



STAFF REPORT ACTION REQUIRED

Expropriation of a portion of 5795 Yonge Street for public street purposes

Date:	May 25, 2016
To:	Government Management Committee
From:	Chief Corporate Officer and General Manager, Transportation Services
Wards:	Ward 24 - Willowdale
Reference Number:	P:\2016\Internal Services\RE\Gm16025re (AFS# 23010)

SUMMARY

The purpose of this report is to seek authorization from City Council to commence proceedings for the expropriation of certain lands forming part of the condominium property known municipally as 5795 Yonge Street, and the expropriation of easements over this same land in favour of condominiums municipally known as 5791 and 5793 Yonge Street. The land to be expropriated is a small irregular piece of property required for the construction, maintenance and future repairs of a public street (the "Project"). The lands to be expropriated are part of the common elements of the condominium corporation located at 5795 Yonge Street and currently form part of a mutual driveway providing access to the existing residential condominiums located at 5791, 5793 and 5795 Yonge Street. The Project, once completed, will provide public street access for each of the condominiums.

While discussions with the affected condominium corporations are ongoing, it appears unlikely that satisfactory negotiated terms can be achieved, as the required land is part of the common elements of the condominium corporation located at 5795 Yonge Street and it is also subject to easements in favour of abutting condominium corporations located at 5791 and 5793 Yonge Street. Pursuant to the *Condominium Act* (Ontario), a condominium corporation is prohibited from selling part of the condominium's common elements unless at least 80% of the unit owners vote in favour of the sale and 80% of those persons with a registered claim against the property also consent in writing to the sale. In order to release easements that benefit a condominium, a majority, or in some cases 80%, of the unit owners must approve the release of the easement. Given the large number of condominium units involved, it will likely be necessary to acquire the required lands by expropriation to avoid jeopardizing the construction schedule for the Project.

RECOMMENDATIONS

The Chief Corporate Officer and the General Manager, Transportation Services recommend that:

1. City Council grant authority to initiate the expropriation process for the City to acquire part of the property at 5795 Yonge Street depicted on Appendix "A" (the "Lands") for the completion of a new public street abutting the Lands, conditional upon the owner of the "Newtonbrook Plaza" located at 5799 -5915 Yonge Street entering into a binding agreement, in a form satisfactory to the City Solicitor, in which, among other things, the owner agrees to pay all costs to a mutually agreed upon maximum limit associated with the City's acquisition or expropriation of the Lands and provide, prior to publishing notices of Application for Approval to Expropriate Land, an unconditional, irrevocable letter of credit in an amount satisfactory to the Director of Real Estate Services, to secure such obligations.
2. Subject to satisfaction of the conditions in the above recommendation, City Council grant authority to the Director of Real Estate Services to serve and publish notices of Application for Approval to Expropriate Land, to forward to the Chief Inquiry Officer any requests for hearing that are received, to attend the hearing to present the City's position, and to report the Inquiry Officer's recommendations to Council for its consideration.
3. City Council approve a development charge credit for the land expropriation costs in the above recommendations to be funded by the owner of the Newtonbrook Plaza. The amount of the development charge credit shall be the lesser of the Roads component of development charges payable for the development at 5799 – 5915 Yonge Street and all costs associated with the expropriation of the Lands at 5795 Yonge Street as approved by the Director, Real Estate Services and the City Solicitor.

Financial Impact

There is no immediate financial impact of the recommendations of this report. The costs related to land expropriation will initially be borne by the owner of 5799 – 5915 Yonge Street but reimbursed by the City through a development charge credit arrangement. All other costs related to the construction of the new public street, including signalization of the intersection of the new public street with Yonge Street, will be the responsibility of the developer.

The costs to serve and publish the required Notices of Application for Approval to Expropriate, together with any costs related to attendance at the Hearing of Necessity, if any, will be funded by the owner of 5799-5915 Yonge Street.

The detailed funding amounts will form part of a subsequent report to Committee and Council seeking final approval for the expropriation, if necessary.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

In 2006, the Ontario Municipal Board (OMB) approved Zoning By-law 756-2006 for the residential condominium development at 5791 - 5793 Yonge Street. The development provided for a shared driveway to allow access over the Lands located at 5795 Yonge Street to a new signalized intersection on Yonge Street. In parallel with the approvals of 5791-5793 Yonge Street, the location and conceptual design of this new signalized intersection was established through Addendum No. 24 to the North York Centre Service Road Environmental Assessment. Approval of this development was also secured through a site-specific policy No. 13 (North) in the North York Centre Secondary Plan and included the future conveyance of a small triangular piece of land from 5791 – 5793 Yonge Street for public road purposes.

Link: <http://www.toronto.ca/legdocs/2005/agendas/committees/ny/ny050919/it050.pdf>

In July 2015, City Council approved an OMB Settlement Offer for the proposed redevelopment of the lands located at 5799 - 5915 Yonge Street (the Newtonbrook Plaza). City Council authorized staff to finalize and secure, among many other matters, the conveyance of lands for the necessary public streets. Following from the 2006 approvals granted to 5791 and 5793 Yonge Street, the new public street is designed to extend south from Cummer Avenue and connects to: the subject site at 5795 Yonge Street, the existing signalized crossing at Yonge Street, and the future North York Centre Service Road west of Yonge Street.

Link: <http://app.toronto.catmmis/viewAgendaItemHistory.do?item=2015.NY7.37>

ISSUE BACKGROUND

The connection of the North York Centre Service Road, from the future extension of Beecroft Road west of Yonge Street, crossing Yonge Street at the existing signalized crossing, was identified in the North York Centre Secondary Plan and addendums to the Service Road Environmental Assessment. The alignment and easterly extension of this public street was identified and secured through the approval process for the lands at 5791-5793 Yonge Street. Since the lands at 5795 Yonge Street were not being redeveloped and only the issue of consolidated access to Yonge Street was being addressed, no similar requirement for conveying land to construct a future public street was made at that time.

The new public street connection to Yonge Street is now in the process of being secured through the Plan of Subdivision for the Newtonbrook Plaza. Based on the City Council accepted Settlement Principles, staff are working with the applicant to prepare the implementing documents including the Official Plan Amendment, Zoning By-law and draft Plan of Subdivision conditions. It is important to have the expropriation process for the Lands under way before finalizing the plan of subdivision which is scheduled for an OMB pre-hearing on September 6, 2016. The new public street will involve reconfiguring the current driveway access of 5791-5793 and 5795 Yonge Street for future access to the signalized intersection on Yonge Street.

As part of the settlement discussions related to the redevelopment of the property at 5799 - 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averhill Crescent (the Newtonbrook Plaza), the owner has agreed to initially pay the expropriation costs required for the Lands at 5795 Yonge Street, plus any costs directly associated with the expropriation, on the basis that they would receive a credit against the development charges that are payable to the City prior to the issuance of a building permit.

The Lands at 5795 Yonge Street are located between lands already secured to the south and the Newtonbrook Plaza lands to the north. The Lands represent the remaining parcel that is required to complete the new public street connection from the North York Centre Service Road west of Yonge Street to the east side of Yonge Street and north to Cummer Avenue. All costs associated with the construction of the new public street, including the portion of the new public street over the Lands and a new signalized intersection of the new public street and Yonge Street, will be borne by the developer.

Currently, the North York Centre Service Road (Beecroft Road), runs parallel to Yonge Street for approximately 2.5 kilometres from Bishop Avenue in the north to Poyntz Avenue to the south. The future extension of Beecroft Road west of Yonge Street will connect to Drewry Avenue pursuant to addendums to the Service Road Environmental Assessment. The Service Road connection across Yonge Street is a critically important part of this public road network that supports the North York Centre Secondary Plan.

COMMENTS

The Lands at 5795 Yonge Street are located between the condominiums at 5791-5793 Yonge Street to the south and the Newtonbrook Plaza at 5799-5915 Yonge Street to the north. The City previously secured the right to acquire a small triangular piece of land from 5791 – 5793 Yonge Street, through the approvals for that development, for the purposes of a new public street. Certain lands from the future development of the Newtonbrook Plaza to the north are also being secured for a future public street through a City Council adopted OMB Settlement. The Lands at 5795 Yonge Street are located between these two parcels and abut both. They are required to complete the new public street.

It is the opinion of staff that the proposed credit against the development charges owed to the City by the developer is an appropriate funding source as the new public street will be a benefit to the City and will contribute to the growth and future development of the North York Centre.

The Lands at 5795 Yonge Street form part of the common elements of a condominium, which is governed by a condominium corporation known as Metro Toronto Condominium Plan No. 805. Easement rights for access out to Yonge Street are also granted to the two abutting condominium buildings located at 5791 – 5793 Yonge Street known as Toronto Standard Condominium Plan No. 2048 and 2064 respectively.

Pursuant to the *Condominium Act*, a condominium corporation is prohibited from selling part of the common elements of a condominium unless at least 80% of the unit owners vote in favour of the sale and at least 80% of those persons who have registered claims against the common elements also consent in writing to the sale. Given the large number of units in the building located at 5795 Yonge Street, it will be extremely difficult to achieve the 80% threshold that is required before the condominium corporation can sell the necessary land to the City. Similarly, the condominiums at 5791-5793 Yonge Street would also require an amendment to their condominium declaration to release their easement interest over the Lands. This requires an 80% approval from the registered unit owners which would be extremely difficult to obtain. Therefore, it is anticipated that it will be necessary to initiate expropriation proceedings to acquire the Lands.

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SIGNATURE

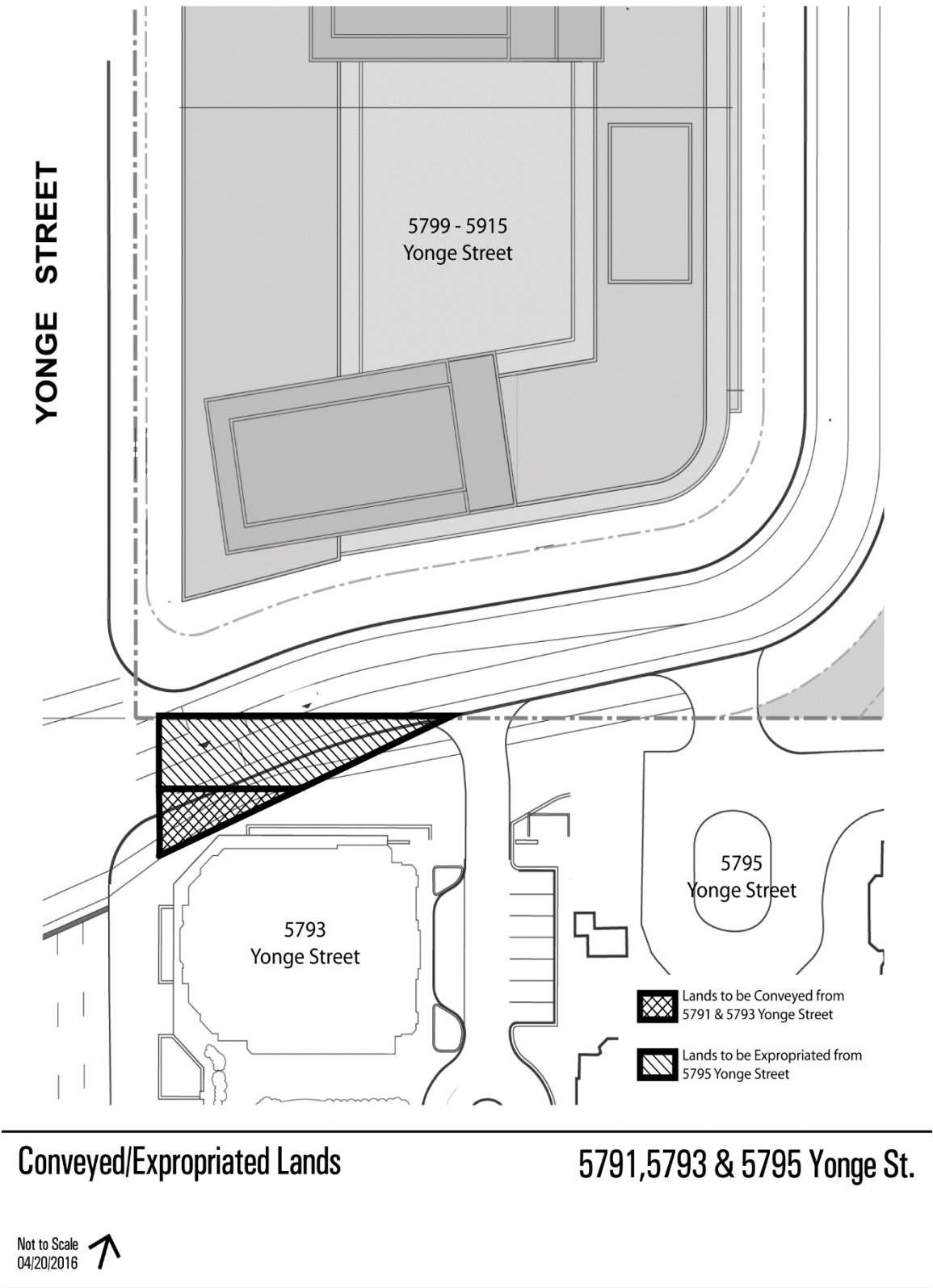
Josie Scioli
Chief Corporate Officer

Stephen Buckley
General Manager, Transportation Services

ATTACHMENTS

Appendix "A" – Survey Sketch: Area Requirements ("lands")
Appendix "B" – Location Map – 5795 Yonge Street

Appendix "A"



Appendix "B" – Location Map (5795 Yonge Street)

