



**STAFF REPORT
ACTION REQUIRED
With Confidential
Attachment**

Outstanding Motel Strip Liabilities

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| Date: | February 17, 2009 |
| To: | City Council |
| From: | City Solicitor Acting Deputy City Manager and Chief Financial Officer |
| Wards: | Ward 6 – Etobicoke-Lakeshore |
| Reason for Confidential Information: | This report contains advice subject to solicitor-client privilege |
| Reference Number: | |

SUMMARY

This report deals with the finalization of expropriation proceedings on the Motel Strip between the Toronto and Region Conservation Authority (“TRCA”) and A.E. Gadzala and his related companies (“Gadzala”). Gadzala had several claims against TRCA and the City, most of which were paid in 2006 with the exception of an injurious affection claim which was under appeal and legal costs. This report provides advice on the results of that appeal, requests Council approval of cost sharing principles between the City of Toronto and the Province of Ontario, as co-funders of the motel strip expropriation liabilities, and recommends payment of all outstanding matters.

This report contains advice subject to solicitor-client privilege. The information concerning the Gadzala injurious affection award, the resolution of legal costs claims, and the agreement with the Province and the staff recommendations related thereto, are provided as confidential material.

There is urgency to this matter as the time period for an appeal from the latest Divisional Court decision expires on February 24, 2009 and payment will be required shortly thereafter.

RECOMMENDATIONS

The City Solicitor and Acting Deputy City Manager and Chief Financial Officer recommend that:

1. City Council adopt the confidential instructions to staff in Attachment 1.
2. The confidential information and recommendations in Attachment 1 remain confidential.

FINANCIAL IMPACT

The financial impact is discussed in the confidential information attachment 1 of this report.

DECISION HISTORY

In 2005, Council authorized payment of uncontested compensation to Edward Gadzala and his related companies (“Gadzala”) as well as the continued retainer of outside counsel (Gowlings LLP) to represent the City on the Gadzala claims and appeals, including an assessment of costs, if necessary. Council further authorized the City Solicitor to settle the costs claim, if deemed reasonable, in consultation with staff. The public recommendations in this report are available at:

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050201/pof2rpt/cl023.pdf>

In 2006, Council authorized further payments to Gadzala pursuant to the Court of Appeal decision. This did not cover the injurious affection claim and legal costs. At the same time, Council authorized settlement of the Proudfoot Motel claim on a confidential basis.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl074.pdf>

In 2007, Council authorized the settlement of the Red Carpet Motel claim, also on a confidential basis.

<http://www.toronto.ca/legdocs/mmis/2007/gm/bgrd/backgroundfile-8973.pdf>

These reports outlined the financial liabilities arising from the Motel Strip expropriations and refer to ongoing discussions with the Province of Ontario, the City’s 50/50 funding partner in respect of these liabilities and cost sharing principles. These principles have now been finalized with counsel for the Province of Ontario on a confidential basis and are included in the confidential attachment for adoption by Council.

ISSUE BACKGROUND

In 1996, TRCA expropriated lands from various motel properties (including the Gadzala properties, the Proudfoot Motel and the Red Carpet Motel) as part of its mandate to secure property for a “Waterfront Public Amenity Area” required by the secondary plan for the area. This land included a new public road and other infrastructure required to service the redevelopment of the Motel Strip area.

These expropriated parties asserted claims against TRCA and, in Gadzala’s case, directly against the City for lands expropriated by the City for local park purposes. While settlements were reached with the Proudfoot and Red Carpet Motels, the Gadzala claim was the subject of a 48 day OMB hearing, a four day Divisional Court appeal of that decision and a subsequent motion for leave to appeal to the Court of Appeal. These proceedings resulted in the resolution of the claims for market value, loss of riparian rights, delay and disturbance, which were paid as authorized by Council in 2006 (noted above), leaving only the injurious affection claim and Gadzala’s legal costs outstanding.

A further hearing by the OMB to determine the injurious affection claim was heard in June 2008. That award was appealed by TRCA, supported by the City. We are now in receipt of the Divisional Court decision disallowing the appeal and confirming the OMB award in the amount of \$1,859,999.

The financial impact and comments section of this report, including legal advice and financial implications of this decision and the confidential discussions with the Province with regard to cost sharing principles, are contained in Attachment 1 to this report, to preserve the confidentiality of this information.

CONTACT

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SIGNATURE

Anna Kinastowski
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ATTACHMENTS

Attachment 1: Confidential Information: Outstanding Motel Strip Liabilities

