



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**A Resolution of Legal Claims and Disposition of Surplus
Land – 11R Hounslow Heath Road**

Date:	November 19, 2007
To:	Government Management Committee
From:	City Solicitor, and Chief Corporate Officer
Wards:	17 – Davenport
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City and contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	P:\2007\Internal Services\F&re\Gm07119 - (AFS 6293)

SUMMARY

This report is to update City Council on legal proceedings respecting the expropriation of 11R Hounslow Heath Road, to provide an update on the environmental remediation of the expropriated land and surrounding lands.

RECOMMENDATIONS

The City Solicitor and the Chief Corporate Officer recommend that:

1. City Council adopt the confidential instructions to staff in Attachment 1.
2. City Council authorize, as approving authority, the approval of the disposal of the expropriated lands to parties, other than those from whom the land was expropriated, without first giving those expropriated owners the right they would otherwise have of first chance to repurchase the lands set out in Section 42 of the *Expropriations Act*.

3. City Council authorize the public release of the confidential information and recommendation in Attachment 1, if any settlement is finalized to the satisfaction of the City Solicitor.
4. That authority be granted to the appropriate City Officials to take the necessary action to give effect thereto.

IMPLEMENTATION POINTS

External counsel in consultation with City Legal staff and the Director, Real Estate Services will proceed with this litigation as required. Facilities and Real Estate staff in consultation with external counsel and Legal staff will enter into discussions respecting the disposal of surplus lands. Any discussions will be subject to the considerations set out in the confidential attachment and any disposition would be subject to a further report to Council.

FINANCIAL IMPACT

The continuation of the legal proceedings commenced, as a result of the expropriation, will result in additional legal fees. These are discussed in the confidential attachment. Disposition of the surplus lands may result in some revenue for the City.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council at its meeting of March 2, 3 and 4 on 1999 adopted Corporate Services Committee Report Number 2, Clause Number 8 (Recommendation Number 2) that authorized the sale of 80 Turnberry Avenue and directed that staff use those proceeds to fund the expropriation of 11R Hounslow Heath Road. City Council further adopted Clause 4 of Report No. 16 of the Administration Committee at its meeting of November 6, 7 and 8, 2001, authorizing the expropriation of 11R Hounslow Heath Road in accordance with the earlier application to Council for approval to expropriate for the purposes of: public laneway, parks, and in order to extinguish the legal non-conforming use being carried out on the land (i.e. a scrap yard). The offer of compensation was nominal in view of extensive remediation costs anticipated on the property.

City Council later adopted Clause 14 of Report No. 2 of the Administration Committee at its meeting of February 4, 5 and 6, 2003, authorizing a civil suit against the former owners, both individual and corporate (collectively “the Owner”) of 11R Hounslow Heath Road in order to recoup costs associated with off-site contamination on City lands and private lands caused by the operation of the scrap yard. A Statement of Claim was issued in 2003. Subsequently, the Owner issued a counter-claim in the amount of \$10 Million against the City.

The expropriation of 11R Hounslow Heath Road was undertaken. Surplus lands have been identified and Council approval is required to dispose of them to anyone other than the parties from whom the lands were expropriated.

ISSUE BACKGROUND

(i) Expropriation Proceedings and related Legal action

The lands at 11R Hounslow Heath Road were expropriated as a result of historic concerns related to the condition and use of the expropriated lands, particularly contamination those lands have caused on adjacent lands owned by the City and private property owners.

As a result of the expropriation, the Owner advanced a claim under the *Expropriations Act*. Throughout the expropriation proceedings, the owner failed to attend Examinations for Discovery, refused to participate in a Board ordered teleconference, failed to produce certain tax and inventory records and failed to produce an Affidavit of Documents. As a result, the OMB, by order dated June 16, 2004, dismissed the claim in respect of compensation. The City was awarded costs in the amount of \$2,500.00, which costs were paid in September 2007.

After the expropriation, the Owner refused to give up possession of the lands and the City was obliged to apply to the Superior Court of Justice for an Order seeking possession. In a decision dated August 3, 2004, the Superior Court of Justice ordered the owner to vacate the expropriated land on or after October 1, 2004. Counsel was invited to make submissions respecting costs. A Bill of Costs has been submitted but the presiding Judge has not yet released his decision.

(ii) Remediation of Expropriated Lands

While the legal proceedings were pending, City staff retained consultants to examine the options for remediation of the subject lands. At its meeting of July 22, 23 and 24, 2003, City Council adopted Motion J(11) authorizing the remediation of the subject lands and the surrounding private residences in accordance with a proposal developed by the City’s environmental consultant. Subsequently, City staff entered subrogation agreements with neighbours as authorized by Council whereby the City would remediate their lands and take steps to recover the costs incurred through the Superior Court of Justice action.

The remediation has now been completed.

(iii) Use of Expropriated Lands

A portion of the expropriated lands have now been integrated into Wadsworth Park. A portion of the expropriated lands have been used to complete the laneway at the rear of the property. The remaining lands between the new laneway and the residences on Hounslow Heath Road (i.e. Nos. 9, 11 and 15) are now surplus to the City's needs as discussed below.

COMMENTS

Lawsuit

The City's lawsuit is based on the difference between the market value of the expropriated lands (estimated to be \$242,500.00 if clean) and the cost to the City of remediating the contamination on the subject lands, the City lands and the adjacent residential properties (actual costs are approximately \$750,000). The counterclaim for \$10 Million is based on allegations that the City has exposed the defendants (plaintiffs by counterclaim) to personal injury, illness and death and intended to put them out of business. The parties are currently engaged in the discovery process. Discussions have taken place with the defendants with the intent of resolving all outstanding legal issues on the basis of a comprehensive settlement.

In the event that settlement discussions fail, and in view of the counterclaim, the City has to be prepared to fully defend its interest (and therefore would continue to assert its own claim).

Disposal of Surplus Lands

Portions of the expropriated land have been used for park and laneway. The remaining portion may be disposed of provided that the expropriating authority (City Council) concludes that it no longer requires the lands for its purposes. Authority has been delegated to the Chief Corporate Officer to declare lands surplus (by adoption of Item GM6.18 contained in Government Management Committee adopted as amended by City Council on July 16, 17, 18 & 19, 2007). Further authority is required, however, from the approving authority (City Council) to dispose of the lands without giving the owners from whom the land was taken the first chance to re-purchase on terms of the best offer received by the expropriating authority (in accordance with s.42 of the *Expropriations Act*).

City Planning has reviewed the remaining land in consultation with Technical Services and determined that municipal services are available from Hounslow Heath Road. However, given the small size of the remaining land parcel which is located to the rear of abutting properties fronting onto Hounslow Heath Road, the existence of a large tree within the parcel, and the fact that practical and convenient accessibility is only from the public laneway and not the public street, any stand-alone development opportunity would be constrained. The preferred disposition would be to offer the lands to the adjacent property owners. The surplus lands could be offered to the three property owners to the north of the laneway (i.e. Nos. 9, 11 and 15), which would result in the extension of their backyards south to the laneway.

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SIGNATURE

Anna Kinastowski
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Bruce Bowes, P.Eng.
Chief Corporate Officer

ATTACHMENTS

Privileged discussion regarding legal advice on disposition of lands and ongoing litigation.