

Replacement of Water Service for 9R Baldwin

Date:	May 15, 2007	
To:	Public Works and Infrastructure Committee	
From:	Lou Di Gironimo, General Manager, Toronto Water	
Wards:	20	
Reference Number:	p:\2007\Cluster B\TW\pw07023.doc	AFS #5031

SUMMARY

The private property owner of 9R Baldwin has an existing private water service connection, which passes through 9 Baldwin, to the City watermain on Baldwin Street. A request was made to Toronto Water to provide 9R Baldwin with a new water service, via the lane south of Baldwin Street, to the City watermain on McCaul Street. Toronto Water denied the request for the various reasons set out in this report. The Ward Councillor had also requested the Public Works and Infrastructure Committee to direct staff to take appropriate action to provide a new water service to 9 R Baldwin Street. In response, the Public Works and Infrastructure Committee referred the matter to staff requesting a detailed report on the issues.

This report recommends against the proposed water service and provides the rationale for the denial of the proposed new service connection in the lane.

RECOMMENDATIONS

The General Manager of Toronto Water recommends that:

1. The request for the installation of the proposed new water service for 9R Baldwin Street off of McCaul Street via the public lane immediately south of Baldwin Street be denied.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the recommendation in this report.

However, should the request be permitted by the City, the following significant costs would arise:

- the cost to construct the new water service;
- the cost to operate, maintain and repair the new water service;
- the increased cost related to the future operation, maintenance and repair of the existing sewer;
- the cost associated with the potential legal liability related to the construction, ownership, maintenance and repair of the new water service and increased risk resulting from the location of public utilities in a congested space such as the risk of damage to adjacent utilities and buildings; and
- the cost associated with the potential supply to other private properties lying along the newly constructed public supply line; and,
- the potential cost resulting from additional future requests by private property owners, based on this precedent decision, to provide similar new services to existing properties via laneways throughout the City.

To partially offset these costs, First Canadian Title, on behalf of the involved property owners, has expressed a willingness to pay for the cost of the installation of a water service to the City's satisfaction and provide the City with a limited indemnity related to the proposed work.

DECISION HISTORY

The Public Works and Infrastructure Committee, at its meeting held on May 2, 2007, considered a request from Councillor Vaughan to direct staff to take the appropriate action to provide water service to 9 R Baldwin Street. The Committee referred the communication to the General Manager, Toronto Water, the Chief Planner and Executive Director, City Planning, and the City Solicitor, with a request to prepare a detailed report on the issues related to the provision of water services to 9R Baldwin Street for submission to the May 30, 2007 meeting of the Public Works and Infrastructure Committee.

The committee also requested that the water not be cut off to 9R Baldwin until this matter has been resolved.

The Decision Advice can be found in Item PW5.9 in the Committee Decision Document: <http://www.toronto.ca/legdocs/mmis/2007/pw/decisions/2007-05-02-pw05-dd.pdf>

ISSUE BACKGROUND

The private property owners of 9 and 9R Baldwin Street, by their representatives, have approached Toronto Water for permission to install a new water service to 9R Baldwin off of McCaul Street via the public lane immediately south of Baldwin Street, at the

expense of First Canadian Title. First Canadian Title is a provider of title insurance for residential and commercial real estate transactions, and is involved in this matter. Both 9 and 9R Baldwin Street have their own independent water service off of the City's watermain supply running along Baldwin Street. However, the water for 9R Baldwin is presently and has historically been supplied privately by a private service connection passing through 9 Baldwin. Based on information provided to the City, it would appear that a private easement for below grade water service over a portion of 9 Baldwin through to 9R Baldwin has not been secured by the appropriate parties to ensure continued water service supply for 9R Baldwin. The owners of 9 Baldwin now want to redevelop their property and are not willing to continue allowing a water service to 9R Baldwin. The City has been advised that the redevelopment matter has proceeded through various stages of Committee of Adjustment and Ontario Municipal Board (OMB) proceedings and is presently held up by an appeal by 9R Baldwin.

After careful consideration and several meetings and communications between City staff, the parties, and their representatives, Toronto Water denied the request for the proposed installation of a new water service to 9R Baldwin for various reasons outlined in this report. Moreover, it should be noted that the City has no legal obligation to provide the proposed new water service.

The Ward Councillor has requested the Public Works and Infrastructure Committee to direct staff to take the appropriate action to provide a new water service to 9R Baldwin Street. In response, the Public Works and Infrastructure Committee referred the matter to staff requesting a detailed report on the issues.

This report provides the rationale for the denial of the proposed new service connection in the lane.

COMMENTS

Staff from Toronto Water and Legal Services has met with the property owners and their representatives and the current and former Ward Councillors regarding this issue on numerous occasions since September 2005. In order to comply with the above request, two procedures are required. One is to shut off and abandon the existing water service to 9R Baldwin and the other is to construct a new water service to 9R Baldwin from McCaul Street via the public lane.

Process for severing the existing water service

The shut-off of a water service from the City to a private property is primarily a matter between the City and the owner of the lands to which the water is supplied. In accordance with Chapter 340 of the former City of Toronto Municipal Code, the applicable by-law for this property, and the *City of Toronto Act, 2006*, the shut-off of a water supply may be on the application to the City by the owner to whom the utility is provided or at the City's own direction. There is no provision for any other party other

than the owner or the owner's authorized agent to apply to the City for a shut-off or to alter existing services within the street allowance.

The City has no intention of shutting off the existing water service to 9R Baldwin.

Issues with respect to the provision of a new service

The owner of 9R Baldwin has hired an engineer who has submitted plans for a new service connection in the lane. Staff have consistently stated that Toronto Water does not want to accept ownership and responsibility for new water services in lanes in general and in this lane in particular, given the existing physical constraints. This position was communicated to the Solicitor for 9R Baldwin in a letter from the City Solicitor dated December 1, 2006 (see Attachment No. 1).

Policy Issues

The City is not required by law to provide a water service to 9R Baldwin as the building does not lie along an existing water supply line owned by the City.

The proposed installation would result in a situation that is counter to City policy for new development. According to Development Infrastructure Policy and Standards (DIPS), where new rear lanes are proposed: "There will be no municipal infrastructure in rear lanes other than street lighting and drainage." The function of a laneway is to provide vehicular access to garages for buildings which already have public street frontage. Municipal services such as water are normally provided from the public street frontage of the building. While DIPS is intended to apply to new development with new rear lanes, the rationale for the restriction on services in lanes is applicable to situations such as 9R Baldwin or other rear lots (existing or proposed) that have access to a public lane without municipal services. It is clear that a public lane is not intended to provide the same function as a public highway and is not designed to provide access to municipal services such as water and sanitary sewers.

The DIPS report can be found at:

<http://www.toronto.ca/legdocs/2005/agendas/council/cc051205/pltwks2rpt/cl002.pdf>

City Council has also adopted a recommendation that "the City not permit construction of housing on existing laneways, except in special circumstances where there are no adverse privacy, overlook, shadowing and engineering servicing implications"; and "the City not permit construction of housing on proposed/future laneways." Although this Council direction does not directly address this particular situation, the rationale for the policy is based, in part, on the inherent difficulties associated with providing municipal services to properties abutting only lanes. This report can be found at:

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060725/wks5rpt/cl005.pdf>

There may be other properties in the City which share private service connections without formal easements or legal agreements. There is concern with respect to the City setting a precedent if permission is granted in this instance. Where private arrangements

between property owners for sharing services or access or reciprocal rights of way lapse or fall apart or are found to be inadequate, the City should not be required to provide an alternative solution that impacts all water ratepayers.

Technical Issues

Should a new water line be constructed in the public lane to service 9R Baldwin, it would necessarily become a “supply line of the City for the public utility” and may, therefore, have to be made available by the City to service other properties on the public lane, if requested. In addition, the new water line would have to be constructed to the City’s standard of a 150mm watermain (6” line), not a 2” service connection as proposed by the property owner (this size service is typical for private service connections - from the watermain fronting a property - and not municipally owned infrastructure).

The public lane is too narrow to allow for the required clearances for excavation purposes between the future watermain and the existing sewer. The lane is only 4.03m wide and is encumbered by encroachments from abutting buildings, existing light poles, an existing 375mm combined sewer located in the centre of the lane and a gas service line. This narrow lane, coupled with the location of existing utilities, does not permit adherence to MOE requirements for minimum horizontal separation distances between watermains and sewers; and minimum separations required between electrical, natural gas and water utility infrastructure

Further, a new watermain connection would be required to the existing watermain on McCaul Street, where the existing underground infrastructure is extremely congested by trunk mains for sewers, water and Hydro (both Toronto Hydro and Hydro One), street car tracks and the usual array of local services.

There is significant concern with the narrowness of the public lane as it will not only be an impediment to the proposed installation of the watermain because of the inherent physical limitations but also the associated health and safety risks with servicing and maintaining the infrastructure in the future. As working space becomes more congested, the risk of damaging adjacent buildings or existing utilities becomes greater. In this case, the excavation would occur in a 4m gap between two residential buildings where there are also overhead hydro lines, and buried gas and sewer lines.

There would be an increase in the future maintenance costs for the existing sewer. In addition, because of the proximity of the proposed watermain, it may be necessary to remove and replace the watermain in order to access the sewer for repairs or replacement.

A dead end watermain requires a hydrant or a blow-off valve to allow for periodic flushing to prevent accumulation of stagnant or rusty water. There is no room in the lane to provide a safe location for the placement of a hydrant or a blow-off valve.

The City would incur additional long term costs associated with operating and maintaining infrastructure servicing a single property without any offsetting revenue increase.

Legal and Liability Issues

There are unacceptable legal liability concerns from the City's perspective associated with the proposal as submitted by, or on behalf of, the property owner of 9R Baldwin Street. The primary concerns relate to the potential costs and increased risks associated with the ownership, construction, installation, operation, maintenance, service, and longer term renewal of the existing sewer and proposed water line. In addition, there is a concern regarding the potential establishment of a public supply along the public lane and the possible creation of an obligation, on the part of the City, to provide water supply to other properties along that newly created supply line.

The Chief Planner and Executive Director, City Planning and the City Solicitor were consulted in the preparation of this report.

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SIGNATURE

Lou Di Gironimo,
General Manager, Toronto Water

ATTACHMENTS

Attachment No 1. Copy of letter from City Solicitor to Robert Jarvis Q.C. dated December 1, 2006