation with the TTC.’ ”)*

The Administration Committee recommends the adoption of the following report (May 31, 2000) from the City Solicitor:

Purpose:

To obtain authority to commence legal proceedings against Petro-Canada, Shell Canada Limited, and/or any other parties that may have liability in respect of contamination encountered during the excavation of the Bessarion Station of the Sheppard Subway.

Financial Implications and Impact Statement :

TTC staff advises that sufficient funds have been included for the Sheppard Subway project in the 1999-2003 Capital Program, as approved by City Council on March 2, 1999.

Recommendations :

It is recommended that:

- (1) the City Solicitor be authorized to commence proceedings against Petro-Canada, Shell Canada Limited and/or any other parties that may be implicated in respect of contamination encountered during the excavation of the Bessarion Station of the Sheppard Subway system and that such authority include authority to recommend a settlement of any such lawsuits on terms satisfactory to the City Solicitor, in consultation with the TTC, or to appeal such proceedings, or to take any such steps as may be necessary in the opinion of the City Solicitor in respect of the matter; and
- (2) the appropriate staff be authorized to take such action as is required to give effect to these recommendations.

Background:

During the design of the Bessarion Station, borehole testing indicated that hydrocarbon contamination had migrated into the City-owned road allowance on Sheppard Avenue in the vicinity of Burbank Drive and Sheppard Avenue East and onto lands purchased from Canadian Tire Corporation and Sheppard Square Plaza. The contamination was believed to come from both the Petro-Canada station on the northwest corner of the intersection as well as the Shell station on the northeast corner of the intersection. As a result of the testing, provisions were included in the Bessarion station contract for the contractor to excavate, segregate and dispose of the expected volume of contaminated materials.

Excavation of the station has revealed contamination in excess of what had initially been predicted, and substantial additional costs for the treatment and disposal of contaminated soil and groundwater have been required. Contamination has also spread to the east onto property purchased for a station entrance from Sheppard Square Plaza. Details are currently being finalized as to the extent of the costs but it is expected that up to 30,000 tonnes of contaminated material will have to be removed from the site.

Comments:

Shell Canada Limited was notified during property negotiations that hydrocarbon contamination had been found in the road allowance and that it was the intent of the TTC and the City of Toronto to recover the costs for the removal and treatment of this contamination. Shell Canada Limited, through its lawyer, did not wish to address the contamination issue through the expropriation process. Accordingly, the City of Toronto preserved its rights to bring an action at common law to recover its costs. Shell Canada Limited has had a representative on site from time to time observing the testing and removal of contaminated material.

Petro-Canada was advised of the contamination issue and provided a report prepared when their site was de-commissioned in 1991. It is Petro-Canada's position that they have no liability in respect of this contamination.

Accordingly, civil action against both Shell Canada Limited and Petro-Canada is necessary at this time.

The incremental cost to remove contaminated material from the Station excavation includes the cost to dispose of contaminated soil and ground water, additional inspection and testing costs, the provision for engineering measures to reduce contaminated water seepage into the finished subway structure and potential delays to construction as a result of the increased volume of material to be excavated. Overall, incremental costs are currently estimated at approximately one million dollars. Further de-commissioning is necessary at the time of writing, and the incremental costs may well exceed one million dollars.

The civil lawsuit will be initiated by City Legal Staff, as the contamination affects City-owned property. TTC legal and technical staff will provide support for the lawsuit. Specialized consulting services may be required and would be the subject of a separate report. Staff of the TTC's legal department and the TTC's Sheppard Subway Project have been consulted, and concur with this report.

Conclusions:

A civil lawsuit against Shell Canada Limited and Petro-Canada, or such others as may be identified, is necessary to attempt to recover the additional costs for the removal of contaminated soil and water from the City-owned road allowance in the vicinity of the Bessarion Road Station of the Sheppard Avenue Subway.

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