



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Settlement of Litigation – Bonnydon Limited v. City of Toronto, Court File No. 06-CV-312155PD3

Date:	June 25, 2008
To:	Government Management Committee
From:	City Solicitor
Wards:	Ward 42, Scarborough Rouge River
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards and commissions.
Reference Number:	

SUMMARY

On May 20, 2006, an action was commenced by Bonnydon Limited (“Bonnydon”) against the City of Toronto. In the action, Bonnydon is seeking a declaration that a particular provision contained in the Core Servicing Agreement between the City and 554056 Ontario Limited, Mattamy (Neilson) Limited, Mattamy (Staines) Limited, Neilson-Finch Residential Developments Inc. and Trans-Gate Inc. (collectively, “MHLG”), dated February 22, 2002 (the “Core Servicing Agreement”) is void and that the provisions of an agreement of purchase and sale between the City and MHLG, dated July 8, 2004 (the “MHLG Purchase Agreement”), is similarly void.

Bonnydon also alleges that the realignment of Neilson Road has resulted in the encroachment of Neilson Road upon Bonnydon’s lands. Bonnydon is, accordingly, seeking damages for trespass.

Counsel for the City have been involved in discussions and negotiations with counsel for Bonnydon and counsel for MHLG and have reached agreement on a recommended resolution to the matters raised in the litigation, as set out in the confidential attachment.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Attachment 1.
2. City Council authorize the release of the confidential recommendations, excluding Appendix A (Minutes of Settlement) in Attachment 1 once the settlement and appropriate documentation are finalized to the satisfaction of the City Solicitor. Appendix A will remain confidential in its entirety.

FINANCIAL IMPACT

The financial implications resulting from the adoption of this report are set out in Attachment 1.

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

DECISION HISTORY

At its meeting held on August 1, 2, 3 and 4, 2000, City Council adopted Clause No. 2 of Scarborough Community Council Report No. 8, thereby authorizing the City to enter into the Core Servicing Agreement.

<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000801/sc8rpt/cl002.pdf>

At its meeting held on June 22, 23 and 24, 2004, City Council adopted Clause No. 16 of Toronto East Community Council Report No. 5, thereby authorizing the City to enter into the MHLG Purchase Agreement and to invite an offer to purchase Parts 2, 3, 5 and 6 on Sketch No. PS-2004-098 from the abutting property owners to the west. A copy of Sketch No. PS-2004-098 is attached.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040622/te5rpt/cl016.pdf>

ISSUE BACKGROUND

On or about February 22, 2002, the City entered into the Core Servicing Agreement with MHLG, the developers of certain lands to the east of Neilson Road. The development is known as the Morningside Heights Community. In the Core Servicing Agreement, MHLG agreed to provide, install and up-front the costs of various core municipal services to service the Morningside Heights Community and surrounding areas. The agreement further required MHLG to convey and deed to the City by way of reference plan(s) all public right-of-ways to be used as roads and all other public lands and valley lands required to supply services to the Morningside Heights Community in accordance with the Core Servicing Agreement, free and clear of all encumbrances at no cost to the City, all to the satisfaction of the City. The agreement contained a provision requiring MHLG to make satisfactory arrangements with the City regarding MHLG's acquisition

of roads closed or re-aligned, such roads being Staines Road, Neilson Road, Morningside Avenue and Finch Avenue.

On July 8, 2004, the City and MHLG entered into the MHLG Purchase Agreement, pursuant to which MHLG was to purchase certain parts of Neilson Road and Staines Road, including Part 1 on Sketch No. PS-2004-098, for nominal consideration, as the parties acknowledged that the consideration for these conveyances had already been secured by the City in the Core Servicing Agreement. Transfers of parts of Neilson Road and Staines Road were completed pursuant to the MHLG Purchase Agreement, with the exception of Part 1 on Sketch No. PS-2004-098. The transfer of Part 1 was delayed by virtue of the fact that a reference plan for this Part had not yet been prepared by MHLG. The matter was never pursued by MHLG and the City ultimately took the position in or around October 2006 that the time for completing the transfer, as set out in the MHLG Purchase Agreement, had elapsed and the City was no longer obligated to transfer Part 1 to MHLG.

In or around June of 2004, City Council authorized the City's Chief Corporate Officer to invite an offer to purchase Parts 2, 3, 5 and 6 on Sketch No. PS-2004-098 from the owner of the Bonnydon lands, subject to a road closing by-law being enacted in respect of Parts 2 and 3 on the Sketch. However, an offer to purchase was never negotiated with Bonnydon.

To date, the City has not yet passed a by-law stopping up and closing Parts 1, 2 and 3 on Sketch No. PS-2004-098.

On May 20, 2006, an action was commenced by Bonnydon against the City. In the action, Bonnydon is seeking a declaration that the provision contained in the Core Servicing Agreement requiring MHLG to make satisfactory arrangements with the City to acquire portions of Neilson Road for nominal consideration constitutes the unlawful fettering of legislative discretion and is, therefore, void. Bonnydon is further seeking a declaration that the provisions of the MHLG Purchase Agreement, wherein the City agreed to sell said portions of Neilson Road to MHLG, are similarly void *ab initio*.

Bonnydon also alleges that in the process of closing portions of Neilson Road, the City trespassed onto Bonnydon's lands. It is further alleged that the realignment of Neilson Road has resulted in the encroachment of Neilson Road upon Bonnydon's lands. Bonnydon is, accordingly, seeking damages for trespass.

COMMENTS

As it was clear to Legal Services that MHLG was a necessary party to this litigation, Legal Services notified MHLG of the litigation and indicated that the City intended to commence a third party claim for contribution and indemnity against MHLG. The City never commenced the third party claim against MHLG as settlement discussions subsequently ensued among the City, Bonnydon, and MHLG.

Comments discussing and describing the proposed settlement are contained within Attachment 1.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 – Confidential Information with respect to the proposed settlement of the action commenced by Bonnydon against the City.
2. Sketch No. PS-2004-098
3. Minutes of Settlement