

CONFIDENTIAL ATTACHMENT 1

Auditor General's Observations of a Land Acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority - Part 2

CONFIDENTIAL INFORMATION OR ADVICE

Table of Contents

THE COMPLAINT	2
EXECUTIVE SUMMARY.....	3
KEY FINDINGS - PART 1	10
KEY FINDINGS - PART 2	12
A.1 TPA Did Not Use a Qualified Independent Business Valuator to Value the Sign	12
A.2 Avoiding Conflicts and Potential Conflicts of Interest.....	14
A.2.1 A Lobbyist Was Involved With the Negotiations of the Agreement of Purchase and Sale (APS).....	14
A.2.2 Lobbyist Appears to Have Been Aware of How the Purchase Price Was Negotiated	16
A.2.3 The Lobbyist Received Copies of the Draft Agreement of Purchase and Sale	16
A.2.4 Lobbyist May Have Been Helped to Advance the Financing of the Flagpole.....	16
A.2.5 Access to In-Camera Information	18
A.2.6 Lobbyist's Billings Confirm He Provided Advice to the TPA.....	19
A.2.7 Lobbyist Was Also the Sign Consultant's Lobbyist	19
A.3 Potential Conflicts of Interest Involving the Sign Consultant.....	20
A.4 TPA's Involvement in the Sign Valuation Potentially Compromised TPA's Independence.....	22
A.4.1 Approach to Valuing the Sign	22
A.4.2 Purchase Price of \$12 Million Was as Low as the Vendor Was Willing to Go	22
A.4.3 TPA's Involvement with Preparing the Sign Valuation	23
A.4.4 The Sign Valuation Did Not Support the Purchase Price of \$12.18 Million	24

A.4.5	A Potential Second Sign Was Added to the Valuation	24
A.4.6	The Sign Consultant Put the VP's Calculations on His Letterhead	27
A.4.7	Auditor General Commences Investigation	27
A.4.8	Sign Valuation Methodology Changed.....	27
A.4.9	VP Helped the Sign Consultant Prepare His Final Report	28
A.4.10	VP Influence on Including the Sign Consultant's Report in Land Appraisal.....	28
A.4.11	Auditor General's Sign Valuation	29
A.5	Timing of Independent Appraisals	30
A.6	Requirement for a Business Case	32
A.7	Difficulty Obtaining Information and Consistent Explanations During the Investigation Process	34
A.8	Opportunities to Improve Board Functioning	35
A.8.1	Sufficient and Timely Information Should Be Provided to the Board	35
A.8.2	Importance of Disclosing All Relevant Information	39
A.8.3	Importance of Dissenting if a Board Member Disagrees.....	39
A.8.4	Importance of Refreshing Board Procedures.....	40
A.8.5	Other Skill Sets Supporting the Board	41
A.8.6	Current State	41
	CONCLUSION	42
	CHRONOLOGY OF EVENTS	43

THE COMPLAINT

On March 31, 2016, Council directed the Toronto Parking Authority (TPA) “to acquire a property located at the southeast corner of Finch Avenue West and Arrow Road (near Highway 400).” This property is referred to as 1111 Arrow Road in this report.

On September 1, 2016, the Auditor General was contacted and requested to review the property purchase of 1111 Arrow Road. The person was concerned, in part, “*that nothing in the file appeared to justify the purchase of the property for \$12,100,000 - even though the Agreement of Purchase & Sale had already been signed by the President of the TPA*”. Note that the Agreement of Purchase and Sale (APS) was fully conditional and subject to a 60 day due diligence period (October 18, 2016) and that the APS had been signed by the Vice Chair of the TPA Board as well as the President.

By the time the request to review the transaction was received, a conditional Agreement of Purchase and Sale (APS) had been signed on August 19, 2016. The due diligence date (60 days after execution of the agreement) was October 18, 2016. The due

diligence date is the date by which all the conditional clauses in the agreement are either waived, and the deal becomes firm or, if not waived, the deal is cancelled. On September 28, 2016 TPA sought and received an extension to the due diligence date to November 15, 2016. The Auditor General issued Part 1 of this investigation report to the TPA Board of Directors and it was discussed before the Audit Committee on October 28, 2016. Subsequent to this, the transaction was cancelled.

Part 2 of the investigation is contained in this report and provides recommendations for process improvement.

EXECUTIVE SUMMARY

1. City Council directed property at 1111 Arrow Road be purchased at fair market value (FMV) in support of the Public Realm initiatives relating to the planned Finch West LRT.

"5. City Council authorize and direct the Toronto Parking Authority, in support of the Public Realm Amount strategy set out in this report, to acquire a property located at the southeast corner of Finch Avenue West and Arrow Road (near Highway 400) for municipal parking and ancillary uses including proposed Bike Share Toronto infrastructure, and to permit construction of a possible gateway feature for the Emery Village Business Improvement Area. Acquisition will be on terms and conditions to be negotiated by the President, Toronto Parking Authority, at fair market value plus associated costs such as land transfer tax, title insurance and other fees, and approved by the Toronto Parking Authority Board. The City Solicitor is authorized to complete the purchase transaction, deliver any notices, pay any expenses and amend the closing and other dates, on such terms and conditions as the City Solicitor may determine."

2. The decision to acquire the property was debated before City Council. At City Council, Councillor Filion, the complainant in this case, supported the purchase of the property.
3. The Emery Village Business Improvement Area (EVBIA) had tried to acquire the property on other occasions. The EVBIA wanted to construct a gateway to Emery Village and build North America's largest flagpole. In addition to the property cost, the flagpole was conservatively estimated to cost \$5 million, with annual maintenance costs expected to be \$130,000 annually. The initiative to acquire the property had been brought before City Council in the past and there were, at one time, other sites being considered for the flagpole. In the end, the EVBIA decided to pursue 1111 Arrow Road for the gateway project.

4. In 2008, EVBIA hired a lobbyist¹ under a monthly retainer to seek out parties interested in funding the flagpole project, find a location, create a program for business and residents in the community, and to take the BIA into Request for Information (RFI) process (for the flagpole project²) and then a Request for Proposal (RFP) process to build a flagpole. The lobbyist had worked with Councillor Mammoliti, an EVBIA board member. At the EVBIA meeting in 2008, Councillor Mammoliti recused himself from the vote to hire the lobbyist due to his conflict of interest related to his past working relationship.
5. TPA was approached by the lobbyist to acquire the property prior to 2015. In the summer of 2015, TPA was approached by the lobbyist again, and also by Councillor Mammoliti, who was now both an EVBIA and a TPA board member, and the TPA Board Vice Chair because the property became more attractive with the announcement of the Finch West LRT in April 2015.
6. In July 2015, TPA's VP of Real Estate and Development (VP) and the President, met Councillor Mammoliti, EVBIA Executive Director, the TPA Board Chair and Vice Chair onsite to review the opportunity to purchase the property. TPA's VP obtained an appraisal from a real estate appraisal firm, Integris³ Real Estate Counsellors (Integris), for negotiation purposes⁴. The appraisal valued the land at \$7.5 million effective August 2015. According to TPA, the vendor⁵ valued the land at \$17 million. Evidence suggests that the parties used the medium value of \$12 million as the purchase price. TPA informed the Auditor General that once the price was negotiated, they were going to verify if the price reflected market value.
7. TPA staff remarked several times that the vendor was extremely difficult to deal with and they knew that \$12 million was the vendor's bottom line.

¹ The Auditor General notes that 'lobbyist' refers to the principal of the lobbying firm or one of the staff members.

² The flagpole project is also known as the gateway project.

³ TPA's VP of Real Estate Development worked as a Partner with Integris until around January 2013. There was no financial connection when she joined the Toronto Parking Authority. Around September 2015 Integris was acquired by Altus Group Limited.

⁴ TPA requested an appraisal that was "*defensible and able to be used for expropriation if needed.*" The Integris appraisal was 74 pages. It was complete, but not signed. Altus' Executive VP conveyed that the "*main difference between the 2015 Integris draft report and the (2016 Altus appraisal) is the effective date of the valuation, which required consideration of current market conditions and newer comparable sales evidence. The 2015 draft appraisal report was used in extensive negotiations with the landowner regarding the land value component only of the subject property. There was an understanding in our communications with [the VP] that if negotiations were to reveal any factual inconsistencies in the draft Integris report (i.e. regarding the subject property, comparables, etc.), then this could potentially affect our value conclusions in finalizing the document. The draft report was provided but never finalized.*"

⁵ The Auditor General notes that the vendor of the sign is an individual and the vendor of the land is a holding company that is represented by the same individual. For purposes of this report, we are referring to this individual as 'the vendor'.

8. In addition to the land value, a digital sign on the property added value. The VP prepared a net present value (NPV) spreadsheet of the income stream supporting that the value of the sign may be around \$2.5 million. By April 2016, there appears to have been sufficient information to support a property value of around \$10 million. The property could have been worth more if land values increased before the deal closed or if the digital sign held more value than the income stream in the current licence agreement.
9. TPA confirmed that initial negotiations involved the lobbyist because the lobbyist had a prior connection to the vendor. The VP conveyed that the lobbyist was involved with the transaction. The VP said that it was the lobbyist who informed TPA that the vendor would agree to a purchase price of \$12 million subject to having the Gateway Development Agreement (development agreement) in place for the vendor to be the developer when the lands were redeveloped.⁶ The lobbyist was copied on purchase agreements during the negotiation process and it was through the lobbyist that TPA obtained the negotiated price and was provided a copy of the vendor's licence agreement for the sign.
10. The first draft of the Agreement of Purchase and Sale (APS) was completed in January 2016. The price was established early and essentially stayed the same throughout the negotiations. Initially, the development agreement portion was included, but was removed around June 2016. The purchase price was then increased by \$100,000 to compensate for the change.
11. On March 31, 2016 as part of the broader public realm initiative, TPA was directed by City Council to acquire the property at FMV. By this time, a draft APS to purchase the property was already in place but not signed.
12. In April 2016, the lobbyist reported to the EVBIA that TPA was acquiring the property and that TPA would be funding the building of the flagpole for \$5 million. TPA President and VP said *"the discussion was that it was clear we would be advancing the funds but that it would be subject to an acceptable agreement for repayment."*⁷
13. In May 2016, TPA prepared a staff report recommending to the Board that TPA proceed with the purchase. The report referenced the Gateway Development Agreement. The Board approved proceeding with the purchase of the property, subject to TPA completing its due diligence. Following the meeting, Councillor Filion followed up to ask when the appraisals would be ready. In a May 31, 2016 text, the President responded *"we will have the appraisal when (the) final proposal is presented to the board..."* to which Councillor Filion replied, *"I'm not expecting to find anything unusual but want to do due diligence."*

⁶ The Gateway Development Agreement included the building of the flagpole and gateway project that would be a world class tourist attraction which includes North America's tallest flagpole.

⁷ Under the Toronto Municipal Code, Business Improvement Areas are not authorized to obtain loans.

14. In June 2016, the lobbyist reported to the EVBIA information from TPA's May in-camera board meeting, TPA had *"presented an offer to purchase the land on Arrow Road at a price acceptable to (the vendor)"*. The lobbyist's report also stated that *"the funds expended by the TPA for the gateway feature are to be recouped from fundraising initiatives by the Emery BIA."* Councillor Mammoliti seconded the motion for the lobbyist to continue negotiations with TPA.
15. The lobbyist also reported to his client, the EVBIA, that he was *"actively engaged over many months facilitating partnership discussions between TPA and (the vendor)"* and the *"discussions (were) difficult, the results...extremely positive"* with TPA presenting an offer to purchase the land. When asked why he was involved with the transaction, the lobbyist conveyed that he thought eventually the EVBIA would need to repay TPA for building the gateway / flagpole features, so he was interested in the negotiations to ensure that the flagpole costs would not be too high. In addition, the acquisition of the property by TPA, the building of the flagpole assisted him in achieving the objectives of his contract with the EVBIA. **Since 2008, the lobbyist invoices that reference the gateway/flagpole/ Arrow Road project total over \$1 million.**
16. Mid-July 2016, the VP contacted TPA's sign consultant to value the sign. The sign consultant is not an independent Chartered Business Valuator who objectively determines the value. He is more of a sales person or a broker to help develop revenue potential for clients. There was no engagement letter to formally engage the consultant and the consultant was not paid for his work. The consultant had worked with TPA for many years.
17. The sign consultant put together the original sign deal for the vendor and represented the vendor on that transaction in 2009 before Etobicoke York Community Council to obtain a sign variance to place the sign on 1111 Arrow Road. The EVBIA lobbyist who was working with TPA to put the deal together at 1111 Arrow Road and who could possibly benefit by having this transaction be successful, also acted as the lobbyist for the sign consultant. The Lobbyist's Registry indicates that the lobbyist represented the sign consultant over 200 times. All of this raised a concern about the sign consultant's independence, especially given the level of involvement of the lobbyist through this transaction and given the lobbyist was being copied on draft versions of the APS.
18. The VP said that discussions were held with TPA's sign consultant to try to identify the possible maximum value of revenue from current and future signage on the property. The consultant informed the Auditor General that the VP prepared NPV calculations for the income stream from the licence agreement for the digital sign on the property. The NPV of \$2.5 million for the existing digital sign was not enough to close the gap between the \$7.5 million appraised value and the negotiated purchase price of \$12 million.

19. TPA and the sign consultant decided to include the potential to add a second sign on the property. According to the VP, based on discussions with their sign consultant they believed there was a 25% chance that a second sign would be permitted by the Ministry of Transportation (MOT) given the public consultation underway by the MOT. Then, and even now, the MOT does not allow digital signs facing highway 400 in this location. In 2009, the sign consultant tried to obtain approval to have the face of the current sign look toward highway 400. It was disallowed. Although there was a public consultation underway to obtain feedback on third-party signs, the MOT official said that it "may be a stretch" to think that the policy was going to allow for digital signs in this area, "very premature".
20. In August, the VP contacted the real estate appraisers to update the land appraisal and asked them to incorporate into their appraisal the valuation from the sign consultant before submitting their appraisal. The real estate appraiser agreed.
21. At the July TPA board meeting, TPA management informed the Board that TPA could not negotiate a reasonable price with the vendor to develop the site. TPA recommended changes that included increasing the purchase price to partially compensate the vendor for the loss in the contract for the development agreement. It also asked for funding to support initiating due diligence related to the gateway project.
22. Councillor Filion again requested to see the appraisals to confirm that the purchase was being made at FMV, as Council had directed. Although TPA had the Integrus appraisal and the NPV of the income stream, neither was provided to the Board. The Vice Chair mentioned at the meeting that TPA could give Councillor Filion the old appraisal, but it does not appear that all board members were aware of the Integrus appraisal. The Integrus report was not provided. The VP and President said it was not provided because "*a 2015 land appraisal and an internal valuation of an existing sign contract is not sufficient evidence to support fair market value*". In any case, to help address Councillor Filion's concerns, the Board requested that the due diligence be reported to the Board as soon as possible. The only scheduled Board meeting before the due diligence period expired was September 15, 2016.
23. Based on the mid-July discussions, TPA's VP prepared for the sign consultant, income stream valuations for two signs: the current sign and the 'proposed' sign and the spreadsheet was forwarded to the sign consultant to include on his letterhead. The consultant returned the spreadsheet with a signed cover report. The VP clarified, she was helping with the calculations, not the assumptions. The consultant agreed that the NPV calculations were simply a mathematical process.

24. September 1, 2016 Councillor Filion became concerned about not having sufficient time to review the appraisals. He was especially worried about the sign value. It was his understanding that he could not reopen the matter at the Board because he had voted against proceeding with the transaction until the Board reviewed the appraisals. Based on the totality of the situation, he contacted the Auditor General on September 1st to review the transaction to confirm there was sufficient supporting documentation to warrant property purchase at \$12.18 million, the now new price.
25. The Auditor General completed her first meeting with TPA management on September 2, 2016, just two hours before the sign consultant had forwarded his report to the TPA saying "here is my final version" of the value of the current sign and the value of a possible second sign that was not allowed under the current permitting regulations.
26. Within 24 hours of submitting his "final version" to the TPA, the sign consultant and TPA changed the methodology to a 'multiple'⁸ approach. The TPA and the sign consultant informed the Auditor General that they became uncomfortable valuing a 'possible' sign and they could not rely on getting a permit from the MOT for a possible second sign.
27. The sign consultant said the VP inquired whether there was another way to value the sign to maximize the value of signage on the property. The President was aware of an approach used by other organizations. The consultant informed TPA that by using the 'multiple approach' to address 'the delta between your appraised value and the purchase price' the approach 'could get you there', meaning the approach would support a value of over \$4 million for the sign.
28. After incorporating changes suggested by the VP in relation to his draft reports, the sign consultant submitted his valuation on September 8th. The VP then asked the sign consultant to backdate his report to September 1st, and the sign consultant added: *"I have completed my analysis as at September 1, 2016..."* September 1st was the day before the Auditor General interviewed TPA on this matter. The sign consultant backdated his report. The sign consultant's analysis using the multiples approach did not commence until September 3rd.
29. When the valuation was sent to the real estate appraiser, they reviewed it and *"concluded that the opinion should not be placed"* on their letterhead.⁹ The

⁸ Refer to footnote 14 for an explanation of the 'multiple' approach. The sign consultant used a similar methodology with other clients.

⁹ We reviewed other appraisals of the property and spoke to other real estate appraisers. We were informed that it is not uncommon for appraiser to have revenue generating assets on a property. Assets such as this sign are valued by real estate appraisers as a contributory asset to the value of a property, based on the income stream. It is possible that there may be more value in the assets but as an independent appraiser without sufficient independent evidence they do not attribute the higher value.

Executive VP of the Real Estate appraisal firm would not sum the appraisal value of the land with the sign consultant's valuation.

"In terms of the ...sign valuation, I have only just reviewed the document and concluded that the opinion should not be placed under the (our) Letterhead. I understand that we could state certain caveats to its inclusion but its appearance and arithmetic summing in our appraisal would infer acceptance of a total value, which I cannot personally support."

30. The VP wrote to the President:

"Here is their answer. I haven't been able to speak with (my former Partner, who still worked with the appraisal firm) yet. I don't want to go final yet – just in case (my former colleague) can get (the Executive VP of the appraisal firm) to reconsider..."

31. TPA noted that they wanted to have the information included in accordance with the agreement and summarize the numbers to make it easier for the readers.
32. The VP put a cover memo on the appraiser's report and added the land appraisal and sign valuation and submitted it to the Board.
33. In September, the Auditor General briefed the Board that the purchase price in the agreement was higher than the July board approval so the deal would need to be reapproved. She also conveyed that her work to date only showed support for a purchase price of around \$10 million for the property. In October 2016, the Auditor General's work concluded that the sign value was too high and that TPA would be overpaying by approximately \$2.63 million. After informing TPA of this, both TPA and the Auditor General then tested their valuations with the market. Both confirmed the Auditor General's valuation.
34. The TPA President and VP said that they would have come to the same conclusion. They were at the beginning of their due diligence period. They said that they always intended to obtain the opinion of the independent business valuator for the sign. We disagree. The Board was informed that it was their sign consultant who was valuing the sign and the real estate appraiser was asked to include the opinion of the sign consultant.
35. There was difficulty obtaining information at the beginning of the investigation and the explanations for questions raised by the Auditor General were inconsistent throughout this review. This difficulty in obtaining information limited our ability to form conclusive findings. The President and VP said that they did not fully understand the Auditor General's request for information and were initially only providing her with what they thought was relevant. In addition, the VP was on vacation. Documentation shows that while on vacation, the VP was

actively working with the sign consultant during this time and at least one document, the August 17, 2016 email from the VP to the sign consultant containing the July 27 spreadsheet was deleted from the VP's mailbox and not provided to the Auditor General. The VP said that it was deleted in error and she could not recover it.

36. Overall, we are concerned about TPA's approach to the purchase of this land when TPA was already aware that the vendor's bottom line was \$12 million. TPA's actions created unnecessary potential risk for TPA and the City, by not ensuring independence and transparency expected by the City of Toronto. The lack of judgement in disclosing information to the lobbyist without a confidentiality agreement, not checking for conflicts of interest and not obtaining an independent sign valuation prior to reporting the TPA Board is concerning.
37. TPA confirmed that going forward, it will endeavor to ensure that the Board receives appraisal information when they are asked to approve a transaction. They will also ensure independent appraisals and valuations are obtained and that there are no conflicts of interest. They will support the Board by arranging for training on roles and responsibilities.
38. It is our considered view that had Councillor Filion not brought this matter to the attention of the Auditor General, TPA would have overpaid for the land by approximately \$2.63 million. TPA disagrees.
39. We did not notice evidence that TPA staff or the sign consultant received direct benefits by taking the approach they did. However, we are comfortable concluding that the approach does not meet what is expected of Toronto Public Service staff.

KEY FINDINGS - PART 1

The Auditor General issued Part 1 of her investigation report to the TPA Board of Directors and it was discussed before the Audit Committee on October 28, 2016.

Key findings from this report included:

- Fair market value of the land was between \$7.75 and \$8 million
- Fair market value of the digital sign was \$1.55 million, not \$4.5 million
- Fair market value of the land and digital sign was therefore approximately \$9.55 million
- The negotiated purchase price of \$12.18 million exceeded existing TPA Board approval and would require reporting back to the TPA Board for additional approval
- The difference between the FMV and the negotiated purchase price was \$2.63 million

TPA management agreed with the Auditor General's valuations and recommendations.

KEY FINDINGS - PART 2

A.1 TPA Did Not Use a Qualified Independent Business Valuator to Value the Sign

1. September 2015, the land portion of the property was valued at \$7.5 million by an independent draft appraisal prepared by Integrus Real Estate Counsellors (Integrus), a company that was purchased by Altus Group Limited (Altus). The difference between the September 2015 appraisal of \$7.5 million¹⁰ and the negotiated purchase price of \$12 million was \$4.5 million. To purchase the property at the negotiated purchase price, the sign valuation needed to be between \$4-\$4.5 million.
2. The sign value was a material part of the overall purchase price. It was TPA's responsibility to determine the FMV of the sign by obtaining an independent appraisal.
3. TPA did not engage an independent business valuator to assess the sign value. TPA asked a sign consultant, who was once under contract with TPA and was still collecting sign revenue for TPA, to conduct the valuation. The consultant was more of a broker or a sales person. He essentially helps land owners understand the potential value of signage on property, brings together parties for sign licencing deals and then develop agreements to receive a commission for these licencing deals.
4. The sign consultant had represented the vendor years earlier to licence the same sign on the vendor's property. TPA informed us that they believed the sign consultant would be a natural choice to prepare the valuation because of his knowledge about this particular sign.
5. In the July 27, 2016 staff report, TPA communicated to the Board that they had "*contacted TPA's outdoor sign consultant to value the sign, (to) validate the purchase price*". The Board was not informed about the prior relationship between the sign consultant and the vendor.
6. There was neither a contract, nor an engagement letter to clarify the purpose of the engagement and the degree to which TPA would be relying on the valuation. The sign consultant was not paid for the valuation he prepared for TPA.

¹⁰ Refer to paras 6-7 October 24, 2016. Though draft, according to the President of Altus, the appraisal was thorough and could be relied on. The main difference between the September 2015 and August 2016 appraisals was the effective date of valuation, which required consideration of current market conditions and newer comparable sales evidence.

7. TPA understood the consultant was not an independent business valuator skilled at providing an objective valuation for the sign. The VP said *"He's a sign consultant; it's not like he's an appraiser..."*

8. The sign consultant was asked for ways to maximize the sign value on the property:

"My job is always how can I help my client to maximize value; [and create] new value for property owners."

"I am neither a valuator nor an appraiser....We don't profess to be appraisers... an appraiser probably thinks much differently, they probably don't think as creatively in terms of revenue options."

9. The sign consultant confirmed that he was directed to determine the maximum value that signage could have on the property:

"They (President and VP) wanted to understand what the maximum value you could get from signage on the property; so I provided that..."

There are a whole bunch of assumptions that were made; 'what ifs' ...I didn't go to the market to test that; it's assumptions. I felt comfortable that there's a possibility (to obtain the value but there's a lot of factors to consider)..."

It's really up to the client to take that info and go 'how likely is that' and 'how much of that value is real' and to assess the risk of that; that's their job to assess that risk associated with it; I wasn't asked to do that; I just gave a range of values..."

10. The sign consultant informed us that he was not aware of the degree to which his valuation would be relied on:

"I was doing it as a service to my client... they asked me and I said yes

I never imagined we'd get to this type of complexity

I had no idea how big or small it would in their decision making ... I didn't see it as obviously a big piece of decision making; I would imagine it would be one of a number of factors; I initially thought it would be a small part of their decision making."

The VP concurs that the sign consultant likely did not understand the full degree to which his information would be relied on.

11. With regard to the reliability of his estimate that the sign is valued at over \$4 million, the consultant said there was a possibility of getting the value, but in hindsight:

"If they said to me 'so you've assessed the (value to be) \$4 million and if we don't get \$4 million...you have to pay the difference'... I would not be writing you a cheque for the difference.

It's a small piece of what I do; I didn't think it would morph into something that it has; had I known that, I probably wouldn't have gotten involved"

12. In relation to the Auditor General's recommendations that the President have non real estate assets with significant contributory value appraised by independent business valuers and that engagement letters be prepared for appraisers, valuers and consultants to ensure there is a clear understanding of key terms of engagement such as scope, fees, methodology, timing, conflicts of interest declarations and expectations, the President said:

"We agree with the Auditor General's recommendations. TPA's normal due diligence process include obtaining independent business valuations for all our acquisitions. We had time to do this. The complainant did not understand our due diligence process despite being told repeatedly. TPA's use of the sign consultant's valuation was intended to satisfy significant pressure from the complainant to obtain appraisals within a short period of time and permit TPA staff do their regular due diligence work after that, including obtaining a sign valuation from an accredited business valuator."

A.2 Avoiding Conflicts and Potential Conflicts of Interest

A.2.1 A Lobbyist Was Involved With the Negotiations of the Agreement of Purchase and Sale (APS)

13. A lobbyist brought together the TPA and the vendor. The lobbyist represented the Emery Village Business Improvement Area (EVBI). He was hired by the EVBI in 2008 to:
- seek out parties interested in funding the flagpole project,
 - find a location,
 - create a program for businesses and residents in the community,
 - take the BIA into a Request for Information (RFI) process (for the flagpole project¹¹) and then a Request for Proposal (RFP) process to build the flagpole.

¹¹ The flagpole project is also known as the gateway project.

14. According to the President, the lobbyist *"represented the BIA and ...our connection to the vendor was through him."* At first, the lobbyist dealt with the vendor, but the President said that at some point:

"we started getting directly involved with [the vendor]. [The lobbyist] is not a real estate guy; his goal is to get it done for the BIA; things got lost in the messaging...(so we) wanted to meet with the vendor directly".

15. When asked whether the lobbyist was involved with negotiations, the VP said that he was early on, and the purchase price came from him, but at one point the lobbyist was excluded from negotiations because he:

"doesn't know real estate and we didn't want him discussing details of this deal (VP) he wasn't involved in negotiating the transaction but he would see the documents"

16. The lobbyist was involved with discussions between the vendor and TPA while the negotiation was ongoing. The lobbyist reported to the EVBIA on June 16, 2016 that he had:

"been actively engaged over these past many months in facilitating partnership discussion between TPA and [the vendor]....

...while these discussions have been difficult, the results are extremely positive."

17. Even though this deal was supposed to be confidential, the lobbyist reported to the EVBIA board meeting that at TPA's May 2016 (in-camera) board meeting:

"TPA has presented an offer to purchase the land on Arrow Road at a price acceptable to [the vendor]. We anticipate that the purchase will be finalized as early as July or no later than September, 2016."

18. The lobbyist's billings showed that the lobbyist was involved with *"ongoing discussions with [the vendor] & TPA"* about the deal from approximately August 2015 until August 2016.

For example, the lobbyist billed as one of the line items the following after each month of work:

- May 2, 2016 *"Ongoing discussions with [the vendor] & TPA"*
- June 1, 2016 *"Ongoing discussions with [the vendor] & TPA"*
- July 4, 2016 *"Ongoing discussions with [the vendor] & TPA"*
- August 1, 2016 *"Ongoing discussions with [the vendor] & TPA"*
- September 1, 2016 *"Liaise w/TPA and [the vendor] re sale of Arrow Rd land"*

A.2.2 Lobbyist Appears to Have Been Aware of How the Purchase Price Was Negotiated

19. Throughout our review, there were various explanations regarding how the negotiated purchase price was arrived at. The VP said that she didn't determine the purchase price. She received a call from the lobbyist saying *"the vendor settled on a price of \$12 million"*. When the Auditor General asked the lobbyist if he knew how the parties arrived at the negotiated price he said:

"(the landowner) had an appraisal I think it was for \$17 million..."

TPA had an appraisal that was lower (around \$7 to 8 million ...)

...the 'mean price' is probably around \$12 million which may be how they arrived at that"

The VP said *"she does not know the thought process used by the vendor and the lobbyist to determine the purchase price."* She simply received a call from the lobbyist telling her that the price was \$12 million. TPA project notes confirmed that the price was most likely arrived at by averaging the price of two appraisals.

A.2.3 The Lobbyist Received Copies of the Draft Agreement of Purchase and Sale

20. The lobbyist was copied on draft Agreements of Purchase and Sale (APS) from January until May 2016. He was aware of confidential changes to the draft agreements.

A.2.4 Lobbyist May Have Been Helped to Advance the Financing of the Flagpole

21. Originally, there was a development agreement in the APS that would allow the vendor to develop the site for the gateway / flagpole feature. At the July 28, 2016 board meeting, the TPA Board was informed that the development agreement was removed from the APS and the negotiated price increased by \$100,000 to compensate for this. Also at this meeting, the TPA Board was asked to approve funding to be expended by the TPA for the gateway feature, including:

"...initial funding up to \$100,000 in consultant costs...and any other related service to support the development of the Gateway Feature for the Emery Village BIA.

These funds will be reimbursed by the Emery Village BIA from existing funds, future Section 37 charges, sponsorship, grants, and other sources."

22. The lobbyist was aware of the changes to the APS and that the development agreement was removed.

23. The President of the TPA confirmed that it was from the lobbyist that he learned that the funding was needed to support pre-development studies prior to the start of the gateway feature for the EVBIA.

24. We asked the lobbyist if the requirement for TPA to request board approval to fund due diligence to build the flagpole came from him. The lobbyist said that funding *may* have been discussed with the President and he *may* have said to the President:

"...with the development agreement gone it (the building of the flagpole) will have to go to RFP [Request for Proposal] and there may be costs..."

25. The Auditor General notes that a month prior to the TPA July board meeting, the lobbyist's report to the EVBIA dated June 16, 2016 confirms discussions about having TPA fund the gateway feature:

"The funds expended by the TPA for the gateway feature are to be recouped from fundraising initiatives by the Emery BIA and/or NPO including, but not limited to:

- *Private fundraising*
- *Section 37 and 42 funds from developments within the Emery BIA boundary*
- *Government and services in kind*

The TPA has requested a report outlining how the Emery BIA will meet these commitments."

26. A Motion was adopted for the lobbyist to continue negotiations with TPA.

The Motion was Seconded by Councillor Mammoliti.

27. The President confirms that the discussion occurred in the context of "*how are we going to recover funds*" for the gateway from the EVBIA. The lobbyist was aware of the change to the APS to remove the development agreement and the need to go to RFP for this. His request to the President appears to have come after the development agreement was removed from the APS.

28. The lobbyist confirmed to the Auditor General that the building of the gateway feature and the acquisition of the lands by TPA would assist him in achieving the objectives of the contract he has with the EVBIA. We also asked why he was involved with the negotiations. He conveyed that he wanted "*to make sure BIA could afford to build the flagpole*".

29. The President and VP said that some board members were aware of the involvement and influence of the lobbyist in this transaction but it does not appear that the full board was aware. The degree of involvement of the lobbyist in this transaction was relevant and should have been disclosed to the Board. It would have been important to ensure that conflicts of interest did not exist between those involved with the transaction, the members of the Board and the lobbyist or the organization he represented.

A.2.5 Access to In-Camera Information

30. In the June 2016 EVBIA board meeting minutes, the lobbyist presented a report on matters discussed at TPA's May 26, 2016 ***in-camera*** board meeting:

"At its meeting Thursday, May 25, 2016¹² the TPA board authorized staff to present an offer for the purchase of land owned by (the vendor) at 1111 Arrow Road."

[The lobbyist] has been actively engaged over these past many months in facilitating partnership discussions between TPA and [the vendor]...

...while these discussions have been difficult, the results are extremely positive.

TPA has presented an offer to purchase the land on Arrow Road at a price acceptable to [the vendor]. We anticipate that the purchase will be finalized as early as July or no later than September, 2016."

31. In addition to his detailed references to the May 26, 2016 TPA in-camera Board meeting, the lobbyist's October 3, 2016 bill of over \$13,000 included the following items for the lobbyist's September 2016 activities:

*"-Monitor TPA Meeting
-Monitor TPA meeting and decide approach/response for Councillor Mammoliti"*

32. The September 15, 2016 TPA board meeting on the land transaction was in-camera. It was at this meeting that the Auditor General provided a confidential *verbal report* to the TPA Board.

33. When asked about these billings, the lobbyist appeared to have difficulty explaining how he monitored the meeting. He said:

"We would have monitored what came out of meeting but we wouldn't have known what it was; we knew there was something afoot in terms of delaying the project, but it was a confidential item..."

¹² The Auditor General notes that the date should be May 26, 2016. Refer to paragraph 111 of the Chronology of Events the full quotation.

A.2.6 Lobbyist's Billings Confirm He Provided Advice to the TPA

34. In addition to his involvement with negotiating the transaction and lobbying for funding, the lobbyist billed on the gateway / flagpole project for the following on its April 1, 2016 invoice: "Prep TPA for media questions" and "Meet Councillor to review strategy"
35. The Auditor General asked the lobbyist what was meant by "prepping TPA". He responded:

"I had [the President and VP] asking me...how would you position this to the Board? So I let them know how I would position it and billed [the EVBIA] for it."

The President believes this related to prepping TPA for media questions following the passing of the Motion at Council for TPA to purchase the property at FMV.

A.2.7 Lobbyist Was Also the Sign Consultant's Lobbyist

36. The lobbyist is also the lobbyist for the sign consultant. The lobbyist registry shows that there have been over 200 interactions with government officials by the lobbyist or his staff for the sign consultant, or on average, approximately 40 interactions per annum over five years, since 2011.
37. The invoices the reference the gateway/flagpole/Arrow Road project have exceeded \$1 million since 2008. There have been several attempts to secure a site but, to date, a site has not been secured and the flagpole has not been built.
38. Given the importance of this project to the lobbyist, past and current working relationship with the sign consultant, and the extent of knowledge that the lobbyist has about this transaction, overall, the totality of the interactions create a conflict or the perception of a conflict of interest. There appears to have been at a minimum, a lack of judgement in involving the lobbyist to the degree that TPA did.
39. In relation to the Auditor General's recommendations that the President to ensure persons involved with procurement transactions do not have actual or perceived conflicts of interest and that proper confidentiality agreements are put in place for advisors on transactions, the President responded:

"We agree with the recommendations. We had no knowledge that the lobbyist was discussing the status of the transaction with the EVBIA. In hindsight, we should have been more careful in obtaining the assistance of the lobbyist without a confidentiality agreement, but at the time, we didn't understand the full relationship between the lobbyist and the various

stakeholders in the transaction. Also, we viewed the lobbyist's role in the transaction akin to a broker in a real estate transaction. Going forward, we will try to ensure the involvement of such parties is disclosed to the Board and that we will check for conflicts of interest."

A.3 Potential Conflicts of Interest Involving the Sign Consultant

40. TPA had a long standing relationship with the sign consultant. The sign consultant currently manages the outdoor sign contracts, collecting rent on behalf of TPA. He was under contract with the TPA from 2007 to 2009. The VP noted that *"the agreement has expired and that, while TPA has not signed an extension agreement, it has been considered month to month up to now"*.
41. In 2009, the sign consultant represented the same vendor that is involved in TPA's transaction to put the sign on the property and to put the licencing agreements in place. The consultant was therefore essentially valuing his own deal. Although much time had passed, it was important for TPA to ensure that the sign consultant was independent enough to consider the risks associated with evaluating the agreement. TPA however considered the sign consultant's familiarity with the agreement and the sign as an advantage.
42. The sign consultant also has a significant relationship with the lobbyist and the transaction appears to have been important to the lobbyist. Having the sign consultant value the sign raises, at a minimum, the perception of a conflict of interest.
43. The situation became more complicated because there was no engagement letter for the sign valuation and the consultant was not paid for his work. Following an interview with the Auditor General, TPA considered whether a perception of a conflict may have arisen.

September 6, 2016 email from President to VP asking:

"Is it a problem that they have managed our outdoor contracts?"

VP responded:

"I don't think it is a problem because we have not offered the contract to him. Also, we can spin it in our favour in that we have knowledge and comfort with the abilities over the last several years."

44. VP clarified that *"spin in it in our favour"*, meant that it was to TPA's advantage to have both the lobbyist and sign consultant help move the deal forward given their historical involvement with the land and sign. In hindsight, VP acknowledges that there may have been perceived conflicts.

45. Given that the sign consultant did not receive monetary compensation to complete the valuation, our investigation considered whether there was any evidence that the sign consultant was compensated in some other way.
46. The sign consultant was asked whether he was promised future deals. He said they were not discussed. He further said *"if I'm doing this work for TPA in the future [sign valuation], I would not be participating in anything going forward..."* He said that he had undertaken the engagement as more of a service to his client.
47. When asked whether he felt there may have been a conflict of interest after considering everything together. He responded:
- "I understand the optics – I did work for [the vendor] 6-7 years ago; I get the optics; I didn't think of it at the time, if I had known I probably wouldn't have done this; I was simply doing something as part of our advisory services to try to be helpful..."*
48. When retaining independent advisors to value transactions, it is paramount that the valuator or appraiser is and has the appearance of being independent. The nature of an engagement, compensation, conflicts and the potential conflicts of interest should be clearly defined in an engagement letter. Conflicts and perceptions of a conflict of interest should be disclosed to the Board for consideration where the Board is relying on the information being provided.
49. In response to the Auditor General's recommendations about conflicts of interest, the President said:
- "We agree with the recommendation. We were aware of the sign consultant's involvement with the vendor and the sign in 2009. We considered it to be an advantage that the sign consultant was knowledgeable about the sign and the agreement. We have had a long-standing relationship with the sign consultant and he was doing the valuation at no charge so we didn't formalize the arrangement in writing. Going forward, we will endeavour to be more careful and when we are aware of real or perceived conflicts, we will undertake to notify our Board."*
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A.4 TPA's Involvement in the Sign Valuation Potentially Compromised TPA's Independence

A.4.1 Approach to Valuing the Sign

50. One of the President and the VP's roles was to obtain independent valuations and appraisals to verify whether the purchase price of \$12.18 million was at Fair Market Value (FMV).
51. TPA informed the Board at the July 28, 2016 meeting that they have contacted TPA's outdoor sign consultant to value the sign, such that they could validate the purchase price. There was only one sign on the property.
52. The real estate appraiser was informed that:

"a component of the subject property includes an existing right to locate signage on the property and the potential to add another large sign on the eastern portion of the property adjacent to Highway 400. TPA will provide all information concerning both signs that is in our possession and will arrange for you to speak with a senior representative from the media sign group [TPA's sign consultant] who brokered the transaction for the existing sign."

The real estate appraiser agreed to include the sign valuation into their overall real estate appraisal.

A.4.2 Purchase Price of \$12 Million Was as Low as the Vendor Was Willing to Go

53. The vendor and TPA each obtained appraisals for the property. Based on the independent appraisal conducted in August 2015, TPA valued the land at \$7.5 million. The vendor was asking for \$17 million. The VP stated:

"...eventually we got to \$12 million; now we're going to verify if that is true [value]"

54. TPA project notes confirmed the \$12 million was the mid-point between the appraisals of the two parties.
55. The President confirmed at the September 15, 2016 board meeting with the Auditor General in attendance that:

"...\$12 million was as low a number we thought we could get the vendor to sign...We thought it could be market value and we knew it was his bottom line..."

56. The VP concurred with the President and added that the \$12 million was:

"...based on preliminary value of land and value of sign yet to be verified but it was a value quite frankly the vendor was willing to negotiate with;

If purchase price is too high we will go back to vendor and tell him purchase price is too high and it's not FMV and not proceeding with deal and then they will go back to negotiate a new price."

57. At the October 2016 board meeting, a discussion regarding how the purchase price was arrived at ensued.

The VP said:

"...the vendor came back with extremely high purchase price; we went back to him and it was just at that time we thought a deal was doable at \$12 million."

Councillor Filion tried to clarify with the following question:

"So you negotiate with vendor, then you do appraisal and they magically come out to be \$12 million?"

The President responded:

"I take offense to that; we don't tell our appraisers how to appraise it."

We (don't) do a deal (then) tell our appraisers this is number they have to get to – we don't do that."

A.4.3 TPA's Involvement with Preparing the Sign Valuation

58. TPA management was very involved in guiding the valuation of the sign consultant.
59. The VP confirmed that she shared the land value with the sign consultant: *"He's our sign consultant, he does know our purchase price."*
60. The sign consultant confirmed that the target purchase price was shared.

"They definitely shared with me there was an appraised value for land and there's going to be some value assigned to the sign and there was a difference or delta between whatever the purchase price was and what the value of land is..."

When asked how he knew that the difference between the purchase price and the land value was \$3.5 million, the sign consultant said that it was the difference between *"the land and maybe the expectation of the purchase price."*

A.4.4 The Sign Valuation Did Not Support the Purchase Price of \$12.18 Million

61. According to the sign consultant, he met with the VP in mid-July. At that meeting, the VP worked out the NPV of the existing sign to be about \$2.5 million. The NPV of the current sign did not support the purchase price. About \$4 million in value was needed to close the gap between the appraised value of the land (approximately \$7-8 million) and the negotiated purchase price of \$12 million at that time. If the sign value could not bridge the gap of \$4 million, the deal would need to be renegotiated with the vendor.
62. The sign consultant conveyed that it was then that the VP began asking him how to maximize the sign value. The sign consultant suggested that one approach was to add the possibility of a second sign as the MOT had initiated a review of its 400 highway series sign policies.

A.4.5 A Potential Second Sign Was Added to the Valuation

63. According to the sign consultant:

"They (President and VP) wanted to understand what the maximum value you could get from signage on the property; so I provided that..."

64. The notes from the mid-July meeting between the VP and the sign consultant show they discussed that they thought the probability of obtaining a second sign was approximately 25%. TPA said that this probability decreased significantly the following month, which according to TPA prompted the change in valuation methods.
65. The sign consultant, conveyed that he thought there was a possibility of obtaining the sign because there was a Ministry of Transportation consultation ongoing related to third party signs.
66. The Auditor General spoke with key officials in the Ministry of Transportation (MOT) and the City of Toronto's sign department. The MOT indicated that it may be 'a stretch' to expect a digital sign to be approved.
67. When the Auditor General asked "what was the driver to go to the two signs; to try to value a second sign", the sign consultant said:

"...that was coming from [the VP]; they were looking at possibilities of different revenue sources and asked me would there be a possibility to do a

2nd sign on property; that stimulated the discussion on this, such as what's going on at the province, what's going on with signage policy....

That was probably the start of the discussion with them trying to understand how much value they could get out of the land whether a second sign could be installed and what value it would have."

68. When we asked the VP why the second sign was added, the VP said:

"...it was his idea to add a second sign...[the sign consultant] thought there was a high degree of probability that he would get a second sign..."

69. In any case, based on the assumption that there was a 25% chance of obtaining a second sign, TPA's VP prepared for the sign consultant a spreadsheet showing NPV of the current sign at approximately \$2.5 million and the NPV of a possible second sign being \$1.8 million, based on a 25% chance of securing a second sign. That brought the total overall value for the signage on the property to \$4.3 million.
70. We were concerned about the level of TPA's involvement with the preparation of the sign valuation.
71. On August 17, 2016, the VP emailed the sign consultant a July 27 spreadsheet she prepared showing the income expected from the current sign and the proposed sign for the property.
72. On August 18, 2016, the sign consultant forwarded back to the VP what appears to be the same spreadsheet that was sent by the VP to him on August 17, 2016. The valuation of the income streams for the existing digital sign and a second potential sign were valued at \$4.3 million.
73. On September 2nd, just after the Auditor General met with TPA to commence her investigation of the transaction, the sign consultant sent his valuation saying "here is the final version" to TPA. The final version added the value relating to a 25% chance that TPA may be able to permit a possible second sign.
74. Within 24 hours of submitting the final valuation to TPA, and after the Auditor General met with TPA, the sign consultant changed his valuation methodology to a multiple approach¹³.

¹³ According to the sign consultant's valuation report:

"The outdoor advertising industry typically values its assets based on a multiple of cash flow ("Cash Flow Multiple"). The value would be what the outdoor company would expect to sell that asset or group of assets if it were selling its business. Cash flow is normally defined as gross revenues less operating costs (maintenance, electricity, license fees, and sales/administration costs). The multiple used to assess value has ranged between 8 and 12 times. The multiple used is based on a number factors, including type/size of asset, desirability of market/geography, and length of term. For example, if the billboard contains the latest digital technology, is located in a top tier market like

75. When asked why the valuation changed, TPA and the sign consultant shared that at that point, they did not believe they could rely on the risk of obtaining a second sign. They decided to reassess the valuation of the current sign. Both said that it was a coincidence that this occurred just after the Auditor General commenced her investigation.

The President said that *"at one point we said we cannot count on this; so then we asked if valuing using upfront is another way of doing it (multiple approach)..."*

76. The sign consultant said:

"...I became uncomfortable about creating any value against a second (possible) sign because...you are either getting the sign or not getting the sign."

77. The sign consultant said that the VP asked him what the result would be if the sign consultant were to use another model. The sign consultant said:

"...so very quickly and roughly (he performed his calculations and said), it's probably \$4 plus million ...and then (TPA's VP) said, let's try to use that approach and see where we land...so I did that."

78. September 4, 2016 email from the sign consultant describes the calculations:

"My note has a fairly aggressive multiple and we could be more conservative. I think the delta between your appraised land value and the purchase price is about \$3.5m + - (confirm this). If this is the case then the value of the license fee (2.75) plus a modest lump sum could get you there. Why don't the 3 of us have a call to discuss the best approach. I am available up to 11am this morning. 1:30-2:30 this afternoon, or after 4:20 let me know."

79. The Auditor General asked the consultant what he meant by "the delta" and "could get you there"? The sign consultant said:

"I have no interest so I don't really care if the value is whatever...I don't have an interest in the property, so you'll have to talk to [the VP] about what she's trying to get to; she knew what the purchase price was; she knew what her delta was; and we know that the pure income approach [only resulted in a value of around \$2.5 million]..."

Toronto, and has a term exceeding 20 years, you would expect that the multiple would be at the higher end of the range."

A.4.6 The Sign Consultant Put the VP's Calculations on His Letterhead

80. The sign consultant took the spreadsheet he received from the VP and drafted a cover report dated August 31, 2016 on his letterhead with very little change. The value of the two signs increased to \$4.4 million. He then sent the valuation report to the VP. The report seemed to give the appearance that the sign consultant prepared the work himself.
81. The TPA VP confirmed that she ran the numbers. She said the assumptions were those of the sign consultant, *"I was helping with numbers but not business assumptions"*.
82. When asked why she was preparing the numbers if the sign consultant was an independent appraiser, the VP answered:

"He's a small shop and he has difficulty doing numbers; he's a sign consultant; it's not like he's an appraiser"
83. On September 2, 2016 at 1:13 pm, the sign consultant forwarded an email stating "here is my *final version*" of the sign valuation. The spreadsheet was similar as the July 27th version that was attached to the August 17th email from the VP.
84. The sign was valued at \$2.6 million plus \$1.8 million for the potential second sign. This equates to a total valuation of \$4.4 million for the signs.

A.4.7 Auditor General Commences Investigation

85. September 2, 2016 at 11:30am, just before the sign consultant sent his final version of the sign valuation, the Auditor General met with VP and TPA President. The Auditor General requested that all documents be provided in relation to this transaction including the appraisals.

A.4.8 Sign Valuation Methodology Changed

86. On September 3, 2016, twenty-four hours after the Auditor General commenced her investigation, the sign valuation approach changed from an income approach to a 'multiples approach'.
87. Under the 'multiples approach', the sign consultant valued the sign between \$4.15-4.55 million.

A.4.9 VP Helped the Sign Consultant Prepare His Final Report

88. When the sign consultant submitted his draft valuation, the VP became involved and asked for changes. The sign consultant said that:

"When I put it together it was less formal because I don't do things like that and then when they asked, 'could you add this' and 'could you add that'; I didn't think too much of that; I was focused on providing the range..."

89. For example, on September 6, 2016, 8:03 am the VP sent an email to the sign consultant:

"I think the valuation letter is good. Is there any way you can add a paragraph towards the beginning of the letter that describes ... that you represent a number of government groups across Canada? Perhaps you can include a list of clients and /or your company brochure. I think that it is important for readers to know that you are experts in your field..."

90. The VP then asked the sign consultant to backdate his September 8th report to September 1, 2016. The sign consultant included a line stating: *"I have completed my analysis as at September 1, 2016..."* September 1st was the day before the Auditor General interviewed TPA on this matter. The sign consultant backdated his report.
91. The VP said there was no specific reason for asking the sign consultant to backdate his valuation to September 1 and changing the valuation date. She said that the fact that the Auditor General's investigation commenced September 2 had no bearing on her request to the sign consultant to backdate his report before the Auditor General's investigation. We note that the valuation approach used by the consultant did not commence until September 3rd.

A.4.10 VP Influence on Including the Sign Consultant's Report in Land Appraisal

92. TPA then asked the real estate appraisers to include the sign consultant's valuation in their overall appraisal. In an email dated September 7, 2016, Altus' Executive Vice President wrote to the VP:

*"here is our draft report with limited references to [the sign consultant]. **I do not wish to state their conclusions within our appraisal document.**"*

TPA's VP responded:

*"... after all of our discussion with respect to this property I'm disappointed that you relegated the sign valuation (which is a major component of the Purchase Price) to the last addenda item. I understand and appreciate that you cannot (nor should you) certify any part of the sign valuation, but **I was***

hoping that the transmittal letter could include the value range for the sign and the arithmetic needed to add the 2 valuations together – of course with the necessary caveats. Is it possible for you to reconsider this?"

The Executive Vice President replied:

"In terms of the [sign consultant] sign valuation, I have only just reviewed the document and concluded that the opinion should not be placed under the Altus Group Letterhead. I understand that we could state certain caveats to its inclusion but its appearance and arithmetic summing in our appraisal would infer acceptance of a total value, which I cannot personally support."

93. The VP wrote to the President:

"Here is their answer. I haven't been able to speak with (my former Partner, who still worked with the appraisal firm) yet. I don't want to go final yet – just in case (my former colleague) can get (the Executive VP of the appraisal firm) to reconsider..."

94. The VP said that she wrote this email because *"it was felt by the VP and the President that the inclusion of the sign valuation was always part of the appraiser's original terms of reference."*

95. On September 9, 2016, the day the appraisal was finalized, the appraisers included the sign consultant's valuation in their report as an appendix with limited reference. They did not sum the sign value with the land value so that it would not infer acceptance of the total value. The VP placed a cover letter on top of the land appraisal adding both components together.

A.4.11 Auditor General's Sign Valuation

96. On October 17, 2016 the Auditor General conveyed to TPA's President and VP that her opinion was that the sign was not worth more than \$2 million.

97. The Auditor General reviewed the valuation with a forensic accountant and a business valuator. Both confirmed that the sign was valued at no more than \$2 million.

98. TPA President said the only true way to determine the value is to test the market so both TPA and the Auditor General contacted a key market participant to confirm the true market value. TPA said that it also contacted a Chartered Business Valuator. In the end, TPA agreed with the Auditor General's valuation.

99. The Auditor General provided TPA with her draft report for comment. TPA then prepared a cover report reflecting the Auditor General's findings.

100. TPA said that it would have reached the conclusion that the sign value was too high had the Auditor General not been contacted, because it was still in its due diligence process. We disagree. TPA appears to have been too vested in trying to support the possibility of a maximum value to support the purchase price to acquire the property.
101. We have considered whether the lobbyist may have been influencing the sign consultant to possibly increase the value to support the purchase price, given the sign consultant's connection to the lobbyist and the lobbyist's desire to have the property acquired by TPA. We found no evidence of this from the work we have completed. It appears that TPA was trying to understand the maximum sign value that could be supported on the site.
102. In relation to the Auditor General's recommendation that TPA remain at arms-length when obtaining independent property valuations, the President said:
- "We agree with the recommendation, but disagree that without the Auditor General's involvement, the TPA would not have caught this issue. TPA was going to obtain an independent business valuation, and TPA had just started its due diligence process when the Auditor General commenced her investigation. TPA went to the market to verify the appetite for signage in the area and then talked to an independent business valuator that supported the Auditor General's value for the sign."*
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A.5 Timing of Independent Appraisals

103. There is a concern that the appraisals were not prepared before the APS was signed.
104. It may not always be possible to obtain appraisals prior to signing the purchase agreement. With the appropriate terms and conditions, a purchase agreement can be written to be fully conditional until after the buyer satisfies its due diligence and this was part of the APS.
105. Where it is not possible to obtain an appraisal before signing the APS, it is important that the agreement contains clear terms and conditions that the purchase price be satisfactory to the buyer.
106. When asked why the appraisal could not be provided to the Board sooner, the President and VP frequently mentioned that TPA cannot conduct due diligence earlier because it competes with private purchasers on the open market.
107. It takes about three weeks to obtain an appraisal. In commissioning her own independent appraisal, the Auditor General was able to obtain three competitive quotes and to have the winning proponent complete a 50-page appraisal within

three weeks. She checked with other organizations and this appears to be the standard time. TPA's own land appraisal was prepared by Altus within three weeks.

108. The draft APS was prepared in January 2016 and TPA knew since the Council direction on March 31, 2016 that they were to purchase the property at FMV.
109. Between January and July, it was possible to obtain an appraisal. The appraisal was commissioned August 17, 2016. Also, TPA had the Integris appraisal effective August 2015 showing that the land was valued at \$7.5 million. TPA could have provided that to the Board with the proper cautions if it did not absolutely have the time to obtain an appraisal to show the Board, especially when a board member was asking for it.

This valuation would have confirmed the difference between the purchase price and the value needed from the sign.

110. TPA advised the Auditor General that they did not want to incur unnecessary costs for the appraisals unless there was more certainty that the deal was proceeding. This was a \$12 million transaction. TPA knew there was a gap of \$4 million between the land and the purchase price. Land appraisals can cost between \$6,000 and \$7,500. TPA paid Integris \$7,500 for the land appraisal. TPA did not incur any costs for the sign valuation as the sign consultant was not paid. Even if a Chartered Business Valuator were hired, the cost could be between \$2,000 and \$3,000.
111. TPA could have engaged the sign consultant anytime between January and June 2016. They did not. TPA could have provided the Board with the land appraisal that had exposure up to March 2016. They did not.
112. The negotiations for this property started around December 2015. The request for TPA to proceed with getting an agreement for the property came to the Board for approval in May 2016. Given the value of this transaction and the advanced stage of the negotiations, it would have been prudent to have provided the Board with independent appraisals or the best information available.
113. In relation to the Auditor General's recommendation to obtain independent appraisals and valuations before requesting the board to approve a transaction the President responded:

"We agree, but it should be noted that the APS was not signed until August 18, 2016 which left little time to complete the appraisals and other due diligence work before the September 15, 2016 Board meeting. In future, when requesting final Board approval of the deal, best efforts will be made by TPA to bring have completed the appraisals to the Board."

A.6 Requirement for a Business Case

114. A question was raised regarding whether TPA should have prepared a formal business case to support the purchase of this property.
115. When making a decision regarding whether to spend millions of dollars to acquire property, business cases are a key part of the due diligence process.
116. A business case may include, but is not limited to, the following items:
 - forecasted parking revenue;
 - an analysis of competition, including the availability of parking at neighbouring properties;
 - the expected increase in property value; and
 - intangible factors such as the community impact.
117. Business cases should also identify the alignment between the property acquisition and TPA's broader, long term strategic goals.
118. TPA had been considering the property since July 2015. To help gain additional understanding of the property, an onsite meeting took place in July 2015 when the property was toured by the President, Councillor Mammoliti, the Executive Director of the EVBIA, the Chair and Vice Chair of the Board, and the VP.
119. Since January 2016, Agreements of Purchase and Sale were drafted by TPA's legal counsel and forwarded to the vendor for consideration. Draft Agreements of Purchase and Sale were also forwarded to the EVBIA's Lobbyist.
120. In communications with staff at the TPA, Jeffrey Climans, Director, Major Capital Infrastructure Coordination Office, was advised by TPA VP that:
 - (i) acquisition of the subject property was being considered by the TPA;
 - (ii) any decision regarding investment in the subject property would be subject to commercial procedures followed by the TPA;
 - (iii) this staff report (directing Metrolinx on its use of the Public Realm Amount) could be used to seek authority for the TPA to pursue that specific transaction.
121. When Jeffrey Climans was asked to include a recommendation to acquire the property in the report to City Council, Climans said that TPA informed him that that *"the property was already under contract or a price was already on the table"*. In his view, *"it was not his role to consider the feasibility of a parking lot at that location"*.

122. On March 31, 2016, TPA's goal to purchase the property was overtaken by a City Council direction for TPA to purchase the property, as long as it was purchased at fair market value (FMV).

City Council approved a broader City policy initiative as outlined in the staff report EX 13.9 "Allocation of the Public Realm Amount - Finch West LRT".

123. The purpose of the EX13.9 staff report to Council was to:

"Seek authority for the Deputy City Manager, Cluster B, to inform Metrolinx of the City's preferences for investment of the Public Realm Amount allocated by Metrolinx to the Finch West LRT project".

"Seek authority for City divisions and the Toronto Parking Authority to implement a number of complementary measures that will improve the streetscape and public realm along Finch Avenue West concurrently with the introduction of the Finch West LRT project".

124. The authorization to proceed with the property acquisition was identified in Recommendation #5 as part of the complementary measures that supported the Public Realm Strategy related to the LRT.
125. The property was to be used for *"municipal parking and other ancillary uses, including proposed Bike Share Toronto infrastructure, and to permit construction of a possible gateway feature for the Emery Village Business Improvement Area."*
126. We noted that at the May 2016 report to the Board, there was some discussion regarding why the property should be purchased, but the full financial analysis was not completed. According to TPA, the normal formal business case was not prepared because they were directed by City Council to purchase the property, as part of a broader strategic initiative.
127. The Motion was supported 29 to 0 by Council at its meeting of March 31, 2016. Fifteen councillors were absent. Councillor Filion, a TPA Board member, supported the Motion, while Councillor Mammoliti, another TPA Board member, was absent from the City Council vote.
128. By directing that the property be purchased at FMV, the City was mitigating its risk if it chose to sell the property at a later date, should the land not be used for its intended purpose.
129. We are of the view that once Council gave the direction to purchase the land, for broader reasons, TPA needed to follow that direction.

130. TPA notes that:

"Business cases are always prepared prior to requesting final approval from TPA Board and City Council. In this case, TPA had been directed by Council to acquire the property at FMV. In our view, this satisfied the need for a business case but, in any event, the May 2016 staff report did include discussion of (i) parking demand and supply, (ii) potential for redevelopment, (iii) interim use and (iv) signage. Although the business case did not include a fulsome financial analysis, there was a clear business rationale for the acquisition."

No recommendation is required.

A.7 Difficulty Obtaining Information and Consistent Explanations During the Investigation Process

131. The Auditor General asked several times for emails and documents related to this transaction. Auditor General had difficulty obtaining information when the engagement began, and the answers to questions was inconsistent throughout the engagement.¹⁴
132. The Auditor General, for example, asked for all appraisal information and supporting documentation related to this transaction and notes supporting how the purchase price was calculated. The VP informed the Auditor General that she did not rely on any documentation when the offer was made. The VP said that the calculations of the purchase price were done on the "back of an envelope". She did not inform the Auditor General that she had received the 74 page Integris appraisal effective August 2015 as part of her work leading up to the offer. It was only when the Auditor General made a specific request for all documentation prepared by Integris that the VP provided the draft appraisal.
133. The VP explained that she was not intentionally holding information back, that it was a tight timeframe and it was difficult to accommodate the timing of the request.

The VP said that she did not understand the full extent of the Auditor General's requests for information or the Auditor General's powers under the City of Toronto Act¹⁵. The VP was only providing what she considered to be relevant information. Those relevant documents did not include prior appraisals, valuations, the engagement email and her interactions with the sign consultant and the land appraiser.

¹⁴ For the sake of brevity, the examples won't be elaborated in great detail in this report, except for the short discussion in this finding, but they are available on request.

¹⁵ City of Toronto Act, sections 179(1) Duty to Furnish Information and 179(2) Access to Records

The Auditor General acknowledges that the VP did not return from vacation until September 12, 2016, a few days before the September 15, 2016 TPA board meeting. However, throughout this time, the VP was working during her vacation with the sign consultant to prepare the sign valuation.

134. At the September 15, 2016 TPA Board meeting, the Board directed that all information be provided. TPA subsequently provided what it thought to be all information related to the transaction. At least one key piece of information was missing, the August 17th email with the attached July 27, 2016 spreadsheet valuation prepared by TPA's VP for the sign consultant wherein the second sign was valued. The spreadsheet needed to be recovered by the Auditor General from the VP's deleted items mailbox. The VP said that the spreadsheet was deleted in error.
 135. In TPA's view, there was a misunderstanding of the Auditor General's requests. We do not agree. The information requests were clear. Going forward, TPA said it has a better understanding of what is needed in these situations.
-

A.8 Opportunities to Improve Board Functioning

136. It is not uncommon for board members to deal with difficult matters. However, issues may arise when there is insufficient timely information for the board to exercise due diligence. Board dynamics can escalate when board procedures and the application of laws to the board are unclear. Synergy can deteriorate when the board does not have the required training to address matters effectively.
137. As such, sufficient and timely information for the board members, a sound understanding of board procedures and applicable laws and training to broaden and strengthen board director skill sets helps to ensure the board can deal with difficult issues in an effective manner.

A.8.1 Sufficient and Timely Information Should Be Provided to the Board

138. Councillor Filion supported City Council's motion to purchase the property at FMV. The complaint was launched by Councillor Filion because in his view, he did not receive sufficient timely information to confirm that the purchase was being made at FMV as directed by Council.
139. By way of background, on May 26, 2016, TPA requested the Board's permission to proceed with the transaction. Councillor Filion asked for the "*analysis that says that this property is valued at \$12 million*". On May 31, 2016, Councillor Filion sent a text message to the President asking to see a copy of the appraisals. The President replied:

"We will have the appraisal when we have final proposal is presented to the board. It is not usual that we provide board members with the actual appraisals."

140. At its July 28, 2016 Board meeting, TPA management again asked the board to approve the transaction conditional on the President being satisfied about the financial matters related to the transaction. Councillor Filion reminded staff that he had asked to review the appraisals in May. He emphasized that he was concerned about approving the transaction before reviewing the appraisals. To address his concern, the board added a motion to proceed with the transaction and that *"due diligence shall be reported to the Board as soon as possible"*. There was only one Board meeting, September 15th, 2016, before the deal was set to go firm on October 18, 2016.
141. On August 17, 2016 TPA ordered the land appraisal and on August 19, the APS was executed. The sign valuation was prepared by the VP on July 27, 2016. Although the NPV of the income stream for the license agreement had been prepared by the VP in time for the July 28, 2016 board meeting, it was not provided to the Board. The VP said it was not provided because *"it was a draft document that had not been approved by the sign consultant"*.
142. Councillor Filion was worried that the appraisals were not going to be received until a day or two before the September board meeting and that would not provide sufficient time to for him review the documents before the meeting. He contacted the VP. The VP changed the delivery date for the appraisal and valuation to around the 8th of September. That provided more time before the September 15th board meeting.

Councillor Filion then asked to review the VP's file on the transaction. He conveyed to the Auditor General that he was uneasy that he saw very little documentation in the file to support a \$12 million purchase price.
143. Councillor Filion discussed with the VP whether the matter could be reopened at the board if he had concerns about the appraisals. The VP recalls saying *"if the FMV reflected the purchase price, the deal would be firm, subject to successfully completing other due diligence matters (i.e. environmental, survey, etc.)."*
144. Councillor Filion said that the VP informed him that management's estimate was that the sign was \$4 million¹⁶. The VP clarified that she only said that the difference between the sign and the land value was \$4 million. Councillor Filion informed the Auditor General that he said to the VP if the sign comes in at \$4 million, "I'm calling the cops".

¹⁶ This was the same statement made by the VP to the Auditor General September 2, 2016.

145. Councillor Fillion did not call the police. He contacted the Auditor General. He said that he wasn't sure there was anything wrong, but the difficulty getting information was unusual and caused a great deal of concern. He felt he could not conduct proper due diligence to ensure that the property was being purchased as authorized by City Council. Further, management's sign estimate was very high and overall, the price just did not make sense to him.
146. Councillor Fillion later shared that he regretted saying that he would 'call the cops'. In the moment, it was a figure of speech. If he could take it back, he would. It was borne out of sheer frustration related to his inability to obtain sufficient information to fulfill his board responsibility to ensure the purchase was made at FMV, as authorized by Council. When he was informed that he could not reopen the matter, he came to the Auditor General to confirm that the transaction had proper support and there was nothing inappropriate occurring.
147. The level of frustration was also high for TPA and the Board. For example, TPA and the Board decided to schedule a 'special meeting' to review the appraisals, instead of bringing it to the regular board meeting. The Auditor General informed the President that he should verify with the City Clerk whether it was appropriate to schedule the meeting since it appeared that be contrary to legislation. As it turned out, the meeting did not comply with the rules and the special meeting was cancelled.
148. The President wrote the following to the Board Chair on September 12, 2016 at 11:02 pm:
- "Also we are required to report to the board as a whole. I am not sure that we should be dealing with board members individual requests. Furthermore, [the VP] has been very open and transparent with info and had provided this info as soon as it is available – for example he and other board member received appraisal report within of it being issued. He is being disingenuous as he already has complained to the auditor general. As you can sense I am frustrated but I am refraining from being reactionary."*
149. The Board Chair responded at 11:23 pm:
- "FACTS:*
- We were directed by council to purchase this proceeded, according to this directive.*
- We put together an OPS, with a future closing date, in order to give us time to do our due diligence.*

The information that we required to go firm has come in, and, now will be reviewed by you and your professional staff and, subsequently, our board. If and when we are all satisfied, we will then go firm. If not, we won't.

Filion could not wait, like the rest of the board did, to review the appraisal, etc., and imposed himself on the staff and the information. This, arguably, is not proper. He also, almost led us into a situation, where our Board entertained the scheduling of briefing meeting, which, if held, could have been deemed in contravention of by-laws.

His actions and demands have muddled the process and have demonstrated nothing but disrespect for our staff and for his fellow board members.

He is asking for information, ahead of our boarding meeting, which he has every opportunity to attend. His referral of the situation, to the AG, is nothing more than a desperate attempt to create another false problem with this process and to stifle the progress towards finalizing a deal which the overwhelming majority of the TPA board and Council, for that matter, wants the TPA to complete.

OPINION:

This board member's actions are clearly selective and extremely disrespectful to the process and to the staff entrusted with executing Council and TPA Board instructions.

I believe he should wait for the AG to report to the board and let the information stand, as is, for her review."

150. In our view, based on everything we have reviewed, seen and heard during our review of this matter, including the interactions at the Board meetings that the Auditor General attended, Councillor Filion was not being disingenuous by bringing the matter to the Auditor General. He was not trying to create a false problem with the process or to stifle the process. He was also not trying to lead the Board into a situation where the Board would schedule a meeting that would be deemed in contravention of legislation.
151. Councillor Filion was trying to obtain the information he needed to ensure the land was purchased at FMV, as authorized by City Council. According to Professor Richard Leblanc, an expert in corporate governance and accountability:

"A fundamental issue...is the quality and flow of information around the board table, because when directors don't have the knowledge or understanding they need, their ability to prepare well and apply independent judgement is constrained, often leaving them unwilling or unable to challenge or

contribute... While the (Board) chair may be held formally responsible for ensuring that the board is informed, the CEO ultimately controls the information flow, and his or her lead determines the level of openness of the executives."¹⁷

152. It is our view that more relevant and timely information should have been provided to the Board to support board members in completing their due diligence as part of their role to approve the transaction. TPA for example had obtained the Integris appraisal (74 pages) when the Board was asked to approve the transaction. While a current appraisal was being updated, the Integris appraisal could have been provided to the board.¹⁸ The NPV of the sign income stream had been prepared by the VP before the July board meeting showing a value of \$2.5 million. The spreadsheet could also have been provided to the Board. TPA management said that it did not intentionally withhold the information. It wanted to wait to provide the Board with final reports and better information once the due diligence was completed.

A.8.2 Importance of Disclosing All Relevant Information

153. Directors also have a responsibility to disclose all relevant information they have to the rest of the Board. Some board members had more information than other board members about the property. For example, some board members had knowledge about important matters relating to this transaction, including the extensive involvement of the lobbyist in this transaction, the early confirmation that TPA was going to build the flagpole and be reimbursed. Some attended site tours and meetings at the property. This information was also not disclosed.

A.8.3 Importance of Dissenting if a Board Member Disagrees

154. *"Directors of an organization have a fiduciary obligation to the organization, meaning that they owe a duty of good faith and heightened loyalty, which compels them to act in the best interests of the organization at all times."*¹⁹ Board members must genuinely participate in board discussions and express dissent if they don't agree. Equally, *"directors should not be a disruptive force and should*

¹⁷ Richard LeBlanc, *The Handbook of Board Governance: A Comprehensive Guide for Public, Private, and Not-For-Profit Board Members* (Hoboken: John Wiley and Sons, Inc., 2016), 221.

¹⁸ The land appraisal firm noted to the Auditor General in a letter dated September 21, 2016 that the *"main difference between the 2015 Integris draft report and the current appraisal is the effective date of the valuation, which required consideration of current market conditions and newer comparable sales evidence. The 2015 draft appraisal report was used in extensive negotiations with the landowner regarding the land value component only of the subject property. There was an understanding in our communications with [the VP] that if negotiations were to reveal any factual inconsistencies in the draft Integris report (i.e. regarding the subject property, comparables, etc.), then this could potentially affect our value conclusions in finalizing the document. The draft report was provided but never finalized"*.

¹⁹ Mark Ellis, *Fiduciary Duties in Canada* (Toronto: Carswell, 1990), loose-leaf updated 2011, p.15-4.1 %15-4.5, citing, inter alia, *Re Owen Sound Lumber Co* (1917, 33 DLR 487, *JLO Ranch Ltd v Logan*(1987), 54 Alta LR (2d) 130 (QB), as well as provincial and federal Business Corporations Acts.

*not interfere with or undermine lawful actions of the Board with which they disagree, if they are properly authorized."*²⁰

155. It is our view that in contacting the Auditor General, Councillor Filion acted in the interest of the Toronto Parking Authority and the City. Our opinion is that TPA would have paid approximately \$2.63 million beyond FMV, thereby exceeding what City Council had authorized.
156. One could argue that Councillor Filion could have or should have waited until after the appraisal and sign valuation were discussed at the September 15, 2016 board meeting before raising his concerns with the Auditor General. However, given that the deal was scheduled to close before the next board meeting, the matter was brought to the Auditor General's attention. Councillor Filion was not being disloyal to the board by asking the Auditor General to review the transaction at this juncture. Had the documentation been complete and supported the purchase at FMV, in conjunction with all other outstanding due diligence matters, the transaction would have closed.

A.8.4 Importance of Refreshing Board Procedures

157. The VP provided the Auditor General with the Toronto Parking Authority By-law No.1, passed in 1998 (by-law). It included guidance around what was expected of board members. The by-law was effective January 7, 1998.
158. The by-law should be reviewed to assess if any updates are required. If it had been used by the board, it may have been helpful in managing interactions. For example, in relation to:
 - the breakdown in communications, the by-law directs the board "*to treat other directors and any person appearing or speaking to the board with courtesy and respect*"
 - members asking staff for information, the by-law directs the board "*to not make direct demands on staff, members' queries or requests for staff services are to be placed directly through the President*"
 - being involved with persons lobbying for another interest or being involved in other boards in relation to the same transaction, the by-law directs the board to "*not let...interests of some third party conflict with those of the board*"
 - reopening items, the by-law directs that "*during a meeting, after any matter has been decided, any director may move to reopen the matter at the same meeting...after any matter has been decided, any director who voted with the*

²⁰ *Al Enterprises v Bram Enterprises Ltd*, 2014 SCC 12 at paras 98-104

majority may place an agenda motion for reconsideration at a subsequent meeting within the year..."

- having unscheduled in-camera meetings discussions, the by-law directs the board to ensure the members are informed of all matters that will be discussed *"not later than two business days prior to the day of the meeting...(including reports and communications)"*
- the in-camera information obtained by the lobbyist about TPA in-camera meetings, the by-law directs the board members *"to exercise judgement in confidentiality of matters conveyed to the board"*
- exhibiting proper behavior, the by-law directs the board to *"not ask a question that is ironical, rhetorical, contains innuendo, or satire...is vague..."*, and
- the President, the by-law directs the President to work *"in close cooperation with the board members...and develop member loyalty and confidence in the board and keep members informed as to progress"*

A.8.5 Other Skill Sets Supporting the Board

159. The President and VP acknowledge challenges relating to protocols, drafting of minutes and motions and other procedural matters. Having greater procedural support at the Board will help ensure effective functioning of the board in difficult times.

A.8.6 Current State

160. The President and VP informed the Auditor General that board dynamics have changed for the better. Without the proper skill set to deal with this issue, the Board and staff supporting the Board experienced a high degree of frustration and a lack of trust relating to this transaction. TPA agrees that the situation should not have escalated the way it did.
161. In relation to the recommendations made by the Auditor General for TPA to review TPA's by-law, to improve procedural support for the Board and to support the Board with training in relation to risks and responsibilities, the President said:
- "We agree with the recommendations. We endeavor to implement the Auditor Generals recommendations as best we can and training is being arranged. We believe with improved skill sets and support, future issues will be avoided. We will ensure that appraisals are completed prior to requesting final Board approval to proceed with a transaction".*
-

CONCLUSION

TPA's actions created unnecessary risk of overpaying an additional \$2.63 million. There was significant risk to the City and TPA's reputation because of the lack of independence, transparency and judgement expected of the Toronto Public Service. The lack of judgement in disclosing information to the lobbyist, not checking for conflicts of interest and not obtaining an independent sign valuation is concerning.

TPA is of the opinion that there was no risk of overpaying for the property because their due diligence period was not completed until October 18, 2016 and that they would have sought a sign valuation from an independent business valuator. We disagree.

TPA agrees with the Auditor General that more formalized agreements with consultants, prompt information flow, fulsome and timely communication with the Board and the awareness of real or perceived conflicts are all areas for improvement.

CHRONOLOGY OF EVENTS²¹

1. This complaint relates to a piece of land that was identified by a lobbyist to the Emery Village Business Improvement Area (EVBIA) as a possible site for a flagpole and public square to support the EVBIA. Councillor Mammoliti is a member of the EVBIA and the TPA Boards.
2. The lobbyist was under contract with the EVBIA for six months in 2008 to:
"...seek out parties interested in funding the flagpole project, finding a location, creating a program for businesses and residents in the community, taking the BIA into an RFI process (for the flagpole project²²) and then an RFP process, and reporting back to the BIA..."
3. The contract was extended by the EVBIA to be month to month after the initial period ended. The lobbyist has been on retainer to secure the site and funding to build the flagpole. Since 2008, the lobbyist invoices that reference the gateway/flagpole/Arrow Road project total over \$1 million.
4. At the EVBIA meeting, Councillor Mammoliti refrained from voting to hire the lobbyist in 2008. He declared a conflict of interest having worked with the lobbyist when he and the lobbyist were Councillors.
5. The flagpole was estimated to cost several million dollars to build, possibly up to \$5 million. The flagpole project was discussed at Council in 2010.

On August 11, 2014 the lobbyist met with the President to discuss options for parking at the Arrow Road and Finch Avenue site.
6. June 24, 2015 Councillor Mammoliti's office emailed the President's executive assistant requesting a meeting onsite to view the property at Arrow Road and Finch Avenue.
7. June 29 – July 2, 2015 Councillor Mammoliti, the President and VP, the TPA Board Chair attended the International Parking Institute Conference in Las Vegas. While at the conference, Councillor Mammoliti requested two meetings:
 - an onsite with the VP so that the VP could "get a feel for the location and prepare numbers" and
 - an onsite with Councillor Mammoliti, the TPA President, VP, TPA Board Chair and TPA Board Vice Chair. This meeting took place July 27, 2015.

²¹ The Chronology of events presents a synopsis of some information collected to provide an overview of events because this is a complex matter. This Chronology does not include all information and some information is repeated in the findings.

²² The flagpole project is also known as the gateway project.

8. The VP was made aware of the property from Councillor Mammoliti and also said that the Vice Chair of the TPA Board also mentioned the property. The Vice Chair noted that the LRT was moving forward and Metrolinx will soon be looking at properties and therefore TPA should start to look for opportunities along this corridor.
9. August 6, 2015 VP emailed the President, Vice Chair of the Board and Councillor Mammoliti to ask who owned 1111 Arrow Road. The VP informed the Vice Chair that TPA will be meeting with the vendor over the next week or so. The meeting with the vendor took place on August 12, 2015.
10. August 17, 2015 TPA engaged a real estate firm called Integrus Real Estate Counsellors (Integrus) to prepare a draft appraisal *"in order to provide guidance regarding the market value of the subject property as at a current effective date"* and that was *"defensible and able to be used for expropriation if needed"*. The VP was a former partner with Integrus.
11. September 10, 2015 the draft appraisal prepared by Integrus valued the land at \$7.5 million with an effective date of August 1, 2015.
12. The November 2, 2015 lobbyist invoice shows that the lobbyist billed the EVBIA \$12,995 for the month of October 2015 for *"Discussions with the TPA"*²³.
13. On November 13, 2015, Councillor Mammoliti toured the site with Mayor John Tory. The Board Chair attended on behalf of the TPA Board. We are unsure of who else was in attendance at this site tour.
14. Late fall of 2015 – the property purchase price was negotiated. TPA management noted that this price was predicated on the vendor being the developer of the gateway / flagpole project.

According to President, the lobbyist was TPA's connection to the vendor. Originally, the lobbyist acted as sort of a middleman. The President said that at some point, likely when the development agreement was removed from the deal, TPA started dealing directly with the vendor because the lobbyist *"was not a real estate guy. His goal (was to get the deal done) for the BIA. Things got lost in the messaging and we wanted to meet with the vendor directly"*.

15. In an interview with the Auditor General, the lobbyist said that:

"(the landowner) had an appraisal I think it was for \$17 million...; he gave him the number based on that..."

²³ In addition to the items noted in the lobbyist billings points, in general, the lobbyist billed each month for *"Internal meetings and conference calls"*, *"Meetings/calls with the client"* and *"Discussion with political staff"*. This is one of added items on the invoice.

TPA had an appraisal that was lower (around \$7 to 8 million...)

... the 'mean price' is probably around \$12 million which may be how they arrived at that..."

16. The Auditor General obtained a copy of the VP's early project notes describing how she arrived at the price. The notes say that two appraisals were completed. *"The medium of the two appraisals is approximately \$12 million."*

17. January 12, 2016 the draft purchase agreement for the property showing a purchase price of \$12 million was forwarded from TPA to the vendor.

18. The President said:

"The vendor said that (the final price) was \$12 million. He wouldn't budge. So we had to see if it was worth \$12 million"

"...\$12 million was as low a number (that) we thought we could get the vendor to sign...We thought that it could be market value....We knew it was his bottom line..."

The VP said that they arrived at the price while negotiating:

"the vendor came back with an extremely high price. We went back to him and... at that time we thought a deal was doable at \$12 million."

"(It was)... a value, quite frankly, that the vendor was willing to negotiate with"

"We have tried to with respect to vendor to allocate every dollar possible to the vendor so that they will accept our offer."

19. VP of TPA said that she learned of the negotiated purchase price from the lobbyist. In an interview with the Auditor General, the lobbyist confirmed that TPA purchasing the land and moving forward on the gateway project to construct the flagpole would help him to meet the objectives of his contract. He said he was also involved to help ensure that the costs to help build the gateway would not be so high that the BIA could not repay the costs through Section 37 monies. The lobbyist estimated that the flagpole construction costs would be between \$4-5 million.
20. TPA's VP said that the lobbyist wasn't involved in negotiating the transaction but *"he would see the document"*.

21. Around January 2016, Jeffrey Climans, Director, Major Capital Infrastructure Coordination Office, was working on the Public Realm Strategy. Metrolinx had invited the City to propose a list of projects to improve the streetscape and public realm along Finch Avenue West.

Climans noted that when "seeking input on the list of projects, several ideas were presented that did not meet the eligibility criteria set by Metrolinx. Councillors and City staff felt that it would, nevertheless, be useful to disclose the range of complementary investments that could be made by the City, TPA, and business improvement areas to supplement investments that would be made by Metrolinx".

In that context, acquisition of the subject property at Finch Avenue West and Arrow Road was raised by Councillor Mammoliti according to Jeffery Climans. According to Climans, the Councillor expressed an interest in aligning complementary initiatives that would support introduction of the LRT by improving the streetscape and public realm on Finch Avenue West. TPA staff confirmed to Climans that "... a price was already on the table" in relation to the property.

Climans further noted that "... Recommendation Number 5 [March 31, 2016 City Council adopted a report entitled "Allocation of the Public Realm Amount – Finch West LRT"] was drafted in consultation with, and subject to the approval of the TPA and the City's legal counsel".

22. February 1, 2016 the lobbyist billed the EVBIA for services rendered in January 2016 in the amount of \$12,995 that included "*Executive Committee report PRA – lobby effort for executive committee report*".
23. February 12, 2016 the VP provides the vendor and the lobbyist with the revised draft of the purchase agreement and a first draft of the development agreement.
24. March 1, 2016 lobbyist bills the EVBIA for services rendered in February 2016 in the amount of \$12,995 for "*Lobby effort for Executive Committee report (released March 9)*" and "*Ongoing discussion with Mayor's staff and Councillor's Office*".
25. March 31, 2016 City Council adopted a report entitled "*Allocation of the Public Realm Amount – Finch West LRT*" including the following:

"Recommendation 5.

City Council authorize and direct the Toronto Parking Authority, in support of the Public Realm Amount strategy set out in this report, to acquire a property located at the southeast corner of Finch Avenue West and Arrow Road (near Highway 400) for municipal parking and ancillary uses including proposed Bike Share Toronto infrastructure, and to permit construction of a possible

gateway feature for the Emery Village Business Improvement Area. Acquisition will be on terms and conditions to be negotiated by the President, Toronto Parking Authority, at fair market value plus associated costs such as land transfer tax, title insurance and other fees, and approved by the Toronto Parking Authority Board. The City Solicitor is authorized to complete the purchase transaction, deliver any notices, pay any expenses and amend the closing and other dates, on such terms and conditions as the City Solicitor may determine."

The recommendation passed by Council shows that the land is expected to be used for *"municipal parking and other ancillary uses, including proposed Bike Share Toronto infrastructure, and to permit construction of a possible gateway feature for the Emery Village Business Improvement Area."*

26. April 1, 2016, the lobbyist bills the EVBIA \$12,995 for services rendered in March 2016, including *'Prep TPA for media questions'* and *'Meet with Councillor to review strategy'*.

When we asked what *'prepping TPA'* meant, the lobbyist responded:

"I had [the President and VP] asking me...how would you position this to the Board? So I let them know how I would position it and billed for it."

According to the President, this could have been related to the development agreement since the vendor wanted it as a part of the deal initially.

27. April 15, 2016 the lobbyist's report to the EVBIA Board noted that TPA committed funding for the *"Public Square and Gateway Feature"* in the amount of \$5 million. At this time, it did not appear that the proposed purchase agreement had been brought to the TPA Board for approval.

According to TPA management, this was perhaps discussed, but that TPA would not provide funding unless they were 'backstopped by funds' from the EVBIA or Section 37 funds. TPA would have required guarantee of repayment.

28. May 2, 2016 the lobbyist billed EVBIA \$12,995 for *'ongoing discussions'* with the vendor and TPA in April.
29. May 9, 2016 latest draft of the agreement to purchase the property was forwarded to the lobbyist by the VP.
30. The legal firm received instructions from TPA in December 2015. Draft purchase agreements were being exchanged in January. As of May 2016, approximately \$10,000 had already been spent in legal fees.

31. May 22, 2016 VP drafts a Board report requesting approval to enter into an agreement of purchase and sale for the property at a price of \$12 million, subject to satisfactory review of the terms by the President. The Board report also asked for approval for TPA to retain a legal firm to negotiate the agreement.
32. May 25, 2016 1:21 pm the Board Supplementary Agenda was issued with the Board Memo regarding the Acquisition Opportunity at 1111 Arrow Road.
33. May 26, 2016 TPA board meeting took place.

Councillor Filion sought the analysis to support the purchase price of \$12 million.

VP said that the *"\$12 million is based on area comparables/land values (based on industrial land value)."*

34. May 31, 2016 Councillor Filion sent a text message to the President requesting a copy of the property appraisal.

The President responded *"We will have the appraisal when (the) final proposal is presented to the board. It is not usual that we provide board members with the actual appraisals. Do you want me to speak with (the TPA Board Chair) ...?"*

Councillor Filion responded *"You can speak to him. If he disagrees I can raise it at the next board meeting. I'm not expecting to find anything unusual but want to do due diligence."*

35. June 1, 2016 the lobbyist billed \$12,995 to the EVBIA for services rendered in May 2016 for 'ongoing discussions' with the vendor and TPA.
36. June 16, 2016 the lobbyist provided a formal report to the EVBIA board meeting. Councillor Mammoliti attended and seconded the adoption that the lobbyist continue its negotiations with TPA.

The lobbyist reported on matters discussed at TPA's May 26, 2016 ***in-camera*** board meeting:

"At its meeting Thursday, May 25 [should be 26], 2016 the TPA board authorized staff to present an offer for the purchase of land owned by (the Vendor) at 1111 Arrow Road.

[The lobbyist] has been actively engaged over these past many months in facilitating partnership discussions between TPA and [the vendor]....

...while these discussions have been difficult, the results are extremely positive.

TPA has presented an offer to purchase the land on Arrow Road at a price acceptable to [the vendor]. We anticipate that the purchase will be finalized as early as July or no later than September, 2016."

37. The lobbyist's report also referred to TPA paying for the gateway feature. The report said:

"The funds expended by the TPA for the gateway feature are to be recouped from fundraising initiatives by the Emery BIA and/or NPO including, but not limited to:

- Private fundraising*
- Section 37 and 42 funds from developments within the Emery BIA boundary*
- Government and services in kind*

The TPA has requested a report outlining how the Emery BIA will meet these commitments".

A Motion was adopted for the lobbyist to *"continue negotiations with TPA".*

The Motion was Seconded by Councillor Mammoliti.

38. The President was asked who made the suggestion to fund the flagpole from TPA monies. The President confirmed that through his conversations with the lobbyist, the request for the funding came from the lobbyist. The President also said that Councillor Mammoliti suggested using Section 37 monies as one way to help repay the funding.

The lobbyist stated that in his conversation with the President, it may have been discussed that *"...with the development agreement gone it will have to go to RFP and there may be costs..."*

The discussion regarding spending funds to build the gateway feature / flagpole and having the EVBIA repay the monies through Section 37 funding did not come before the TPA Board until July 28, 2016. Board members did not receive their information packages until late the day before. At the July board meeting, the Board was asked to approve pre-development funding for consultants to investigate the viability of the project to be expended by the TPA for the gateway feature, including:

"Provide initial funding up to \$100,000 in consultant costs...and any other related services to support the development of the Gateway Feature for the

Emery Village BIA. These funds will be reimbursed by the Emery Village BIA from existing funds, future Section 37 charges, sponsorship, grants and other sources".

39. July 4, 2016, the lobbyist billed the EVBIA \$12,995 for services rendered in June 2016 including "*ongoing discussions*" with the vendor and TPA.
40. July 13, 2016 (approximately) the VP met with TPA's sign consultant. According to the President, the sign consultant acts as a property manager for signs on behalf of TPA. The sign consultant collects fees from clients who have signs on TPA's lands. The sign consultant is paid for this work. The sign consultant's contract expired in 2009. TPA explained that the consultant has continued to collect fees on a "month to month" basis since then.

The sign consultant's former clients include the EVBIA and the vendor. The sign consultant entered into a contract with the EVBIA in 2008 to assist the EVBIA with its strategy to manage signs.

The sign consultant represented the vendor in June 2009 before Etobicoke York Community Council when the vendor wished to place a sign on 1111 Arrow Road. The sign consultant, in essence, set up the sign for the vendor, represented the vendor in obtaining a variance, and now, several years later, was being asked to value the sign by TPA to support the vendor's price.

The lobbyist and the sign consultant have had a long-standing relationship.

The sign consultant is also the lobbyist's client. The lobbyist registry shows that there have been over 200 interactions with government officials by the lobbyist or his staff on behalf of the sign consultant since 2011.

41. According to TPA, the sign consultant was asked to determine whether the sign valuation (estimated to be at around \$4 million) supported the negotiated purchase price of \$12 million. At that time, there was a land appraisal of about \$7.5 million.
42. TPA said they knew that the sign consultant was not an independent Chartered Business Valuator. He is also not a real estate appraiser.
43. TPA did not pay the sign consultant for his work. They did not put in place an engagement letter nor a contract. The sign consultant said that he completed the work as a 'service'.
44. Mid July 2016, the sign consultant had a discussion with the VP. According to the sign consultant, the purpose of the meeting was to find opportunities to maximize potential value for property owners by adding signs to their property.

45. At the meeting, it was decided to value the possibility of a second sign that does not currently exist. When asked "what was the driver to go to two signs when there was only one sign on the property?" The sign consultant said:

"...that was coming from [the VP]; they were looking at possibilities of different revenue sources and she asked me would there be a possibility to do a 2nd sign on property; that stimulated the discussion on this, such as what's going on at the province, what's going on with signage policy...."

That was probably the start of the discussion with them trying to understand how much value they could get out of the land whether a second sign could be installed and what value it would have."

46. The VP and President agreed with the sign consultant's statement because the current sign revenue did not support the purchase price, so TPA wanted to know what the possibility was to increase the value of the sign component. The sign consultant went on to say:

"My job is always how can I help my client to maximize value; [and create] new value for property owners."

"They (the President and VP) wanted to understand what the maximum value you could get from signage on the property; so I provided that..."

There are a whole bunch of assumptions that were made; 'what ifs' ...I didn't go to the market to test that; it's assumptions. I felt comfortable that there's a possibility (but) there's a lot of factors weigh in...

It's really up to the client to take that info and go 'how likely is that' and 'how much of that value is real' and to assess the risk of that; that's their job to assess that risk associated with it; I wasn't asked to do that; I just gave a range of values...

They definitely shared with me there was an appraised value for land (around \$8 million) and there's going to be some value assigned to the sign and there was a difference or delta between whatever the purchase price was and what the value of land is."

47. TPA President said:

"We were asking....what was the possibility of having a second face on the current sign and or a new sign closer to highway 400? Getting a second face was difficult"

48. The VP said:

"...it was [the sign consultant's] idea all along (to have a second sign)...[the sign consultant] thought there was a high degree of probability that he would get a second sign..."

In our view, at that time...the sign consultant had a lot of strength behind his assertion of the likelihood of having a second sign."

49. Meeting notes between the VP and the sign consultant show the probability discussed was 25 per cent of being able to obtain a permit for a second sign. The VP agreed to prepare a NPV cash flow for the possible second sign, discounting the cash flow by 75 per cent to allow for the uncertainty of not being able to permit the sign because the current law prohibits signs to face highway 400. The total valuation of the current sign and the possibility of a second possible sign brought the estimated value up to approximately \$4.3 million.

50. July 27, 2016 the VP prepared a spreadsheet reflecting what was discussed in the mid-July meeting for the sign consultant.

- The valuation of income streams for the existing digital sign was \$2,549,478.
- The value for the separate possible new sign was \$1,800,000.
- The total valuation of the current and the new, second possible sign was \$4,349,478.

The spreadsheet was prepared and submitted by the VP to the sign consultant on August 17, 2016. When we asked the VP why she prepared calculation, she conveyed that the sign consultant came up with the assumptions. She became involved because *"he's a small shop. He has difficulty doing numbers. He's a sign consultant. It's not like he's an appraiser."* The sign consultant confirmed that once the specific business assumptions had been identified, it is a straight-forward mathematical process, so the VP completed the spreadsheets.

51. July 27, 2016 the Board Memo was drafted for the TPA board meeting the following day. Two notable changes were made to prior recommendations to the TPA Board:

- a. The purchase price was increased from \$12 million to \$12.1 million. The VP said this was done in good faith when TPA decided to remove all references in the APS to a development agreement with the vendor to build the Gateway features, including the flagpole.
- b. Recommendation 3 was added to ask the Board of Directors to approve *"initial funding of up to \$100,000 in consultant costs...to support the development of the Gateway Feature for the Emery Village BIA. These*

funds will be reimbursed by the Emery Village BIA from existing funds, future Section 37 charges, sponsorship, grants and other sources."

The President confirmed that the lobbyist and Councillor Mammoliti suggested EVBIA would reimburse the TPA.

The information from the June 16, 2016 lobbyist's report reflects this discussion.

52. The President and VP were asked why the TPA included this recommendation before the land was even purchased.

TPA's VP shared that:

"...the timing requirement (for the gateway feature) ...was to try and have some of the development in place for Canada's [150th] Birthday.

"TPA recognized that in order to meet the timing for the development that due diligence would need to start before the next scheduled board meeting in September. The \$100,000 in funding was required to cover due diligence costs for the preliminary consulting work. All consulting costs related to the gateway feature would be reimbursed by the Emery Village BIA, although it was recognized by the TPA Board that TPA may be required to front-end some of these costs."

53. The July 27, 2016 Board report informed the Board that:

"The current value for the Property is comprised of both land value and signage value. We have engaged an accredited real estate appraiser to value the lands and have contacted TPA's sign outdoor sign consultant to value the sign, such that we can validate the Purchase Price."

54. July 27, 2016 via email, the President requested guidance from the Chair and Vice Chair on the draft wording of a recommendation in the Board report. The question was whether the recommendation should be to purchase the property at a set purchase price or to provide a value range. The Vice Chair asked whether Councillor Mammoliti was "on side". The President said that he "spoke to appraiser" and that "\$12.1 is the top of our range".

55. July 27, 2016 4:25 pm the supplementary in-camera agenda was issued to TPA Board members and included the addition of 1111 Arrow Road with a Board report for the meeting the following day. The President later said that:

"...it wasn't intended to be last minute (but) because we have lots of reports... we're short staffed; this is a report that needs a lot of attention...Also, July was the last board meeting - there is no August board meeting so things were rushed.

Further we were still trying to get a signed deal so we were waiting to see if we could get a signed deal. It was not intentional to prevent the Board members from having sufficient time to review the matter."

"...with no Board Meeting in August we wanted to move ahead and meet the timelines and get the Gateway Project underway with the 2017 Anniversary (Canada's Birthday)."

56. July 28, 2016 the TPA board meeting took place. The Board Memo prepared by staff requested approval for a \$12.1 million purchase price and "*initial funding of \$100,000 in consultant costs for work, including design, engineering, environmental, testing, planning, architectural, and any other related services to support the development of the Gateway Feature for the Emery Village BIA*". Between May 2016 and this new report, the Gateway Development Agreement was removed from the draft Agreement of Purchase and Sale, which means that the vendor would not be developing the property.
57. The Board Meeting minutes contained a discussion regarding how the \$100,000 initial funding would be recovered for the gateway feature. According to the President, "*TPA needed to figure out how the funding would be recovered. Nothing beyond the \$100,000 was committed.*" Board members also had questions.

A Board Member asked:

"... can we share this with another organization? Can we save a few dollars on the \$100,000 consultant costs? Can another organization share this with us...(Is) most of this recoverable?"

The VP responded:

"We have tried to with respect to vendor to allocate every dollar possible to the vendor so that they will accept our offer. If any monies are available I would like it to go to the purchase price.

"Yes (the amount is recoverable) through funds or in the long run there is going to be... demand" with the LRT going through.

58. There is no indication that the Board was informed that it was expected that TPA would be funding the entire cost of the flagpole, estimated to be approximately \$5 million, as reported to the EVBIA by the lobbyist in its report dated April 15, 2016. There was no agreement in place to recover the money and the Economic Development & Culture Division who is responsible for the BIAs was not aware of this transaction. Also, the *Toronto Municipal Code* precludes BIAs from

borrowing funds. TPA has, in the past, advanced funds on behalf of a BIA once agreements have been signed detailing the repayment of the funds.

The President said they would have ensured everything was in place before proceeding but that no discussions had occurred to date.

59. At the July 28, 2016 TPA board meeting, a discussion ensued regarding Councillor Filion's request to see the property appraisal.

"Councillor Filion – this was the property that I asked to see the appraisal on. President – We don't have it yet. Only the verbal.

Councillor Filion – I would like to see the appraisal for this before approving. Staff were aware that I wanted to see the appraisal, but I never saw it and I never got any calls that this item was going to be on the agenda and you never called me to see the appraisal.

VP – I have a verbal number (appraisal). They are comfortable at \$1.7 million/acre. (Total value \$7.9M). Since last September there has been significant increase in residential land, but not in employment land. The number could be challenged.

Councillor Filion – I was very clear that I wished to review an appraisal. I have questions about land use, etc. that would have been factored into the appraisal. Not pleased about this.

Vice Chair - There could have been a draft provided to you but it was possible that it would have been out of date. The vendor ambushed the agreement and tried to change the number/deal so the appraisal needs to be updated.

President - We are in July and there are no meetings in August so we are going to get appraisal on August 15th.

Councillor Filion – I am not challenging anyone's professionalism. President - if there is something that you feel that the appraisal has missed, we do have a due diligence period of 60 days which we can address anything.

Board Member – We could amend the rec that there is an understanding that when the appraisal comes in that it be brought to you for your attention.

Councillor Filion - What if I said that the potential land use is incorrect...then I don't have anywhere to bring this (no board meeting). I would have no voice with the Board.

Board Member - *sure you would.*

Councillor Mammoliti – *my concern is that it would be process. Any documents released should stay with the board itself. Giving them out is unprecedented. Should be given to board in the entirety.*

President - *what do you suggest? I get the appraisal, [Councillor Filion] wants to review it. Whoever wants to come they can review it – maybe at a real estate meeting?*

Board Member – *Would this deal come back to the board?*

President - *No. it gives us the ability if we are satisfied, to go ahead and do the deal. We can report on the due diligence in September as there is the environmental and the appraisal."*

As a result of this discussion, a motion was made to amend one of the recommendations in the Board memo to include *"...and that the due diligence shall be reported to the Board as soon as possible"*.

TPA scheduled a meeting outside the regular board meeting to review the appraisal.

60. The President later said to Councillor Filion that the reason the appraisal has not been obtained ahead of time is because:

"We don't want to waste money [Councillor Filion] if the Board didn't approve it. Since the Board approved it we requested the Appraisal."

61. The President said that between May and July 2016, the deal changed and they didn't pursue an appraisal until they knew they had a deal.

Appraisals cost between \$6,000 - \$7,500.

62. July 28, 2016 a meeting notice was received by the VP to meet with the lobbyist. The VP advises that she did not meet with the lobbyist.
63. August 1, 2016 the lobbyist submitted a bill to the EVBIA for \$12,995 for 'ongoing discussions' in July with the vendor and TPA.
64. August 15, 2016 the purchase price increased from \$12.1 million to \$12.18 million. According to the VP, *"The final change in purchase price from \$12.1 million to \$12.18 million was negotiated to reflect the unamortized prepaid rent for the sign (\$270,000 for 5 remaining years or \$135,000). TPA wanted an adjustment at closing to transfer the unamortized prepaid rent to the purchaser which is currently held by [the vendor]. [The vendor] advised that he had already spent the prepaid rent and that he wanted to be compensated for the after-tax*

value (or approximately \$80,000)...Accordingly, the purchase price increased by \$80,000 to reflect this".

This exceed price authorized by the Board. TPA did not realize they did not have the authority to add \$80,000 until the Auditor General raised this issue.

65. August 17, 2016 the land appraiser, Altus Group Limited (Altus), was engaged. Via email, Altus confirmed the terms of the engagement. Altus was to appraise the land:

"...as a vacant and unencumbered parcel of land."

The engagement email also included the following clause written by Altus:

"It is my understanding that (the sign consultant) will be preparing a supplemental valuation report for the signage component, including the existing and proposed signage..."

66. August 17, 2016 4:51 pm the VP emailed the sign consultant the spreadsheet she prepared showing the income expected from the current sign and the proposed sign for the property. This spreadsheet was prepared July 27, 2016. The email simply said *"Here it is"*.
67. August 18, 2016 8:52 am the sign consultant returned the same spreadsheet back to the VP with the following message:

"... further to your request, I am attaching my preliminary valuation..."

The sign consultant confirmed that the VP created specific business assumptions and the spreadsheet. He reviewed and was comfortable with the result. He said, *"clearly we are sharing information on the calculation and I'm verifying assumptions."*

The VP said that she prepared the spreadsheets for the sign consultant because *"he was not an appraiser"* and *"he is not a numbers guy"*.

The VP confirmed there is no material difference between her spreadsheet and the spreadsheet returned to her by the sign consultant.

68. August 18, 2016, it appears that the Mayor's Office was lobbied on behalf of the EVBIA to promote the creation of a flagpole.
69. August 19, 2016 Agreement to purchase the land was signed for \$12.18 million. When later asked by Councillor Filion why the deal was signed without the appraisal, the TPA President said:

"We can always walk away from the deal".

The VP added that *"...this is a conditional deal – it is not just the purchase price – it includes environmental and other things..."*

VP said *"we have a lot of deals going on so it would not be fiscally responsible to get an appraisal before an agreement ..."*

The VP had noted in an email to Councillor Filion that the TPA never requests an appraisal *"...until after the Board approves the purchase as we would not want to spend money if the business terms of the sale are not approved. This is all part of our due diligence..."*

TPA President said *"we don't get the appraisal beforehand because we don't have the luxury of time so we tie the property up..."*

70. August 29, 2016 email from TPA to the lobbyist for the EVBIA to bring any "project related design, contract information, geotechnical work (documents) engineering documents and other related project information to the meeting". A meeting was scheduled to take place on August 31, 2016 with the lobbyist and the EVBIA.
71. August 29, 2016 5:48 pm the VP prepares a revised sign valuation for the sign consultant, incorporating a lump sum that will be repaid over the next five years.

"As a follow up to our discussion this afternoon, please find attached the revised valuation for the sign revenue at Arrow Rd that incorporates prepaid rent of \$135,000 to be amortized over the next 5 years." (includes attachment of the NPV calculation)

72. August 31, 2016 TPA staff including the President and VP met with the lobbyist and the EVBIA. The Auditor General asked what the meeting was about. The VP said *"we were trying to do our due diligence (around the building of the flagpole) ahead of time...that's why we requested it (a meeting)".*

According to the President *"we thought we'd get all the information (to commence the due diligence on the flagpole project)... They told us to wait until the Purchase Agreement was signed... The BIA didn't want to be liable to hand everything over carte blanche so they did not provide anything to us at that meeting".*

The lobbyist confirmed that TPA had asked for all the information, but until the purchase agreement was confirmed, they did not want to provide the drawings for the flagpole because the drawings were proprietary, and they didn't want them disclosed until the deal was firm.

73. September 1, 2016 the lobbyist billed the EVBIA \$12,995 for the month of August including *"Liaise w/ TPA and [the Vendor] re sale of Arrow Rd land"*.
74. September 1, 2016 the VP makes some changes to the sign consultant's valuation then replied to the sign consultant.

"Thanks for this letter. I've made some small changes to the letter and modified the back up schedule somewhat. No numbers have changed."

"Can you please make these changes and resend to me?"

75. September 1, 2016 – 12:30-2:00 pm the VP met with Councillor Filion to review procedures and he was provided with information. The VP tried to describe a conditional real estate transaction and the work to be completed before going firm on the transaction. The Councillor asked if all the due diligence worked out and the President was satisfied, would the transaction be approved. The VP said, based on the July 28, 2016 board meeting, it would be, but there were a lot of matters that needed to be reviewed before that happened. He asked to see the file and he reviewed it, but didn't take it.
76. September 1, 2016, Councillor Filion made his complaint to the Auditor General. His main complaint was that he could not get the information to enable him to properly conduct his due diligence as a Board Member. He said:

"Apparently the purchase is ... subject to the approval of the board. I'm on the board. I can't get the information to do my due diligence."

He said the VP informed him that the sign was valued at \$4 million. He further stated:

"The big question is if there's a \$4 million valuation (on the sign), how do you get \$127,000 lease to turn into \$4 million?"

If the sign is valued at \$4 million, he told the VP *"I'm calling the cops"*.

The VP said, *"I wasn't (representing) to the Councillor that the sign value was \$4 million...[the VP] used a number of \$8 million because of the previous Integris appraisal...To get to \$12 million [purchase price], the difference is \$4 million"*. The VP also advised Councillor Filion that if the sign value was \$4 million, then the President had the authorization to proceed with the transaction if all other conditions under the transaction had been met since the condition that the transaction was at FMV was satisfied.

77. September 2, 2016 at 11:30 am the Auditor General met with the President of TPA and the VP. The VP called in to the meeting because she was on vacation.

The VP conveyed:

- She thought the estimate of \$12 million was a reasonable price. She had Integris (now Altus) helping her to determine an informal price in September 2015.
- She did not have supporting documents regarding how she arrived at \$12 million, although she was asked several times by the Auditor General. The Auditor General also asked for negotiation sheets and all documentation supporting the purchase price. The VP said that she *'did it on the back of an envelope'*. When asked for the envelope, she said that she did not keep the envelope. *"Roughly...the property is worth about \$2 million per acre plus some premium for the LRT."*
- She informed the Auditor General that the appraisal was being conducted by Altus and was due around September 8, 2016.

TPA's VP informed the Auditor General September 2, that TPA's management estimate for the sign was approximately \$4.5 million.

The VP and President were asked for all emails and documents related to the transaction. The Auditor General then said that one of her staff would follow-up making the formal request for documents via email.

Although all documents related to the transaction were asked for, at this time, the President and VP did not inform the Auditor General that she received the 2015 Integris appraisal or the July 27, 2016 sign valuation that the VP had prepared.

78. September 2, 2016 at 1:13 pm the sign consultant forwarded the sign valuation saying ***"here is the final version"***.

The spreadsheet attached to the sign valuation was the spreadsheet that had been previously prepared by the VP. The sign was valued at \$2.6 million plus \$1.8 million for a potential sign that may or may not be possible to place on the land.

79. The Auditor General confirmed by email with the City's sign unit that TPA:

"...would not be able to get a permit for a third party sign in the current location facing north and south along Highway 400...due to Ministry of Transportation requirements for signs next to 400 series highways."

Despite some attempts from the third party sign industry to have this policy changed, there has been no indication of any change from MTO; in fact, we have very recently coordinated with them to take down most of the (illegal) third party signs visible from Highway 401 and Highway 400. We expect to have most of the signs (approx. 40) along these highways removed in the coming months.

In addition, the sign at 1111 Arrow would not be able to get a variance from the sign bylaw as the property is designated as 'Institutional' under the sign bylaw; this is due to the fact that there is a large Place of Worship on the property. Third party signs are not permitted in Institutional sign districts. Any new sign (or substantial modification to the current sign) would require a site-specific amendment to the sign bylaw, which would be debated by Planning and Growth Management and then have to be approved (or not) by City Council.

Due to the designation of the property, its proximity to the highway and the size of the sign, it is highly unlikely that staff would be able to support any such application - we didn't support the original one!...Also, a sign at this location is simply contrary to the objectives of the sign bylaw which does not permit third party signs in institutional sign district or so close to the highway...

...Even if council did approve a site specific amendment to the sign by law to permit a new sign, they would still need an MTO permit before we could issue them either a sign permit or a building permit for a new sign structure...it is unlikely that they would get such a permit unless the sign face was not visible from the highway."

The Ministry of Transportation confirmed:

"We are doing public consultation under environmental bill of rights about corridor signing policies; what people think of the policy and how we enforce it and what improvements they would want to see...We are in initial stages of reviewing the policy but to say digital signs may be allowed may be a stretch..."

The Auditor General asked: *"What is the potential for allowing 3rd party signs?"*

The Ministry confirmed *"Very premature"*.

The Auditor General asked *"Could there have been 'rumblings' of a change in the sign policy?"*

The Ministry confirmed *"The only rumblings would have been that the Ministry initiating a consultation to look at policy and enforcement, not digital signs"*.

80. September 2, 2016 at 3:28 pm TPA President accepted a meeting invite. Subject: [TPA President] / [Lobbyist]. The meeting was scheduled to take place on September 6, 2016 at 2:30 pm.
81. September 2, 2016 at 4:51 pm Auditor General's staff formally followed up with TPA by email on the meeting earlier that day to request records.

"Just a quick follow-up, could you please make sure to send us all the correspondence and documents related to this transaction, including engagement letter with the appraisers, email exchanges regarding valuation/appraisal, etc."

82. September 3, 2016 (Saturday) at 1:52 pm the sign consultant changed the valuation approach from valuing the income of current sign and a potential second, non-existent sign to valuing based on a 'multiple approach'²⁴. The sign consultant's email message to the VP read:

"A new draft based on a typical industry valuation...need to add NPV calc on ongoing licence free stream. Please share and let me know if we are on track. If so, I will finalize on Monday."

The appraisal was dated September 4, 2016.

When the Auditor General asked the sign consultant why he changed his valuation approach from the NPV of the income stream to a multiples approach, he said:

"We did the original valuation and the possibility of a second sign...We...decided that it wasn't realistic...I was uncomfortable with it and moved to just assessing the sign that was there."

"[The VP] who is an appraiser ... then she asked me, is there another approach we can use?"

"...so very quickly and roughly (the multiple approach was calculated and estimated the value to be)...probably \$4 plus million ... then she said, let's try to use that approach and see where we land...so I did that."

²⁴ The valuation methodology, as explained in the sign consultant's report, states:

"The outdoor advertising industry typically values its assets based on a multiple of cash flow. The value would be what an outdoor company would expect to sell that asset or group of assets if it were selling its business...The multiple used is based on a number of factors, including type/size of asset, desirability of market/geography, and length of term. A property owner can realize the value of an outdoor advertising asset in the same way an outdoor company does. [The sign consultant] has successfully implemented what we call a "lump sum" model. Like the "Cash Flow Multiple" described above, the property owner charges an upfront lump sum to the billboard operator based on a multiple of cash flow...In addition to the Lump Sum payment, the property owner would receive an annual license fee over the term of the agreement."

The TPA President said that *"at one point we said we cannot count on this (the two signs); so then we asked if (there is)... another way of doing it (multiple approach)..."*

"I was aware of the multiples approach...the sign consultant has used the multiples approach before for pillar ads and billboards and he did it for Exhibition Place; we were the first I think at Exhibition Place and that was a number of years before...but when I saw the numbers was not comfortable..."

83. September 4, 2016 at 7:43 am The VP responds to the sign consultant:

"I quite like your approach...However, I'm not sure I understand your statement in your letter that "(you would add the asset value based on the multiples above, and the NPV of the ongoing rental stream)". Isn't that double counting? Either TPA assumes responsibility for the sign for between \$2.6 and \$3.4 million or it licences it to a sign company for \$2,750,000..."

84. September 4, 2016 at 12:29 pm from the President to the VP and the sign consultant:

"It is my understanding that if a sign company secures the rights for the sign for 30 years, we would get an upfront payment of 2.75 to 3.4 for those rights plus receive an annual license plus \$125K inflated by CPI."

85. September 5, 2016 at 10:03 am the sign consultant responded to the President and VP:

*"...My note has a fairly aggressive multiple and **we** could be more conservative. I think the delta between your appraised land value and the purchase price is about \$3.5m + - (confirm this). If this is the case then the value of the license fee (2.75) plus a modest lump sum could get you there. Why don't the 3 of us have a call to discuss the best approach. I am available up to 11am this morning. 1:30-2:30 this afternoon, or after 4:20 let me know."*

A draft valuation was attached to the email.

"The total valuation for the existing single face 14'x48' digital billboard based on receiving a lump sum of between \$1,400,000 and \$1,800,000 and the license fee on an NPV basis of \$2,750,000, would range between \$4,150,000 and \$4,550,000."

We asked the sign consultant what was meant by *"the delta"* and *"could get you there"*. The sign consultant said:

"You will have to talk to the VP as to what she's trying to get to."

The VP noted that they informed the sign consultant of the purchase price of approximately \$12 million. The sign consultant confirmed that VP and President:

" definitely shared with me there was an appraised value for land and there's going to be some value assigned to the sign and there was a difference or delta between whatever the purchase price was and what the value of land is..."

86. September 6, 2016 at 8:03 am email from the VP to the sign consultant:

"I think the valuation letter is good. Is there any way you can add a paragraph towards the beginning of the letter that describes [the company] and that you represent a number of government groups across Canada? Perhaps you can include a list of clients and /or your company brochure. I think that it is important for readers to know that you are experts in your field..."

87. September 6, 2016 at 8:07 am the President emails the VP, after the Auditor General asked about conflicts involving the sign consultant:

"Is it a problem that they have managed our outdoor contracts?"

88. September 6, 2016 at 8:19 am the VP responds to the President:

"I don't think it is a problem because we have not offered the contract to him. Also, we can spin it in our favour in that we have knowledge and comfort with the abilities over the last several years"

When asked what "we have not offered the contract to him" means, the VP said it meant that:

"If we were to terminate the [existing] contract, we would probably need a consultant to find a new licensee and that would be him."

The sign consultant's report had, however, recommended terminating the existing contract.

89. September 6, 2016 at 8:47 am the sign consultant emails the VP with a signed version of the valuation dated September 4, 2016.

"Here is the signed version including a backgrounder. Please let me know if you need anything further."

90. September 6, 2016 at 9:33 am, the VP forwarded the sign consultant's valuation dated September 4, 2016 to the real estate appraiser, Altus.

91. September 6, 2016 at 2:30-3:30 pm a meeting occurred between the lobbyist and the President. When asked about the meeting, the lobbyist said to the Auditor General that he couldn't remember why he and the President met.
92. September 7, 2016 at 10:59 am the Executive VP of the real estate appraisal firm Altus, informed the VP:

"...Here is our draft report with limited references to (the sign consultant). I do not wish to state their conclusions within our appraisal document."

93. September 7, 2016 at 11:28 am the VP replies to the real estate appraiser Executive VP and two other executives:

"...after all of our discussion with respect to this property, I'm disappointed that you relegated the sign valuation (which is a major component of the purchase price) to the last addenda item."

I understand and appreciate that you cannot (nor should you) certify any part of the sign valuation, but I was hoping that the transmittal letter could include the value range for the sign and the arithmetic needed to add the 2 valuations together – of course with the necessary caveats. Is it possible for you to reconsider this?"

The VP said *"I was trying to get two numbers added together to simplify the conclusions for readers."*

94. September 7, 2016 at 2:34 pm email from the real estate appraiser Executive VP to VP, copying two other executives:

"... In terms of the ...sign valuation, I have only just reviewed the document and concluded that the opinion should not be placed under the (our) Letterhead. I understand that we could state certain caveats to its inclusion but its appearance and arithmetic summing in our appraisal would infer acceptance of a total value, which I cannot personally support."

Should we proceed with preparation of the final document?"

95. September 7, 2016 at 12:50 pm the real estate appraiser's email was forwarded to the President by the VP.

"Here is their answer. I haven't been able to speak with (her former colleague) yet. I don't want to go final yet – just in case (her former colleague) can get (the appraiser) to reconsider..."

96. September 8, 2016 at 9:51 am the VP emailed the sign consultant from her Gmail account while still on vacation, copying the President.

"Can you please add a valuation date to your letter dated September 1, 2016"

When asked by the Auditor General why this was requested, TPA's VP said *"I thought nothing of it, I just thought it looked better as Sept. 1st, rather than Sept. 6th...it was a nice clean date...the beginning of the month...it was just a convenient date...it makes no difference. There was nothing untoward."*

97. September 8, 2016 at 10:37 pm the sign consultant emails the VP the valuation with a new date of **Sept. 1, 2016** and included a schedule of what he believed to be other comparable signs.

"See revised valuation with added comparable locations. Let me know if this works with your appraiser. I will sign this first thing in the morning and send it out."

98. September 9, 2016 at 8:08 am, the VP wrote to the sign consultant, copying the President. The appraisal is dated September 1, 2016 and the VP asked the sign consultant to add the following wording:

"I have completed my analysis as at September 1, 2016, and my findings are outlined below."

The Auditor General notes that the sign valuation based on the multiples approach commenced September 3, 2016.

When the Auditor General asked the sign consultant why he backdated his valuation to a time before he commenced work on it, he said:

"When I put it together, it was less formal because I don't do things like that (prepare formal valuations)... And then when they asked, 'could you add this' and 'could you add that'; I didn't think too much of that; I was focused on providing the range (of value)..."

99. The sign consultant said he did not know enough about how his work would be relied on or that TPA was going to pay around \$4 million for the sign based on his work:

"I was doing it as a service to my client... they asked me and I said yes

I never imagined we'd get to this type of complexity..."

I had no idea how big or small it would in their decision making... I didn't see it as obviously a big piece of decision making; I would imagine it would be one of a number of factors; I initially thought it would be a small part of their decision making...

I'll leave you with this, if they said to me 'so you've assessed the range at \$4 million and if we don't get \$4 million for it, then you have to pay the difference'...I would not be writing you a cheque for the difference.

It's a small piece of what I do; I didn't think it would morph into something that it has; had I known that, I probably wouldn't have gotten involved..."

100. September 9, 2016 the Auditor General phoned the VP.

The Auditor General said that she was reviewing one of the VP's project notes that refer to two appraisals and that \$12 million was the medium price. The Auditor General asked which appraisals were being referred to. The Auditor General surmised to the VP that one appraisal might be the vendor's appraisal at \$17 million, "*so there must be another appraisal for about \$7 million to get to the \$12 million.*" The VP said that she had not seen any appraisals, except for the vendor's numbers. At this time, the VP again did not say that that she had received the Integris appraisal effective August 2015 and that the Integris appraisal valued the property at \$7.5 million.

Concerned that documents were still missing, the Auditor General again asked the VP to provide all documents related to the transaction be provided.

101. September 10, 2016 at 1:49 pm the Auditor General emailed the VP and President once more, requesting all related documents.

"At our meeting on Sept 2nd, we asked for all documents related to this file (I copied [President's] file and I received some emails)

At our meeting on Sept 7th, I asked for all documents related to this file once more, and specifically referenced obtaining the emails that were sent to engage the environmental survey and land survey. I understand on the land survey you should have quotes on Monday, but please forward the 'engagement' emails for both the survey and the environmental testing if they exist. I understand that you are still in the due diligence phase.

Also, if you could immediately:

- *Confirm that you have provided copies of the entire file for the 1111 Arrow Road property (emails, notes, other documents, electronic records – everything you have related to the property) – please send on missing documents.*

- *Confirm the nature of the involvement of Altus or Integris with this property. Was there any consulting on the property prior to the August 2016 agreement, whether paid or not.*
 - *As soon as possible, please provide the history of all payments to Altus and Integris for the period from January 1, 2015 to the present, as well as agreements, invoices and statements related to the payments.*
 - *As soon as possible, please provide a copy of Agreements of Purchase and Sale and appraisals for property purchases since January 1, 2015, as well as retainer agreements from the appraisers for those properties."*
102. September 11, 2016 at 8:58 am in response to the Auditor General's question to "Confirm the nature of the involvement of Altus or Integris with this property. Was there any consulting on the property prior to the August 2016 agreement, whether paid or not?"

The VP responded:

"Altus prepared a draft appraisal of the subject property in August 2015 which indicated a value of the land at \$7.5 million. ...There was a meeting between Altus and Peter Rusin of Royal LePage to discuss the Royal LePage valuation prepared for the vendor which I understand to be \$17 million in order to understand the almost \$10 million difference in appraised value. This meeting was held in the fall of 2015. I understood from Altus that Peter Rusin used inappropriate comparable properties to arrive at his value conclusions. Although I was not privy to any conversations between (the vendor), Peter Rusin and Altus, (the vendor) backed off his desire to get a \$17 million purchase price in the fall of 2015 and we were able to continue negotiations to acquire the property for approximately \$12 million..."

103. September 12, 2016 at 9:30 am a meeting took place between the President, two VP's of the TPA, the lobbyist and a flagpole engineer to discuss the proposed flagpole. The flagpole engineer had provided flagpole drawings for the EVBIA.
104. September 12, 2016 at 1:00 pm the Auditor General attended TPA offices. Among other things, the Auditor General was provided with an engagement letter engaging Integris to provide an **estimate of market value** in August 2015 as well as a copy of the 2015 draft valuation report

Scope of the Assignment

- *"The focus of our initial work will be to complete preliminary research and due diligence in order to provide guidance regarding the market value."*

The report

- A Current Narrative Appraisal Report (74 pages) prepared by Integrus in 2015 valuing the property at August 1, 2015 at \$7,500,000. The report considered "*all factors believed to affect the value of the property*".

105. September 12, 2016 at 7:57 pm Councillor Filion sends an email to the VP and President:

"In 34 years as an elected official this is the only time I have ever felt that the staff of the public body of which I am a member has attempted to stifle my efforts to obtain the information I need to conduct my responsibilities.

As you know, I expressed concerns about this purchase and asked for detailed information when it first came to my attention in May of this year. Instead of making any attempts to address those concerns about lack of information on which to base a decision involving a large sum of public money – or to provide me with ANY such information during the next two months – staff brought forward and Agreement of Purchase and Sale as a last minute added item on the July board agenda.

Since then, I have continued to request information which staff have claimed is either unavailable or to which I cannot have access. My most recent request is for basic information which you do not wish to provide me with so that I have time to examine it before next Board meeting. It is the type of information, along with an appraisal, that should have been provided to me, and to other board members, BEFORE we were asked to approve a purchase.

My initial concern was that we were purchasing a property without proper analysis or information being available to the decision makers. My concerns now go much deeper, to the purchasing process of the TPA in general and the reasons beneath the secrecy surrounding this purchase."

106. September 12, 2016 at 10:40 pm email from the President to the Chair of the Board:

"I think that you should speak with John. I think that he is way off base. Not sure what to do with this. I am not sure if we should provide a written response. Thoughts."

107. September 12, 2016 at 11:02 pm email from the President to the Chair of the Board:

"Also we are required to report to the board as a whole. I am not sure that we should be dealing with board members individual requests. Furthermore, [the

VPJ has been very open and transparent with info and had provided this info as soon as it is available – for example he and other board member received appraisal report within of it being issued. He is being disingenuous as he already has complained to the auditor general. As you can sense I am frustrated but I am refraining from being reactionary."

108. September 12, 2016 at 11:23 pm the Chair of the Board replies:

"FACTS:

We were directed by council to purchase this proceeded, according to this directive.

We put together an OPS, with a future closing date, in order to give us time to do our due diligence.

The information that we required to go firm has come in, and, now will be reviewed by you and your professional staff and, subsequently, our board. If and when we are all satisfied, we will then go firm. If not, we won't.

Filion could not wait, like the rest of the board did, to review the appraisal, etc., and imposed himself on the staff and the information. This, arguably, is not proper. He also, almost led us into a situation, where our Board entertained the scheduling of briefing meeting, which, if held, could have been deemed in contravention of by-laws.

His actions and demands have muddled the process and have demonstrated nothing but disrespect for our staff and for his fellow board members.

He is asking for information, ahead of our boarding meeting, which he has every opportunity to attend. His referral of the situation, to the AG, is nothing more than a desperate attempt to create another false problem with this process and to stifle the progress towards finalizing a deal which the overwhelming majority of the TPA board and Council, for that matter, wants the TPA to complete.

OPINION:

This board member's actions are clearly selective and extremely disrespectful to the process and to the staff entrusted with executing Council and TPA Board instructions.

I believe he should wait for the AG to report to the board and let the information stand, as is, for her review."

109. At the September 15, 2016 TPA board meeting, concerns were raised to the President and the VP about how the sign valuation was arrived at. In addition, there was discussion that the sign may be overvalued.

The President stated:

"We got this report at the same time (the Auditor General did) – we still have to review it. Have to see if the sign valuation holds water. We need to feel comfortable with it. We would never close on this deal if we didn't feel comfortable with it. We are here to advise – in terms of where you are going on the valuation, we would have done it in the due course. The land value we are comfortable with – ...the sign value is what we are concerned with...We would have gone back to the Board to advise. You are catching us in the middle of our due diligence – we are not trying to withhold info."

"If purchase price is too high we will go back to vendor and tell him purchase price is too high and it's not FMV and not proceeding with deal and then they will go back to negotiate a new price."

110. Also at the September 15, 2016 TPA Board Meeting, the Auditor General outlined that information was not being provided by the President and the VP regarding the transaction. The Auditor General noted that an email related to the valuation and appraisal was deleted from the VP's mailbox. The following emails were originally not provided by TPA until after the September 15, 2016 TPA board meeting:

- a. Certain emails relating to the preparation of the sign valuation and the involvement of the VP in that process.
- b. Emails requesting that the valuation report be backdated
- c. Emails requesting Altus to include increase the importance of the sign consultant's valuation it is appraisal

In a later meeting with the Auditor General, the Auditor General asked whether the August 17th email containing the July 27th spreadsheet was deleted on September 6, 2016. The VP said:

"Probably not until after the 6th (of Sept)...What I did do... The weekend after the board meeting (Sept 15th board meeting), when I realized that we needed all the emails...I came in on the weekend... I went back and looked at my messages. In some cases I moved incorrectly into the delete box. I put some back, you might see some put back did you see that...quite frankly I don't delete to the best of my knowledge I haven't deleted anything; I may not have...but if I did then it would certainly be the result of human error."

111. October 3, 2016 the lobbyist invoices EVBIA for September in the amount of \$13,111.74 for services rendered including "Monitor TPA meeting" and "Monitor TPA meeting and decide approach/response for Councillor Mammoliti".

The September 15, 2016 TPA board meeting was an in-camera meeting and included a *verbal update* from the Auditor General.

When the Auditor General asked the lobbyist "how can you monitor an in-camera meeting"?

The lobbyist replied:

"Was it in camera? We would have monitored what came out of the meeting but we wouldn't have known what it was; we knew there was something afoot in terms of delaying the project, but it was a confidential item".

The Auditor General asked:

"I'm trying to figure out how you can monitor an in-camera meeting?"

The lobbyist responded:

*"...I don't actually do our invoices so 'monitoring TPA meeting.' I see where you're going with that now...that we're **aware of what was going on and then advising Mammoliti on what to do? That is not what it was intended to say...***

"I want to be clear on the reports; I've not read any reports that are confidential I know Mammoliti was very upset"

112. October 17, 2017 the Auditor General met with the President and VP to start reviewing her findings, including her finding that the sign was worth approximately \$1.5-2 million, not \$4-4.5 million. It was at that point that the President and VP started to express they could not rely on the sign consultant's valuation.

The President said:

"the only way you're going to know (the sign value) for sure is to go ask sign companies; my point being if you [the AG] didn't come on the scene, we would never ram it through;

When I saw the numbers I was asking are we comfortable with it; the only way to test this thing during our due diligence was to go ask the market how much the sign is valued; because there is risk; all I'm saying...

...if we're not comfortable with a valuation, with or without you, I would say we shouldn't do this deal; we were going to have a meeting with Board members to discuss the valuations; in normal course of action, we'd get appraisal and this is different; we have to make a judgement and we were uncomfortable with it."

"When we saw the valuation, I go, 'How can we rely and necessarily get the upfront payment?' We've been struggling with this and we've been holding back a bit because we wanted to see (where the Auditor General) lands and (what her) sign appraisal (comes) in at..."

The VP said:

"We weren't accepting it carte blanche..."

...typically we would do our deal and it would be conditional and we would go out and validate the purchase price. Once that happens we would go to the Board. At that time; we were not able to do our due diligence for two reasons –

*1) No board meeting in August so it advanced everything to July and
2) Filion wanted to get very involved and (the AG) got involved and we had to report very quickly; so you're getting info at a point in time that wouldn't be what was normally reported to the Board."*

113. Both the VP and the Auditor General followed up with the market and the sign was worth no more than \$2 million less costs to put it in place. The Auditor General's estimate was accurate.

114. October 18, 2016 at 6:06 pm the VP sent an email to the Auditor General:

"Just to reiterate our position discussed during our meeting yesterday, while we asked (the sign consultant) for his opinion with respect to value, we needed to get third party evidence to support it as we didn't have confidence in the value as determined by (the consultant). We discussed asking other outdoor media sign companies for an advertising proposal for the sign but it is difficult to do while the deal is conditional. We did receive some information from another sign company which supported a lower value. We have decided to get a third-party valuation from a CBV to provide a value for the sign."

115. October 18, 2016 the date the deal was to 'go firm'. However, on September 28, 2016, TPA management obtained an extension to the Purchaser's Conditions from October 18, 2016 to November 15, 2016.

116. October 20, 2016 TPA board meeting took place.

The TPA Chair said *"I maintain that the issue of getting appraisals in advance is not feasible if we are to be competitive in the City of Toronto".*

In addition, a motion was made to:

"1) direct the TPA's President to seek advice from an appropriate body to provide the Board with guidance with respect to responding to the Auditor General's Report regarding this matter and 2) including, but not limited to, Board Member conduct and responsibilities."

117. October 20, 2016 at 3:30 pm TPA President and VP met with the Auditor General. At this meeting, the Auditor General was informed by the President that the Board expressed concerns about a complaint about Councillor Filion.
118. At the October 20th meeting, the Auditor General asked what the sign consultant meant in his September 4th email about the "delta" and that his valuation would get the TPA there.

President: *"He'll get us to the purchase price"*

Auditor General: *"If he is an independent evaluator, why is he trying to get you the purchase price"?*

The VP: *"He's our sign consultant, he does know our purchase price. ...It does not mean either (the President) or myself would accept carte blanche the findings of an appraiser, an environmental consultant; sign consultant."*

TPA said they would have gotten there anyway.

The President said:

"This is what bothers me; he says this will get you to our price; we thought the odds of getting the sign was there; then he changed (his mind) after board approval, it switched to multiples. We're doing our due diligence. We're trying to get appraisals prepared to present to the board. This one by (the sign consultant), the Board would have laughed at it too; ... the multiple (approach) ...we've used before and have seen some success with (but) you can't rely on it..."

The VP: *"We still had a month where we would do our due diligence. We would read the reports and talk to people, to determine whether we accept... fact that the board approves it doesn't mean that we don't do any more work."*

119. In her confidential report dated October 24, 2016, the Auditor General had the following observations:

- a. *The Auditor General's expert appraised the property at \$7,750,000. There were slight differences in the land size between the Altus report and the Auditor General's appraisals. After considering the evidence, including the initial August 2015 appraisal by Integrus, the August 2016 Altus Group appraisal, and all other documentation in the file, the evidence supports FMV to be approximately \$8,000,000, excluding the value of the sign license agreement for the digital sign located on the property.*
 - b. *...the estimated value of the existing sign licensing agreement, with and without exercise of the option period, is from \$1,150,000 to \$1,550,000, including a portion of the \$270,000 lump sum payment that the TPA would receive from the Vendor on closing. TPA has conducted its own analysis and they concur with the Auditor General's valuation.*
 - c. *Evidence supports that FMV of the property at \$8,000,000 and the sign at \$1,550,000. FMV is approximately \$9,550,000.*
120. October 25, 2016 a staff report was prepared by the VP for the Board, in advance of the Auditor General's report. The VP had been provided with the Auditor General's report before the meeting and included the Auditor General's findings. Based on the Auditor General's report, the VP disclosed pertinent findings of the transaction in the staff report:

"Land Value:

In August 2015, staff received a draft appraisal of the land prepared by Integrus Real Estate Councillors (recently purchased by Altus Group Limited) to assist with Vendor negotiations because the Vendor had advised that he had an appraisal for the land of approximately \$17,000,000. Once a conditional PSA had been agreed upon, TPA engaged Altus Group Limited to appraise the land which resulted in a value of \$8,000,000. Reviews were held between TPA staff and Altus Group relating to this report to discuss and corroborate the 2016 value of the land. Based on TPA staff due diligence, we agree that the fair market value for the land is \$8,000,000."

TPA discloses that it did more upfront analysis than in TPA's other staff reports by obtaining the Integrus draft appraisal in 2015. TPA, however, had never discussed the Integrus appraisal much prior to the October 26, 2016 board meeting and only after the Auditor General referred to it in her report.

121. October 26, 2016 at the TPA Board Meeting the Board Chair noted:

"Going around the table you probably sense some concern. Part of it from my stand point is that during the approval process of this item we would have naturally had an opportunity to review the due diligence that staff was doing or underway."

The complaint came in and we no longer had an opportunity to review appraisals, due diligence etc. appraisals are important for us to go forward with the deal."

The Auditor General responded that "the Board had access to two appraisals from qualified land appraisers. The sign was valued through calculations of the income flow prepared by the VP. Board has access to the info it needed."