



STAFF REPORT ACTION REQUIRED

Expropriation of Portions of 1797 St. Clair Avenue West

Date:	April 1, 2008
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Ward 17
Reference Number:	P:\2008\Internal Services\F&re\Gm08039F&re- (AFS 7385)

SUMMARY

To seek approval for the expropriation of portions of 1797 St. Clair Avenue West for road widening purposes to accommodate St. Clair Avenue West transit improvements.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council, as approving authority under the *Expropriations Act*, approve the expropriation of the following interests in land at 1797 St. Clair Avenue West required for road widening purposes and for all works and uses ancillary thereto:
 - (a) fee simple in Part 1 on Draft Plan of Survey dated April 1, 2008 and identified as Job Number 2008-0286, and
 - (b) a temporary working easement for a period ending December 31, 2009 in Parts 2, 3, 4 and 5 shown on the above mentioned Draft Plan of Survey.
2. City Council, as expropriating authority, under the *Expropriations Act*, authorize all steps necessary to comply with the *Expropriations Act*, including, but not limited to, the preparation and registration of the Expropriation Plan(s) and service of Notices of Expropriation, Notices of Election as to Date for Compensation and Notices of Possession.
3. Each of the Executive Director of Facilities & Real Estate Services and the Director of Real Estate Services be authorized severally to sign the Notice of Expropriation and Notices of Possession on behalf of the City.

4. Authority be granted to apply to Court for an Order permitting the City to take early possession of the expropriated property in order that the proposed road widening and ancillary works may be constructed expeditiously and in favourable weather.
5. Leave be granted for the introduction of the necessary Bill in Council.

Financial Impact

Funding for property acquisitions for the St. Clair Avenue West road widening purposes has been previously approved as part of the St. Clair Avenue Transit Improvement Project and it - is available in the 2008 Capital Budget for Transportation Services, - account CTP806-30-06. Once known, the expropriation costs for the subject property interests will be reported back, together with sources for their funding.

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

DECISION HISTORY

By adopting Clause No. 1 of Report No. 7 of the Policy and Finance Committee on September 28, 29, 30 and October 1, 2004, City Council authorized initiation of the expropriation process to acquire property interests to implement the Preferred Design Concept for the St. Clair Avenue West Transit Improvement Project which will enable two centre lanes along St. Clair Avenue West to be reserved for use by streetcars and emergency vehicles.

ISSUE BACKGROUND

1797 St. Clair Avenue West is owned by Imperial Oil Limited (“Imperial Oil”). The property is vacant land which was formerly used as a gas station and is environmentally contaminated by petroleum product. Imperial Oil has commenced a remediation of the property by installing extraction wells on the property from which liquid petroleum is pumped out bi-monthly. A plume of contamination exists at a level of approximately 8 metres below the surface of the portion of the lands required by the City

City staff have determined that a traditional acquisition of the contaminated land to the “centre of the Earth” would expose the City to potential liability and remediation costs as the City would thereby assume the responsibility for the plume.

The road widening does not require a depth greater than 2 metres below surface. It is proposed that the City expropriate a stratified fee simple interest in the property, commencing 2 metres below grade and unlimited in height as shown as Part 1 on Draft Plan of Survey dated April 1, 2008 and identified as Job Number 2008-0286 which is attached hereto as Schedule “A”. In addition, a temporary working easement in Parts 2, 3, 4 and 5 shown on the said Draft Plan, is required.

Pursuant to Council authorization, Notices of the Application for Approval to Expropriate the property were served upon Imperial Oil and published in the newspaper in accordance with the *Expropriations Act*.

Imperial Oil requested a Hearing of Necessity which was held on January 29, 2008. At the hearing, Imperial Oil took the position that it would be more appropriate for the City to either acquire the whole of the property or, alternatively, the surface and entire depth of that portion of the property on which the new road allowance would be sited.

The City's position was that a strata taking was reasonable in the circumstances and that the construction of the road widening could be undertaken in a manner that could allow Imperial Oil to continue to remediate the remainder of its property.

The City received the report of the Inquiry Officer dated January 29, 2008 which is attached hereto as Appendix "A". On the basis of the evidence presented, the Inquiry Officer concluded that there was no requirement that the City have responsibility for Imperial Oil's contamination, and that the proposed strata taking was fair, sound and reasonably necessary in the achievement of the objectives of the City.

An issue raised at the Hearing was that Imperial Oil would be left with an unusable piece of property beneath the fee simple interest to be acquired by the City. The Hearing Officer ruled that this issue is a matter of compensation. This issue, if not resolved amicably, will be the subject of a compensation hearing.

COMMENTS

Negotiations between the City and Imperial Oil have not resulted in any agreement or settlement. Therefore, in order to enable the completion of the St. Clair Avenue transit improvements, it is necessary to acquire the property interests which the City proposes to expropriate at 1797 St Clair Avenue West to ensure that construction is completed before the winter months. Furthermore, vacant possession of the property is required as soon as possible. To this end, it is recommended that the City Solicitor be authorized to apply to the Court, as allowed by the *Expropriations Act*, for an abridgement of the notice of the possession date, which is a minimum three month from the date that the Notice of Expropriation is mailed out to the property owner, as provided by the *Expropriations Act*.

For the reasons given in this report, request is sought for approval of the recommendations contained herein.

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SIGNATURE

Bruce Bowes, P. Eng.
Chief Corporate Officer

ATTACHMENTS

Appendix A - Location Map
Appendix B - Report of D.S. Colbourne, Inquiry Officer re Request for Hearing
Appendix C - Draft Plan of Survey dated April 1, 2008 and identified as Job Number 2008-0286