

Release of City's Interest in the most Easterly Portion of the Untravelled Cherry Street Road Allowance and the Adjoining Lane

Date:	October 3, 2008
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Scarborough East – Ward 44
Reference Number:	P:\2008\Internal Services\F&re\Gm08091- F&re – (AFS 8599)

SUMMARY

On July 31, 2008, GO Transit purchased the lands municipally known as 19 Port Union Road, 6 and 12 Duthie Street (the “Port Union/Duthie Site”) from Eden Oak (Cherry Street) Inc. (“Eden Oak”). GO Transit is proposing to construct an additional commuter parking lot for the Rouge Hill GO Station on these lands.

The Port Union/Duthie Site includes a lane and a portion of Cherry Street, shown as Parts 2, 3, 4, 5 and 6 on Sketch No. PS-2008-074 (the “Disputed Lands”), the ownership of which is uncertain.

This report seeks authority for the City to release any right, title and interest it may have in the Disputed Lands in favour of GO Transit, to accept a conveyance of certain lands from GO Transit for park and highway purposes and to enter into certain other Agreements with GO Transit, as detailed herein.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. The City release any right, title and interest it may have in the lane and the portion of Cherry Street shown as Parts 2, 3, 4, 5 and 6 on Sketch No. PS-2008-074 in favour of GO Transit, for nominal consideration, substantially on the terms set out

- in Appendix “A” and such other terms as may be satisfactory to the Chief Corporate Officer, in a form satisfactory to the City Solicitor.
2. The City accept a conveyance from GO Transit of the lands shown as Part 8 on Sketch No. PS-2008-074, for park purposes, and the lands shown as Parts 9, 10 and 11 on Sketch No. PS-2008-074, for the widening of Port Union Road and the construction of a roundabout at the foot of Port Union Road, for nominal consideration, substantially on the terms set out in Appendix “A” and such other terms as may be satisfactory to the Chief Corporate Officer, in a form satisfactory to the City Solicitor.
 3. The City enter into a Subdivision Amending Agreement with GO Transit to amend the Subdivision Agreement for Plan 66M-2313, to confirm that the temporary road between Colinroy Avenue and Wynnecastle Road, shown as Part 1 on Sketch No. PS-2008-074, shall be a permanent road and the City shall be released from any obligation to reconvey these lands to GO Transit or its successors or assigns, in a form satisfactory to the City Solicitor.
 4. The City enter into an Agreement with GO Transit giving GO Transit a right of passage over the one foot reserves at the east and west limits of Bridgend Street, for nominal consideration, substantially on the terms set out in Appendix “A” and such other terms as may be satisfactory to the Chief Corporate Officer, in a form satisfactory to the City Solicitor.
 5. All taxes, legal and other fees up to \$2,000.00 resulting from the approval of recommendations in this report be paid from the Land Acquisition Reserve Fund (XR1012).
 6. The City Solicitor be authorized to complete the transactions on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions as she considers reasonable.

Financial Impact

No revenue will be generated from the City’s release of its interest in the Disputed Lands. GO Transit will transfer Parts 8, 9, 10 and 11 on Sketch No. PS-2008-074 to the City for nominal consideration. The City’s estimated closing costs are \$2,000.00.

This transaction will result in conveyance of the land for Parks purposes as well as for the widening of Port Union Road the construction of a roundabout at the foot of Port Union Road. The parcel of land for Parks purposes will be incorporated into the existing park and operated and maintained within the existing budget. The construction of a roundabout is anticipated for 2009 and estimated cost in the amount of \$200,000 have been included in the 2009 Capital Budget Submission for Transportation Services. The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

DECISION HISTORY

In 2003, in response to advice that the owners of 12 Duthie Street were submitting an Application for First Registration under the *Land Titles Act* requesting to be certified as owners of the Disputed Lands on the basis of adverse possession, City Council, at its meeting held on September 22, 23, 24 and 25, 2003, adopted, without amendment, Notice of Motion J(32) and directed the City Solicitor to object to any Application for First Registration that was submitted under the *Land Titles Act* in respect of the Disputed Lands and to take all steps necessary to assert the City's ownership claim to the Disputed Lands.

At its meeting held on March, 3, 4 and 5, 2008, City Council considered Item GM12.8, which included an Information report (December 13, 2007) from the Chief Corporate Officer entitled "Possibility of Bringing the 2.3 acre Parcel Abutting Port Union Village Common Park into Public Ownership", and adopted a motion urging GO Transit to consider purchasing the Port Union/Duthie Site to assure adequate parking is available.

ISSUE BACKGROUND

The ownership of the Disputed Lands has been at issue for many years. Successive prior owners of the Disputed Lands have asserted a claim of ownership, through adverse possession, based on evidence of possession dating back to 1885. The issue of ownership was never resolved by the City and the prior owners of the Disputed Lands.

COMMENTS

In April 2008, GO Transit advised the City that it had entered into an agreement of purchase and sale with Eden Oak to purchase the Port Union/Duthie Site for the purpose of constructing an additional commuter parking lot for the Rouge Hill GO Station. GO Transit further advised the City that the agreement of purchase and sale was conditional until July 22, 2008 and that GO Transit required the City's response on two matters prior to that date.

The first matter concerned the ownership of the Disputed Lands. GO Transit requested that the City take all steps necessary to convey or release any interest the City might have in the Disputed Lands, for nominal consideration, to confirm GO Transit's ownership of these lands. The second matter concerned access to the Port Union/Duthie Site. GO Transit requested that the City permit it to have access across the existing one foot reserves at the east and west ends of Bridgend Street, so that GO Transit and its customers can access the parking lot to be constructed on the Port Union/Duthie Site from the existing GO parking lot at the Rouge Hill GO Station.

Discussions between the Ward Councillor, City staff and GO Transit took place in May and June 2008. In July, 2008, the Chief Corporate Officer advised GO Transit that he was prepared to recommend the foregoing matters to City Council on certain terms and conditions. By letter dated July 18, 2008, GO Transit advised the Chief Corporate Officer that it agreed to the terms and conditions set out in Appendix "A" to this report.

Details of the Parts of the Sketch are as follows:

Sketch No. PS-2008-074	Total Area	
Part 1	514.3 m ² (5,536.1 ft ²)	To remain in City ownership as a permanent road
Part 2, 3, 4, 5 & 6	1,238.4 m ² (13,330.5 ft ²)	City to release any interest it may have in favour of GO Transit
Part 7	43.1 m ² (463.9 ft ²)	To remain in GO Transit ownership
Part 8	54.4 m ² (585.6 ft ²)	GO Transit to convey to City for park purposes
Part 9, 10 & 11	535.2 m ² (5,761.0 ft ²)	GO Transit to convey to City for public highway purposes

Staff from Transportation Services has reviewed the areas of land proposed to be conveyed to the City for public highway purposes and are satisfied that it meets with their requirements.

Completion of the transactions and agreements detailed in this report will resolve the outstanding ownership issues with respect to the Disputed Lands, will result in the City acquiring the additional lands it requires to widen Port Union Road and construct the roundabout at the foot of Port Union Road and will enable GO Transit to proceed with its plans to construct an additional parking lot on the Port Union/Duthie Site, as urged by City Council.

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SIGNATURE

Bruce Bowes, P. Eng.
 Chief Corporate Officer

ATTACHMENTS

Appendix "A" – Terms and Conditions
 Appendix "B" – Site Map and Sketch No. PS-2008-074