

## **Expropriation of Portions of 1051 and 1251 Tapscott Rd.**

<b>Date:</b>	May 17, 2007
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer
<b>Wards:</b>	42 – Scarborough Rouge River
<b>Reference Number:</b>	P:\2007\Internal Services\F&re\Gm07045F&re – (AFS – 5082)

### **SUMMARY**

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To seek approval for the expropriation of portions of 1051 and 1251 Tapscott Road for the extension of McNicoll Avenue, easterly from Tapscott Road.

### **RECOMMENDATIONS**

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**The Chief Corporate Officer recommends that:**

- (1) City Council, as approving authority under the *Expropriations Act*, approve the expropriation of the following land and interest in land required for the McNicoll Avenue Extension Project, to facilitate construction and operation of the highway extension and for all works and uses ancillary thereto:
  - (i) Fee Simple in Part 2 on Reference Plan 66R-22872;
  - (ii) a temporary working and right of way Easement for a period ending December 31, 2008, in Part 1 on Reference Plan 66R-22872; and,
- (2) City Council, as approving authority under the *Expropriations Act*, approve the expropriation of the Fee Simple Interest in Parts 6 and 8 on Reference Plan 66R-20197 required for the McNicoll Avenue Extension Project and for all works and uses ancillary thereto:

- (3) City Council, as expropriating authority under the *Expropriations Act*, authorize all necessary steps to proceed with the said expropriations in compliance with the *Expropriations Act*, including, but not limited to, preparation and registration of the Expropriation Plan(s) and the service of Notices of Expropriation, Notices of Election as to a Date for Compensation and Notices of Possession;
- (4) the Director of Real Estate or the Executive Director of Facilities & Real Estate be authorized to sign the Notices of Expropriation and the Notices of Possession on behalf of the City;
- (5) authority be given to apply to Court for an Order permitting the City to take early possession of the expropriated property in order that the proposed highway works may be carried out in mild weather;
- (6) leave be granted for introduction of the necessary Bill in Council to give effect thereto; and
- (7) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereon.

## **FINANCIAL IMPACT**

There are no financial implications to the City's budgets as a result of these recommendations because the Morningside Heights Landowners Group ("MHLG") have agreed, as a term of the February 22, 2002 Core Servicing Agreement for the Morningside Neighbourhood, to pay all costs of the expropriations for this extension of McNicoll Avenue, Easterly of Tapscott Road.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

## **DECISION HISTORY**

By adopting Clause No. 31 of Report No. 6 of the Administration Committee, City Council, on September 25, 26 and 27, 2006, authorized initiation of the expropriation process to acquire for the extension of McNicoll Avenue, Easterly from Tapscott Road,

all right, title and interest in Part 2 on Plan 66R-22782 and to acquire (for the temporary period from registration of the Expropriation Plan to December 31, 2008,) a temporary working and right of way easement in Part 1 on Plan 66R-22782.

By adopting Clause No. 25 of Report No. 9 of the Scarborough Community Council, City Council, on October 2, 3 and 4, 2001, previously authorized initiation of the expropriation process to acquire all right, title and interest in Parts 6 and 8 on Reference Plan 66R-20197 which Parts are also required for the extension of McNicoll Avenue, Easterly from Tapscott Road.

## **ISSUE BACKGROUND**

In connection with the development of the Morningside Heights Community, the MHLG entered into the “Core Servicing Agreement” with the City under which MHLG is obliged to acquire the lands for highways, including the lands required for the extension of McNicoll Avenue, Easterly of Tapscott Road. MHLG also agreed that if it were necessary to acquire lands for the extension of McNicoll Avenue by expropriation that MHLG would pay all of the expropriation costs.

The City has already acquired most of the land required for this extension of McNicoll Avenue, which extension, the Transportation Department has advised, is required to connect McNicoll Avenue to Morningside Avenue to provide significant and essential transportation access for the Morningside Heights community and to enhance the transportation network for the broader area.

The property expropriations recommended above will complete the acquisition of the lands required for the extension of McNicoll Avenue, including the land and interest in land required to address the impact of this highway extension on Canadian Pacific Rail’s (“CP”) service to property which abuts this proposed highway extension.

## **COMMENTS**

Pursuant to Council’s authorizations referred to above, Notices of the Application for Approval to Expropriate the said vacant lands, portions of 1051 and 1251 Tapscott Road, were served on all registered property owners and were published in the newspaper in accordance with the *Expropriations Act*. Ongoing negotiations to acquire each property by

purchase, including negotiations for acquisition of one property pursuant to a “section 30 Agreement”, have not resulted in any agreements.

Regarding the proposed expropriation of portions of 1251 Tapscott Road which are recommended for approval in Recommendation #1 above, no request for a hearing of necessity, which is permitted by the *Expropriations Act*, has been received from any owner within the thirty day period following service and publication of the said Notices.

Regarding the proposed expropriation of portions of 1051 Tapscott Road which are also recommended for approval in Recommendation #2 above, a request for a hearing of necessity was received from the owner and from the tenant. The Owner has withdrawn its request for a hearing and it is expected that the Tenant’s request for an inquiry hearing shall also be withdrawn prior to the meeting of your Committee which will receive and consider this Report.

However, if a withdrawal of the tenant’s request for an inquiry hearing with respect to the property described as Parts 6 and 8 is not received prior to your Committee meeting, then staff will inform your Committee, in order that no action is taken with respect to Recommendation # 2.

At this time, it is realized that the acquisition of these lands for this essential highway extension should now proceed. Although negotiations are continuing, in order to ensure the acquisition of the said properties in a timely fashion, it is recommended above that Council formally approve these proposed expropriations and authorize steps to implement these expropriations.

Further, in order to commence highway construction before the winter months, vacant possession of the expropriated property is required before the end of September. As a result, it is also recommended that the City Solicitor be authorized to apply to the Court, as allowed by the *Expropriations Act*, for a possession date which is less than the initial three month notice provided for in the *Expropriations Act*.

After the properties are expropriated for the extension of McNicoll Avenue, the City is also required by the *Expropriations Act*, to have the expropriated properties appraised and to make an Offer of Compensation to the expropriated owners, together with a copy of each property’s appraisal. If the former owners do not agree with the City’s Compensation Offers, the former owners are entitled by the *Act* to have the final compensation determined by arbitration before the OMB.

Part 2 on Reference Plan 66R-22872 referred to in Recommendation number 1 above is being expropriated for a berm required by CP Rail adjacent to CP Rail’s tracks. Once construction of the McNicoll Avenue extension east of Tapscott is completed, staff will be requesting Council to declare Part 2 surplus to City requirements and to authorize the

transfer of this Part to CP Rail. Because this land transfer will reduce the compensation claimed against the City as a result of the impact of this new highway to the train tracks servicing adjacent property, such land is intended to be transferred to CP Rail at a nominal consideration.

The Properties' details are as follows:

1051 Tapscott Road:

Property Location: part of 1051 Tapscott Road  
Registered Owner: Runnymede Development Corporation Limited  
Legal Description: Parts 6 and 8 on Reference Plan 66R-20197  
Improvements: Vacant Land  
Official Plan: Special Industrial Uses and Business Park  
Zoning: General Industrial  
Lot Size  
(before the Taking): approximately 23.932 acres  
Requirements: Fee Simple Acquisition - Part 6 - 48.8 m<sup>2</sup> (0.012 acres)  
- Part 8 - 3313.2 m<sup>2</sup> (0.08186 acres)

1251 Tapscott Road

Property Location: part of 1251 Tapscott Road  
Registered Owner: Hukuna Matata Products Inc.  
Legal Description: Parts 1 and 2 on Plan 66R-22872  
Improvements: Vacant Land  
Official Plan: General and Special Industrial Uses  
Zoning: Industrial  
Lot Size:  
(before Taking) approximately 33.4 acres

Requirements: Fee Simple Acquisition in Part 2 – approx. 1402.2 m<sup>2</sup> (0.35 acres)  
A temporary easement for a period ending December 31, 2008, in  
Part 1 – approx. 2201.2 m<sup>2</sup> (0.54 acres)

## **CONTACT**

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## **SIGNATURE**

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Bruce Bowes, P. Eng  
Chief Corporate Officer

## **ATTACHMENTS**

Appendix A – Location Map  
Appendix B - Reference Plan 66R-20197  
Appendix C – Reference Plan 66R-22872