

## **Background Information regarding 91 Baywood Road**

<b>Date:</b>	June 16, 2010
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer
<b>Ward:</b>	1 – Etobicoke North
<b>Reference Number:</b>	P:\2010\Internal Services\RE\Gm10056re

### **SUMMARY**

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This report is in response to a request from the Government Management Committee for staff from City Planning and Municipal Licensing and Standards to review the material submitted by Councillor Hall with respect to 91 Baywood Road.

The subject property is located at 91 Baywood Road (see Appendix “A”) and has had a concrete batching facility operating on it since 2001. The property has a site area of 1.06 hectares (2.62 acres), is designated Industrial in the Official Plan and is zoned Industrial Class 2. The immediate abutting uses are also designated and zoned industrial. However, to the east of the property is a hydro corridor and on the other side of the hydro corridor are residentially designated and zoned lands. There have been numerous complaints lodged against the concrete batching facility since it began operations from the abutting residential area.

### **Financial Impact**

There are no financial implications as a result of this report.

### **DECISION HISTORY**

A request (see Appendix “B”) from Councillor Hall for the City to purchase 91 Baywood Road was before Government Management Committee on May 20, 2010. Committee requested City staff from City Planning and Municipal Licensing and Standards to review the material submitted by Councillor Hall with respect to 91 Baywood Road and attend the meeting of the Government Management Committee to be held on June 17, 2010.

## **ISSUE BACKGROUND**

### **Planning**

A Chronology (see Appendix “C”) has been prepared by City Planning staff detailing the history of zoning and site plan approval for 91 Baywood Road.

With respect to the zoning history, in 1978, By-law 1978-140 was enacted by the former Borough of Etobicoke to not permit concrete batching plants within certain areas, including 91 Baywood Road. This prohibition was carried forward in a 1983 consolidation of zoning into the former City of Etobicoke Zoning Code. A comprehensive review of industrial provisions led to By-law 1996-209 which was later determined to have inadvertently deleted the prohibition of concrete batching plants on lands which included 91 Baywood Road. This was addressed in 2001 with the passage of 314-2001 which again prohibited certain noxious uses including concrete batching plants at this address and vicinity.

During the period of time when the use was permitted, in early 2000, the use was established by the owner of the land with the development of a concrete batching facility on the land.

After complaints about the operation, the owner filed a required Site Plan Approval application in March 2000. The use of the land for the purpose of concrete batching was confirmed during this process. Site Plan Approval was granted by City Council on April 23, 2001 with certain conditions relating to site works. While a Site Plan agreement was drafted and supplied to the owner, no signed agreement was returned to the City.

Staff from various Divisions involved in the Site Plan Approval conditions are revisiting their records and undertaking site inspections to determine compliance with the original approval.

More generally, the future use of the site should be guided by the Official Plan and in force zoning for the site. The site is located in an Employment Area designation and Employment District, lands which are intended to be preserved for the long term to provide locations for businesses and employment.

### **Municipal Licensing & Standards**

Since 2000, Municipal Licensing & Standards (MLS) has received 10 complaints resulting in 4 noise investigations, 2 investigations relating to graffiti and 4 investigations regarding dust impacting the community.

The noise complaints generally related to a loudspeaker used on the premises and each investigation resulted in voluntary and immediate compliance. Below are some examples of the complaints investigated since 2000.

In September 2000, ML&S received a noise complaint regarding activities at the subject plant at 6:30 a.m. This complaint was investigated and the site monitored. There was no evidence gathered to confirm a violation and the file was closed.

In 2004 ML&S investigated complaints relating to graffiti and noise at the subject location. The graffiti matter was addressed and resolved, however the noise logs provided to the complainant were never returned and the file was subsequently closed.

In 2005 ML&S received a complaint regarding dust from the facility settling on vehicles in the neighbourhood. This was not a violation of a City by-law under our jurisdiction and the matter was referred to the Ministry of the Environment.

In 2008 ML&S investigated a noise complaint relating to the operation starting “as early as 5 a.m. and end at around 3 a.m.”. The investigation did not confirm a violation of the noise by-law, however the owner was advised of the process to apply for a noise exemption.

In April 2010 a complaint was received by ML&S as follows; “The materials in the bunkers at the Cement Factory have blown into complainant's yard. It looked like a huge dust cloud. Sprinklers are set-up properly and put on a system where they go on automatically”. This complaint was investigated and it was determined that it was appropriate to make a referral to the Ministry of the Environment.

### **Toronto Public Health**

Between 2004 and 2005 Toronto Public Health (TPH) received four registered complaints regarding dust emission from the cement batching plant located at 91 Baywood Road. This resulted in at least eight site inspections and recommendations for more stringent dust control measures. Since 2005, no registered dust-related complaints have been received by TPH.

Although TPH has limited information about the actual emissions from the subject property, in similar operations particulate matter was identified as the primary pollutant of concern. The emissions are usually generated in the mixing processes, as well as in the storage, transfer, and transports of the raw and final materials. Transport of materials to and from the site by trucks may lead to additional emissions of diesel exhaust, a probable human carcinogen. Although usually a nuisance, long-term exposure to high levels of these pollutants has been associated with various respiratory symptoms.

### **Real Estate**

In order for Real Estate to proceed with the acquisition of a property a client Division needs to submit a request to Real Estate identifying the proposed use/need for the property, as well as identify the required source of approved capital funding that needs to be in place to fund the purchase. At this time, no client Division has been identified. It should also be noted, that the successful purchase of the property is of

course all reliant upon the owner being a willing participant and to sell to the City at market value.

In terms of expropriating the property, not only does a client Division need to be identified and approved capital funding in place, but more importantly a valid municipal purpose for the property also needs to be identified. Expropriation is a costly endeavour. Depending on the circumstances, in addition to the property value, the City would likely be responsible for injurious affection, if any, sustained in the form of business loss by the property owner, relocation costs and legal, appraisal and other consultants' cost reasonably incurred by the owner. Another factor to take into consideration is given the present industrial use of the property, the City as owner of the property upon expropriation would also be potentially subject to the cost of any environmental remediation of the property.

## **COMMENTS**

Staff from various Divisions involved in the Site Plan Approval conditions are revisiting their records and undertaking site inspections to determine compliance with the original approval.

More generally, the future use of the site should be guided by the Official Plan and in force zoning for the site. The site is located in an Employment Area designation and Employment District, lands which are intended to be preserved for the long term to provide locations for businesses and employment.

Since 2000, ML&S has received 10 complaints resulting in 4 noise investigations, 2 investigations relating to graffiti and 4 investigations regarding dust impacting the community.

The noise complaints generally related to a loudspeaker used on the premises and each investigation resulted in voluntary and immediate compliance. The complaints related to dust and other air borne material is not within the jurisdiction of ML&S and were typically referred to the Ministry of the Environment.

Between 2004 and 2005 Toronto Public Health (TPH) received four registered complaints regarding dust emission from the cement batching plant located at 91 Baywood Road. This resulted in at least eight site inspections and recommendations for more stringent dust control measures. Since 2005, no registered dust-related complaints have been received by TPH.

City Real Estate and Legal Divisions, as directed by the Government Management Committee, have reviewed all pertinent information provided by Councillor Hall related to 91 Baywood Road, as verified through City documentation.

Negotiations with the property owners of 91 Baywood Road to acquire or expropriate this property are dependent upon a client Division being identified with a municipal purpose for the site and an approved capital budget in place to secure the subject property.

## **CONTACTS**

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## **SIGNATURE**

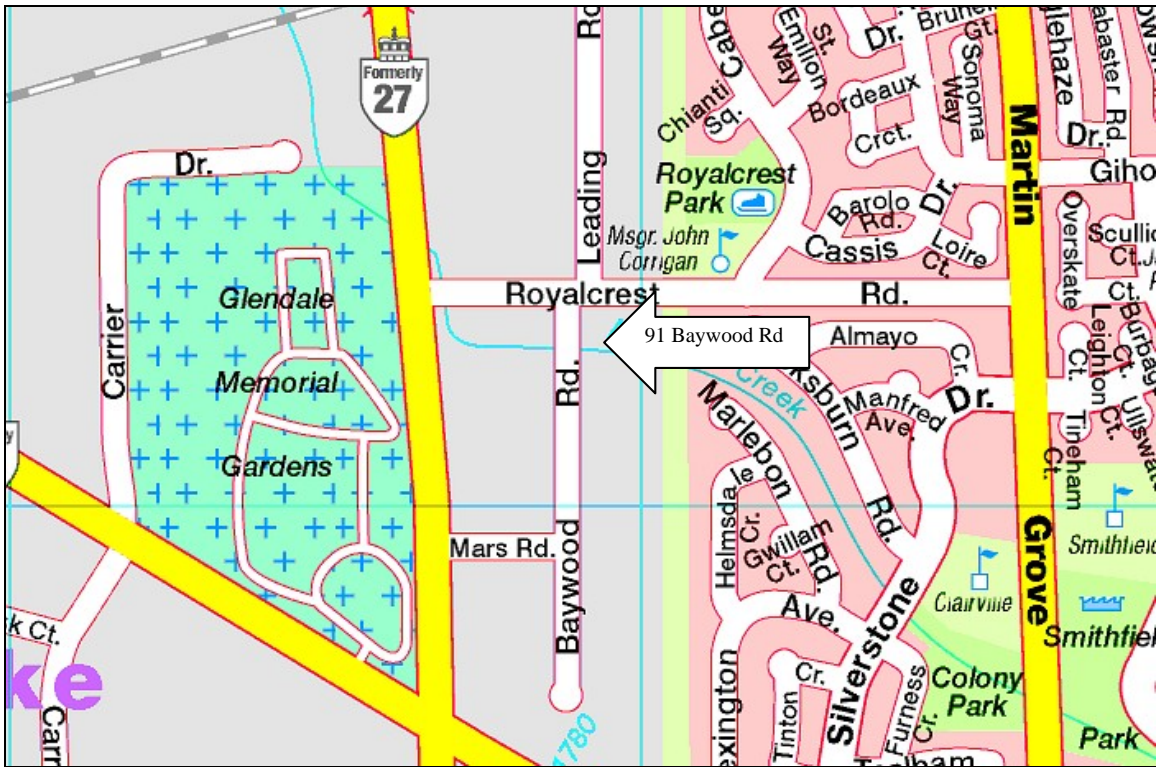
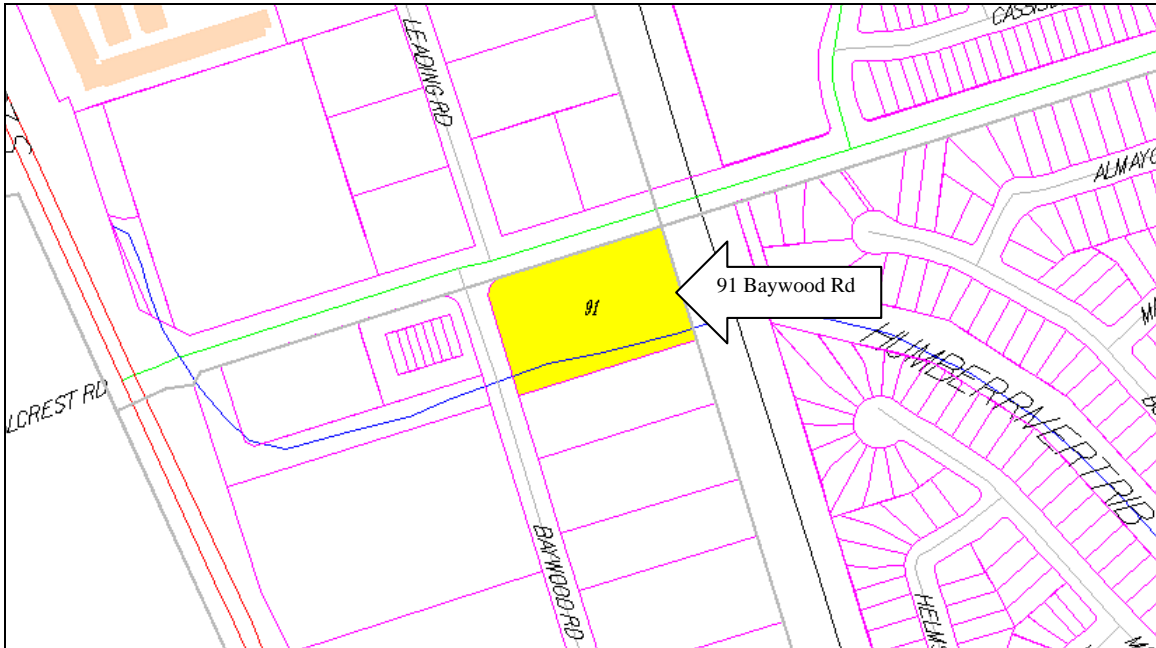
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Bruce Bowes, P. Eng.  
Chief Corporate Officer

## **ATTACHMENTS**

- Appendix "A" - Location and Area Map – 91 Baywood Road
- Appendix "B" - Request from Councillor Hall dated April 9, 2010 for City to purchase 91 Baywood Road
- Appendix "C" - Chronology - 91 Baywood Road including Zoning and Site Plan History

Appendix "A"  
Location and Area Map – 91 Baywood Road



## Appendix "B"



# Suzan Hall

City Councillor  
Ward 1 – North Etobicoke

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## MEMO

To: Government Management Committee (April 28<sup>th</sup> meeting)  
From: Councillor Suzan Hall  
Date: April 9, 2010  
Re: **Request for City purchase of 91 Baywood Road**

91 Baywood Road is located in Ward 1 – Etobicoke North. It currently has a cement batching plant on the site that was approved by City Council in April 2001. A decision was made without considering all pertinent information at the time.

For many years, residents in the immediate residential neighbourhood have voiced concerns about noise levels, air pollution, environmental degradation, health risks and increased heavy truck traffic. As well, an elementary school (Monsignor John Corrigan) is located east of the site where health impacts on school children have raised by staff and parents alike.

Municipal Licensing & Standards, Planning, City Legal and Ministry of the Environment have investigated numerous complaints. Since 2001, over 40% of residents have moved and property values have been impacted.

I am requesting that Real Estate division staff look into the feasibility of purchasing this site for the City. Given the creation of the upcoming harmonized zoning bylaw, the property can be reviewed for possible parkland, an athletic facility or another appropriate use. Given the city's dire financial situation the land could even be declared surplus and released to the market place once the zoning has been revised.

Prior to the advent of the cement plant, 91 Baywood Road was vacant C1 industrial land which prohibited cement batching plant uses. In 1978, certain industrial uses like cement batching were not included as permitted light industrial uses (Bylaw 1978-40). Even though industrial portion of the bylaws for all of the former municipalities were harmonized and codified, the specific bylaw for Baywood was untouched. Planning staff incorrectly allowed the cement batching use because they thought it was permitted when it was not. In 2001, this was rectified and zoning could not be applied retroactively.

The original cement plant operator proceeded to build the facility and equipment installation without obtaining site plan approval and required building permits. They were permitted to obtain the required approvals by city staff after the fact without penalty although many residents raised concerns of the failure to comply with municipal regulations.

The current cement operator cannot expand their business operations to satisfy customer demand due to firm community opposition and concerns about environmental impacts. On the

other side, residents have had to endure dangerous dust and decibel levels and the reduction in the enjoyment of their properties, especially in the summer months. It appears to be a classic Catch-22 of a stalemate that leaves only one realistic option.

That city staff look into purchasing 91 Baywood Road at market value with the aim to convert the usage to the agreement of the surrounding community.

Sincerely,

Suzan Hall  
Councillor, Ward 1 – Etobicoke North



## Appendix “C”

### Chronology - 91 Baywood Road including Zoning and Site Plan History

June 5, 1978	By-law 1978-140 enacted amending Township of Etobicoke Zoning By-law; included provisions that concrete batching plants not be permitted within certain areas, which included 91 Baywood
1983	Adoption of Etobicoke Zoning Code: consolidated all zoning by-laws of former municipalities which then formed the Borough of Etobicoke; included provisions from By-law 1978-140; then located in 320-119 B(7) of Zoning Code
December 9, 1996	Comprehensive Review of industrial provisions leading to adoption of By-law 1996-209; deleted certain provisions of the Code including the prohibition of concrete batching plants on 91 Baywood; it was determined in 2000 that the deletion of this prohibition was unintentional and inadvertent (By-law amended to re-apply standard April 27, 2001)
March 29, 2000	Application for Site Plan Approval filed
June 7, 2000	Comments to applicant: <ol style="list-style-type: none"><li>1. Limit vehicular access to Royalcrest;</li><li>2. Area between storage and batching should be hard surface to reduce dust;</li><li>3. Works should be contacted to discuss drainage issues respecting above;</li><li>4. Sand and gravel storage tarped nightly to reduce dust; periodic spraying of sand storage also to reduce dust; and</li><li>5. Further detail requested on truck wash.</li></ol>
October 6, 2000:	Submission of revised Site Plan drawings; major change is replacement of trailer /portable toilet with permanent building.
November 9, 2000	Confirmation from City Solicitor that concrete batching is a permitted use
April 23, 2001	Site Plan approval adopted at City Council
April 27, 2001	Council adoption of By-law 314-2001 to eliminate listed obnoxious uses on block south of Royalcrest and east of Baywood
2000 – 2009	Multiple Investigation Requests of MLS related to site operations