

APPENDIX A

- INQUIRY HEARING -

APPLICATION BY THE CITY OF TORONTO TO EXPROPRIATE LANDS DESCRIBED AS MUNICIPALLY KNOWN AS 4080 SHEPPARD AVENUE EAST, BY THE CITY OF TORONTO, DESCRIBED AS PIN 06104-1243 (LT) BEING PART OF LOT 28 CONCESSION 3, SCARBOROUGH, FOR THE PURPOSE OF CONSTRUCTING A DRIVEWAY ACCESS/EGRESS TO THE AGINCOURT GO STATION AND ROAD IMPROVEMENTS ON SHEPPARD AVENUE EAST IN CONJUNCTION WITH THE BUILDING OF A GRADE SEPARATION AT THE AGINCOURT GO STATION AND FOR ALL WORKS AND USES ANCILLARY THERETO.

THE CITY OF TORONTO

Monday, 8TH FEBUARY, 2010, at the hour of 9:30 o'clock in forenoon in

The Main Boardroom, City of Toronto Legal Services,

26th Floor, Metro Hall,

55 John Street,

Toronto, M5V 3C6

IN THE MATTER OF THE EXPROPRIATIONS ACT

AND IN THE MATTER OF an application by the by the City of Toronto to expropriate lands described as municipally known as 4080 Sheppard Avenue East, by the City of Toronto, described as pin 06104-1243 (LT) being Part of Lot 28 Concession 3, Scarborough, for the purpose of constructing a driveway access/egress to the Agincourt GO Station and road improvements on Sheppard Avenue East in conjunction with the building of a grade separation at the Agincourt GO Station and for all works and uses ancillary thereto.

INQUIRY HEARING

THE CITY OF TORONTO, Metro Hall, 55 John Street, 26th Floor, Main Boardroom, Toronto, Ontario.

INQUIRY OFFICER:

DAVID R. VINE Q.C.
80 Richmond Street West,
Suite 1604,
Toronto, Ontario,
M5H 2A4

**Representing Dr. Bijan Pardis, MD, CCFP
P.A.C.I.F.L.C. INC.**

**SHANE RAYMAN and
GUILLAUME LAVICTOIRE
RUETER SCARGALL BENNETT LLP**
Lawyers
155 University Avenue, Suite 600
Toronto, Ontario,
M5H 3B7

Representing The City of Toronto

PATRICIA SIMPSON
C/o City Solicitor
Legal Services
Metro Hall, 26th Floor Stn. 1260
55 John Street,
Toronto, Ontario
M5V 3C6

RECOMMENDATIONS

1. IT IS RECOMMENDED that the Expropriating Authority proceed with the expropriation of property known as 4080 Sheppard Avenue East, in the City of Toronto, and legally described as pin 06104-1243 (LT) being Part of Lot 28 Concession 3, Scarborough, for the purpose of constructing a driveway access/egress to the Agincourt GO Station and road improvements on Sheppard Avenue East in conjunction with the building of a grade separation at the Agincourt GO Station and for all works and uses ancillary thereto.

2. I find on the facts that the taking of the land is fair, sound and reasonably necessary since all of the evidence indicates that the property is required for the grade separation between the "GO Line" and Sheppard Avenue East and the LRT proposed in the Sheppard Avenue corridor.

3. I was urged by the owners of the property to take into account the unique use of the property as a result of its use as a substance abuse treatment facility but I am not prepared to take this into account as it would appear to me to be a question of compensation rather than a question of whether the taking was fair, sound and reasonably necessary as I have so found herein.

PURPOSE

The purpose of this Expropriation is:-

1. To acquire the property to build a grade separation between the north/south GO Line in the area and the proposed traffic corridor on Sheppard Avenue running in an east/west direction including a Light Rail Transit (LRT) crossing of the north/south GO Line.

PROPERTY

The subject property is a tract of land on the north side of Sheppard Avenue East, approximately 60 x 250 feet deep and contains a single storey office premises, which is currently being used as an addiction treatment facility by the owners and occupants.

OBJECTION BY LANDOWNER

Counsel for the owner was given the opportunity to indicate to the Inquiry, what the owner's objection to the taking was and without prejudice to evidence which might be called in the cross examination. It was stated that the taking of the land was not sound, having in mind the public purpose used presently for the land as an addiction treatment facility. It was therefore not sound and reasonably necessary.

The purpose of this Inquiry is to ascertain whether the taking of the land is fair, sound and reasonably necessary and after argument by Counsel for the owner and the Municipality, I find that the use of the property is not relevant to whether the taking is fair, sound and reasonably necessary but rather goes to the question of compensation, which is not within my jurisdiction.

FILINGS

Counsel on behalf of the Municipality then filed with the Inquiry:-

- EXHIBIT 1** Affidavit of Tammy Turner, a Solicitor with the City of Toronto's Solicitors Office as to persons entitled to Notice as to who should receive Notice of this Inquiry.
- EXHIBIT 2** Affidavit of Service of Notice of Application for Approval to Expropriate Land by Carla Inglis, a Property Officer in the Real Estate Division of the City of Toronto, with the receipt of a request for Inquiry from P.A.C.I.F.I.C. INC. asking for and Inquiry and represented at today's Inquiry.
- EXHIBIT 3** Affidavit of Service of Rocchina Morra, a Legal Secretary for the Planning and Administrative Tribunal Law Section of the Legal Services Division of the City of Toronto with regards to the Notice of Grounds being served upon the solicitors representing the landowner and the Inquiry Officer.
- EXHIBIT 4** Notice of Hearing addressed to parties requesting this Inquiry along with the solicitors for the City of Toronto, The Chief Inquiry Officer and the solicitor representing the owner of the lands and Dr. Pardis.
- EXHIBIT 5** Brief of Documents filed by the City of Toronto, filed by Counsel for the City of Toronto, Patricia H. Simpson.
- EXHIBIT 6** Brief of Document Book, of Dr. Bijan Pardis filed by solicitors for owners.

After reviewing the documents carefully, I find that the Inquiry is properly constituted and so proceeded.

EVIDENCE ON BEHALF OF THE CITY OF TORONTO

Ms. Simpson on behalf of the City of Toronto then introduced Gary Carr, P. Eng. who filed with the Inquiry and marked as **Exhibit 7**, his Curriculum Vitae indicating that he was a Civil Engineer, Graduating from the University of Waterloo in 1980, a professional Engineer of Ontario and a member of the Institute of Transportation Engineers, Canada.

The witness since 1989 to present has been the Chief Engineer of Operations Planning for the Toronto Transit Commission (TTC).

It is to be noted that the witness is "qualified as an expert witness in civil actions alleging inappropriate traffic design elements in existing facilities such as streetcar platforms, streetcar and bus right-of ways, and terminal stations.

Counsel for the owner indicated that he was content with the expertise particularly with regards to his responsibilities for Environmental Studies Group of the TTC for some twenty-five years including signal priority, bus lanes and accident safety.

The witness directed the Inquiry to the documents filed by the City of Toronto and at Tab 5 identified the property being required and filed with the Inquiry **Exhibit 8** which is a coloured photograph of the subject property showing 4080 Sheppard Avenue East with the driveway on the east side of the property which slopes to the north (Exhibit **8A** is a black and white version of Exhibit 8)

EXHIBIT 9

Exhibit 9 was prominently posted so all could see and shows a plan and profile drawing of the proposed Sheppard Avenue East LRT Agincourt grade separation from the GO Agincourt access road.

The Exhibit illustrates the location between Agincourt Drive on the east and Kennedy Road on the west.

The witness called attention to the fact that at the approximate location of the exit driveway for the property there is a 2.15 high retaining wall required with the GO Uxbridge rail line going above the proposed profile of Sheppard Avenue.

EXHIBIT 10 is the coloured detailed drawing of the GO Agincourt grade separation and illustrates in orange the property owned by the landowner illustrating that the entire building and lands are taken up by the new GO access to the parking and the GO Station.

It illustrates the existing profile of Sheppard Avenue and the proposed profile of Sheppard Avenue and profile of sidewalk in the area and the new Agincourt LRT Station.

It is to be noted when reviewing the Exhibits that there is no practical access to the balance of the lands not actually used in the redevelopment of the process.

CROSS EXAMINATION BY MR SHANE RAYMAN COUNSEL FOR THE AFFECTED OWNER

The witness indicated that he had been involved since the beginning of approximately June or July of 2008 in the project.

He agreed with Counsel that property cannot be taken until funds are approved and it would appear from his assessment that the Environmental Assessment is completed and has been completed since September, 2009 and that the funds would be forthcoming.

Counsel for the owner attempted to put forward the letter notifying the City of Toronto that the Expropriation was required which is shown at Tab 10 of the document book of the owner.

I was also directed to Tab 11 "were given on a without prejudice basis" and as such have not been reviewed by the Writer.

The suggestion was made that perhaps part of the building could be saved from demolition with the construction but by examining Exhibits 9 and 10 it is clear that the building is completely taken with the construction.

This completed the City of Toronto's case.

EVIDENCE ON BEHALF OF THE LAND OWNER AND PERSONALLY BY DR. BIJAN PARDIS, MD, CCFP.

The witness reviewed briefly his education, which consisted of being born in Iran, schooled in France, Belgium and in Ontario, Toronto and Kingston who presently operates four clinics in the GTA and one in the location in question in Kennedy and Sheppard, which was established some five years ago.

As the leases became available he gradually wished to take over the entire building to operate as a detox facility along with some seven other doctors who work out of or as part of the clinic.

He decided to purchase the property since there were no neighbours and;

1. There was parking at GO;
2. It was isolated;
3. Public transit was available;
4. It provided exposure;
5. It was public enough so that staff were safe.

REASON FOR BUYING PROPERTY

The availability of suitable property outlined above is not often found. There is a pressing need for treatment facilities for opium addiction for persons of Iranian background and others, who unfortunately by way of custom have found themselves in the hands of the drug with this being one of the few treatment places being available.

The witness has spent at least two years looking for a new location which has the benefits as set out above as the present one has and feels that it will be at least six months or more to obtain a permanent location with a temporary place perhaps taking a couple of months.

Cost of Renovation

The witness indicated that in order to convert the premises to more suitable use as it became available it would be necessary for him to spend approximately \$900,000 for renovations.

In the circumstances Counsel for the owner summarized his argument as revolving around soundness, whereas there was obviously a need for the property there should be great assistance to his client with regards to the business he was involved in.

I was directed to several cases on the basis of soundness and referred to the following by Mr. Guillaume Lavictoire on behalf of the owner:-

1. Ball v. Ontario Hydro;

This case reviews the role of the Inquiry Officer when in this case the report goes forward to the Expropriating Authority represented by a Minister of Government. In the present case the Expropriating Authority is the Council for the City of Toronto and they in turn have a process whereby, my report will be considered by a Committee of Council, who will then recommend or as the case maybe, the report and it is then subsequently voted on by Council. Hence Council and Committees of Council will be appraised of the concerns of the owner in this case.

At page 8 of the report "The inquiry officer decides no rights and liabilities but submits a report which the Minister must consider. The primary objective of this proceeding is to ensure that the Minister shall know and consider the case submitted by the objectors and the opinion of the impartial inquiry officer on the merits of the application for approval of the expropriation in the light of the submissions of the objectors. It goes without saying that the inquiry officer must honestly and impartially conduct the inquiry having in mind this objective. There is no suggestion here that he has not done so."

2. **Bezie Construction Ltd. v. Ontario (Minister of Transportation)**

My attention was drawn at page 3 of the report paragraph 6 "The relief sought here is in the nature of certiorari, as the applicant seeks to quash the Inquiry Officer's report because of a denial of procedural fairness. We are satisfied that we have jurisdiction to hear this application. The duty of the Inquiry Officer is to write a report in which she makes findings of fact and gives her opinion on the fairness, soundness and reasonable necessity of the taking (s.7(5) and (6). It is true that the ultimate decision to expropriate is made by the approving authority. Nevertheless, the hearing before the Inquiry Officer is the only chance for the property owner to challenge the plan to expropriate, and the report must be considered by the approving authority before the final decision is made to expropriate (s.8(1)). Therefore, the report is an important step in the expropriation procedure, which affects the interests of the property owner."

3. **Newman v. Toronto (City)**

"The Board is satisfied that the meaning of "fair" and "reasonably necessary" are readily understood. For the meaning of the word "sound", the Board had regard to Black's Law Dictionary, which defines "sound" in the following way;

SOUND, Whole: in good condition; marketable. So used in warranties of chattels. See Brown v. Bigelow, 10 Allen, Mass., 242; Hawkins v. Pemberton, 35 How. Prac., N.Y., 383; Woodbury v. Robbins, 10 Cush. (Mass.) 522. Free from disease. Raney & Hamon v. Hamilton & White, Tex. Civ. App., 234 S.W. 229, 230. The term may also mean free from Danger to the life, safety, and welfare. Kuhn v. Cincinnati Traction Co., 109 Ohio St. 263, 142 N.E. 370 373."

Ms. Simpson on behalf of the Municipality drew the Inquiry Officer's attention to the case of Parkins v. The Queen in right of Ontario et al., which speaks to the conduct of an Inquiry such as this.

This case analyses the findings of the Inquiry Officer and held that there was no necessity for any special terminology and that the Inquiry Officer did apply the proper tests and therefore the report was not a nullity, In the within matter.

FINDING OF FACTS ON WHICH MY CONCLUSIONS ARE BASED.

I find as a fact that the taking of the lands in total are fair, just and reasonably necessary for the purpose of the Expropriating Authority with regards to the LRT, GO Line crossover, the general improvement of Sheppard Avenue, the improvement of the LRT line and that the lands of the owner are so required.

The provision of an alternate location for a clinic to treat patients suffering from drug addiction is not in my opinion within the purview of my mandate and I so find.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED AT TORONTO THIS 16th DAY OF FEBRUARY, 2010



David R. Vine Q.C.

Inquiry Officer