



## STAFF REPORT SUPPLEMENTARY

### Islington Avenue – Boulevard Parking

<b>Date:</b>	March 4, 2009
<b>To:</b>	Etobicoke York Community Council
<b>From:</b>	Director, Transportation Services – Etobicoke York
<b>Wards:</b>	Ward 7 – York West
<b>Reference Number:</b>	p:\2009\Cluster B\TRA\EtobicokeYork\eycc090055-tp

#### SUMMARY

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Further to a previous staff report of December 16, 2008, the purpose of this report is to advise Etobicoke York Community Council of a recent Ontario Superior Court decision regarding an application for an injunction served on the City of Toronto in November of 2008.

#### Financial Impact

There are no financial implications for Transportation Services that arise from considering this report.

#### DECISION HISTORY

At its October 7, 2008 meeting, Etobicoke York Community Council directed Transportation Services, Etobicoke York District, and Municipal Licensing and Standards, Etobicoke York District, to take appropriate action to “recapture” the City of Toronto’s boulevards along the section of Islington Avenue, between Finch Avenue West and Steeles Avenue West, by December 31, 2008.

At its January 13, 2009 meeting, Etobicoke York Community Council deferred consideration of the information report dated December 16, 2008, from the Director, Transportation Services, Etobicoke York District until its meeting of February 9, 2009, for public consultation and debate.

At its February 9, 2009 meeting, Etobicoke York Community Council deferred consideration of the information report dated December 16, 2008, from the Director, Transportation Services, Etobicoke York District, pending the release of the court decision and directed that when the court decision is before Community Council, that notification of the meeting also be sent to residents who were in attendance and signed-in at the last three meetings.

## **ISSUE BACKGROUND**

In her decision of February 27, 2009, Madame Justice J. Stewart of the Ontario Superior Court of Justice, dismissed a claim against the City of Toronto made by Samarkand Investments Ltd., *et al.* Attachment 1 is a copy of the court's decision.

The applicants sought a declaration from the court that they “. . . enjoy an interest” in the municipal boulevard adjoining 2965 Islington Avenue, based on their claim that they have acquired “. . . possessor title to the land as a result of uninterrupted and unimpeded use since 1972.” The applicants also sought a declaration that they “. . . have an unfettered right of way over the disputed land [municipal boulevard].”

In her decision, Madame Justice Stewart rejected the applicant's arguments, stating clearly that the property in question is public highway, and that the municipality has “. . . a legal right to carry out its intended works on the land, which forms part of its highway [Islington Avenue], regardless of any previous use by the applicants and/or other persons.”

Madame Justice Stewart also found no support for the applicant's alternative claim that they have an exclusive right of way over the municipal boulevard.

Subject to any extension of time that the court may grant, the applicants have until the close of day on March 30, 2009, to file an appeal of the decision.

## **CONTACT**

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## **SIGNATURE**

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John Niedra, P.Eng.  
Director, Transportation Services

## **ATTACHMENTS**

Attachment 1: Court Decision