

Appendix B - Report of D.S. Colbourne, Inquiry Officer re Request for Hearing

1

EXPROPRIATIONS ACT, R.S.O. 1990 Ch. E. 26

IN THE MATTER of an application by the City of Toronto for approval to expropriate part of the lands municipally known as 1797 St. Clair Avenue West, Toronto, and described as PIN 21357-000(LT), PIN 21357-0002(LT), PIN 21357-0003(LT) and PIN 21357-0004(LT) for public highway purposes and all works and uses ancillary thereto.

Date of Hearing: **January 29th, 2008**

Appearances:

City of Toronto Brendan O'Callaghan

Imperial Oil Richard Berube

REPORT

This hearing was held pursuant to Section 7 of the Expropriations Act, R.S.O. 1990, C. E.26 (as amended), to determine whether the taking by the City of Toronto of certain lands owned by Imperial Oil, for public highway purposes and all works ancillary thereto, is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

THE PROJECT

The project is the "St. Clair Avenue West Transit Improvement" which extends from Yonge St. to Gunns Road, (which is west of Keele St. and west of the subject property). For that length of St. Clair Avenue, it involves two centre lanes reserved for exclusive use by streetcars (and emergency vehicles) protected by a raised, but mountable track bed.

For the area in question, the intersection of St. Clair Ave. and Old Weston Rd., for the eastbound segment, **west of Old Weston Rd.**, there will be a left

turn lane, a through lane, and a right turn lane. On the south side there will be a 2.0m sidewalk. Westbound on the north side, beyond the tracks, there will be a single lane, and a sidewalk. Further west, beyond this intersection, St. Clair Ave. enters a depression under a railway bridge, which constricts relocation of the roadway at that location.

THE PROPERTY

The proposed taking is located at the south west corner of Old Weston Rd. and St. Clair Avenue. The fee simple taking are parts 1 & 2, **to a depth of 2 m.** There will be temporary easements over the other parts, which according to the City will be needed, at worst case scenario, until December 2009.

As the requestor states, the property is unique in that it is contaminated. Mr. Kirchmair gave evidence that the vacant site was a gas station in the mid 80's. Contamination in the form of liquid petroleum has been found in the water table which is at 8m below the surface. It also involves some migration of a different type of gas from the site at the south east corner, also formerly a gas station.

Although normal practice is to excavate and remove soil, Imperial Oil determined that the conventional methods were impractical and ineffective due to geology and the depths of environmental degradation impact for this site. They are rehabilitating the contaminated site, with an innovative method of a network of extraction wells, bore holes and ground water monitoring devices over the entire site. There are some 18 vertical ground water monitoring and extraction wells on the area of the taking and 30 on the balance of the property. The program, which has the approval of the Ministry of the Environment and the City of Toronto, drains the wells every two months.

The liquid petroleum is mobile and unstable and the process being undertaken will require some time.

Monitoring continues in order to develop a risk assessment eventually to be submitted to the Ministry in order to decide future remediation to make the land acceptable for development. Experience suggests that any hot spots eventually found could be eliminated by removal of the soil using special techniques.

THE CITY'S EVIDENCE

The evidence and questions directed at Mr. Grajek, Senior Engineer, TTC Projects, determined that there is no possibility of achieving the necessary lanes at the intersection without the proposed taking. Moving the lanes to the north would require an unsatisfactory curvature of the tracks given the location of the tracks and road as St. Clair proceeds under the railway bridge to the west. As well development on the north side of St. Clair Ave., abuts the sidewalk.

There is ongoing discussion between the experts on the question of retaining the wells in their present location or moving them. Moving the wells and monitoring devices from the area of the taking, involves replacing them with angled wells located on the balance of the property directed at a 45 degree angle to the subsurface area of the taking. The City submits that if necessary the wells could be retained in the area of the eventual road and sidewalk areas using surface flush caps, and providing continuing access for draining and monitoring. Whatever is determined as between the City and Imperial Oil is subject to the approval of the Ministry of the Environment.

IMPERIAL OIL EVIDENCE

Imperial Oil takes no issue with the project.

The question of the potential to move the roadway further north was answered in the negative by Mr. Grajek.

Concern continues as to whether or not the angled wells are completely satisfactory for continued extraction of liquids and monitoring. With respect to the stratified taking, the Barenco report, Exhibit 6, represents Mr. Kirchmair's opinion, and states that the removal of any hot spots, ultimately identified, would be impossible to extract without the vertical surface access.

Imperial Oil submits that the subsurface of the area of the taking would be landlocked, and impossible to dispose. Without the appropriate surface area

to remove hot spots; it would be impossible for them to attain closure on the contamination at this site.

They submit that it would be more appropriate for the City to take the entire site, or at least the taking proposed beyond the 2 m, to the centre of the earth.

FINDINGS AND OPINION

The evidence supports and it is agreed that the area of the taking proposed is necessary for the development of the project at this location.

It was also agreed that there are different standards of contamination for different surface uses. That may be obvious given the migration of liquid gas from the former gas station site at the south east corner of the intersection where on the surface there is a mall containing a coffee shop and restaurant.

However, contamination below the asphalt and concrete of the road and sidewalk would not present a health hazard for that surface.

The feasibility of maintaining the wells in the area of the taking or removing and angling them for any necessary remediation for the uses proposed on the area of the taking, and for the balance of the site, already in discussion between the parties, is subject to the approval of the Ministry of the Environment. Whatever future remediation is approved may be the determinant of the issue of the depth of the taking.

I agree with Mr. O'Callaghan that for the purposes of my determination, the area below 2 m. would have no value after the taking, and its disposal by Imperial Oil impractical, and all of that is a matter of compensation. For the purposes of the project and the use proposed, I agree there is no requirement that the City have the responsibility for someone else's contamination. The balance of the land is not necessary for the project, except temporarily.

I am of the view that the taking proposed by the City is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

February 18th, 2008


D.S. Colbourne

APPENDIX A

LIST OF EXHIBITS

1. Staff Report – St. Clair Ave. West Transit Improvement Environmental Assessment
2. Plan of Survey
3. Sketch Showing Sidewalk Location at intersection
4. C. V. Jozef Grajek
5. C.V. George A. Kirchmair
6. Kirchmair Report January 24, 2008.
7. Notice of Grounds (with photographs)

WITNESSES

1. Jozef Grajek
2. George Kirchmair