



Disposition of Spadina Expressway Properties - Memorandum of Understanding with Infrastructure Ontario

Date: September 8, 2017
To: Government Management Committee
From: Chief Corporate Officer
Wards: All

SUMMARY

This report seeks authority to enter into a Memorandum of Understanding (MOU) with Infrastructure Ontario in order to clarify the roles, relationships, mutual expectations, and accountability mechanisms and to document the existing practices of the Province of Ontario (the "Province"), through Infrastructure Ontario, and the City of Toronto (the "City") for the efficient and effective management and disposition of the remaining fifty-eight (58) Spadina Expressway Properties.

In 1996 Metro Council approved the financial terms proposed by the Province, but Metro and the Province did not actually enter into a formal agreement or MOU regarding these terms. The proposed MOU will therefore:

- formalize and enact the previously agreed upon financial terms
- provide procedural and administrative detail and clarity for implementing these terms
- classify the remaining Spadina Expressway Properties into four categories – ensuring that the City's strategic objectives are achieved
- shift responsibility for managing the disposal of surplus Spadina properties from the City to the Province – this is seen to be more appropriate as the Province holds title to the properties.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council authorize the Director of Real Estate Services to execute a Memorandum of Understanding with Infrastructure Ontario regarding those Properties identified in Appendix B (Property List) (collectively the "Spadina Expressway Properties") as provided for and substantially in accordance with the terms and conditions set out in Appendix C to the report, and on such other terms and conditions as may be approved by the Chief Corporate Officer, and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The total sales revenue of the Spadina Expressway Properties that have been sold to date is \$27,044,421.55 and the apportionment of the net sale proceeds of this total sales revenue has been completed between the Province and the City, with one-third (1/3) being apportioned to the Province and two-thirds (2/3) being apportioned to the City.

Net sale proceeds will continue to be split between Province and the City according to this ratio until the total sales revenue of the Spadina Expressway Properties exceeds \$30 Million, after which the net sale proceeds on closing of each sale of a Saleable Property shall be shared equally between the City and the Province.

All necessary due diligence costs (other than environmental or other due diligence matters required only by the Province) such as surveys, appraisals, and/or real estate commissions will be deducted by Infrastructure Ontario from the gross sale proceeds of the disposal of each Saleable Property. The City's portion of the net sale proceeds of each sale will be contributed to the Land Acquisition Reserve Fund (LARF) (XR1012).

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

DECISION HISTORY

At its meeting in September 2004, City Council adopted Clause 3 of Administration Committee Report No. 6, wherein authority was granted to declare surplus twenty-one parcels of vacant land located at the rear of various privately-owned properties fronting onto Strathearn Road.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040928/adm6rpt/cl003.pdf>

At its meeting in June 2003, City Council adopted Clause 15 of Administration Committee Report No. 5, wherein authority was granted to declare surplus 543 Arlington Avenue.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/adm5rpt/cl015.pdf>

At its meeting in February 1997, Metro Council adopted Clause 1 of Corporate Administration Committee Report No. 3, wherein authority was granted to declare surplus Spadina Expressway Properties north of Dupont Street.

At its meeting in December 1996, Metro Council adopted Clause 1 of Corporate Administration Committee Report No. 25 regarding "Financial Agreement with the Province of Ontario Respecting the Disposition of the Spadina Corridor Properties." This report granted authority to accept the financial terms of the disposition of the Spadina Corridor Properties where the Province will receive one-third (1/3) of the net sale proceeds on closing of each property sale up to a total of \$10 Million (Metro's share \$20 Million) and thereafter the net sale proceeds shall be shared equally between Metro and the Province. The report also granted authority to accept the terms of the gratuitous conveyance by the Province of the Cedarvale Nordheimer Ravine parklands, the lands occupied by the Metro archives, the Metro Police parking lot and the 10 acres of land

located within the former Lakeshore Psychiatric Hospital site at Kipling Avenue and Lakeshore Boulevard West to reinstate lost parkland to Metro as a result of the *Toronto Islands Residential Community Stewardship Act* (the "*Stewardship Act*"), whereby the Province statutorily acquired certain lands described in the Schedule to the *Stewardship Act* located on the Toronto Islands owned by Metropolitan Toronto.

At its meeting in March 1983, Metro Council adopted Clause 1 of Transportation Committee Report No. 3 regarding the conveyance to the Province of the Spadina Expressway Properties at nominal value and the leaseback of those properties to Metro.

ISSUE BACKGROUND

Spadina Expressway Project

In the 1960s and 1970s, the former Municipality of Metropolitan Toronto ("Metro") expropriated and/or acquired the Spadina Expressway Properties, comprising of vacant land, residential dwellings, parkland and commercial properties, to allow for the construction of the Spadina Expressway, a proposed extension of Allen Road to the downtown core (the "Spadina Expressway Project"). These lands are located south of Eglinton Avenue and north of Bloor Street. The Spadina Expressway Project was cancelled in the early 1970s following public opposition, and in 1984 the Spadina Expressway Properties that were held by Metro for the Spadina Expressway Project were transferred in title to the Province of Ontario (the "Province") for a nominal amount and immediately leased back to Metro for a nominal amount, on a net basis, for a 99 year period, commencing at various times between December 1, 1978 and December 14, 1984. The leaseback provision provides for Metro to manage these properties. This arrangement is still in place.

Over the years, once it was determined that the Spadina Expressway Properties were no longer required for the expressway, discussions were initiated between Metro and the Province through the Ontario Realty Corporation to arrive at a mutually beneficial arrangement with respect to the disposition of the properties and a sharing of the sale proceeds.

The overall settlement agreement negotiated between Metro and the Province was approved by Metro Council by its adoption of Report 25(1) of the Corporate Administrative Committee on December 4, 1996, which provided generally that (i) the Metropolitan Toronto Archives at 253 Spadina Avenue, the 13 Division Police station parking lot adjacent to 1435 Eglinton Avenue West and all lands that were currently used for park purposes (including Cedarvale ravine) be conveyed to Metro for nominal consideration; (ii) Metro staff manage the disposal process of the other lands; (iii) the sale proceeds up to \$30 Million be shared, with Metro receiving 2/3 of the proceeds and the Province receiving 1/3 of the proceeds; and (iv) the sales revenue in excess of \$30 Million be shared equally between Metro and the Province.

The report further indicated that as part of the overall settlement, including the gratuitous conveyance to Metro of the above noted lands, the Province requested Metro to acknowledge that it has no further requirement for compensatory parkland as a result of the *Stewardship Act* and that Metro concurred with the request subject to ongoing discussions respecting minor property boundary issues on Wards and Algonquin Islands.

Based on this report and various Orders-in-Council by the Province and a subsequent letter penned by staff at the Province's Ontario Realty Corporation dated October 28, 1996, the City and the Province began a program to dispose of certain of the Spadina Expressway Properties to existing tenants and the general public at fair market value. Metro declared certain (mostly residential) properties surplus in 1997 and over the years approximately 100 properties were sold, with the Province receiving 1/3 of the net sale proceeds on the closing of each sale and Metro (later, the City of Toronto) receiving 2/3 of the net sale proceeds in accordance with the above noted agreement. To date, sales revenue has totalled approximately \$27 Million, with the last sale occurring in 2003.

Toronto Islands and Compensatory Parkland

The October 1996 letter from the Ontario Realty Corporation further outlined an agreement to nominally convey certain properties forming part of the Spadina Expressway Properties to Metro. This nominal conveyance is a part of the Province's agreement with Metro, whereby, upon conveyance of the nominal properties, Metro would acknowledge that it had no further requirements for compensatory parkland as a result of the passage of the *Stewardship Act*, through which the Province statutorily acquired certain lands located on the Toronto Islands.

Further, by a Memorandum of Understanding dated March 30, 1994 (the "1994 MOU"), the Province and Metro agreed to convey to Metro ten (10) acres of land located within the former Lakeshore Psychiatric Hospital site at Kipling Avenue and Lakeshore Boulevard West, with the additional transfer to Metro of forty-nine (49) acres elsewhere to compensate Metro for lost parkland stemming from the *Stewardship Act*.

COMMENTS

The City has been working with the Province, through Infrastructure Ontario, to refine the terms outlined in the 1996 agreement in a way that maintains the City's objectives with respect to city building and aligns with the City-Wide Real Estate Program approved by Council in May of 2017. The remaining Spadina Expressway Properties have been categorized and prioritized in a manner that reflects the varying timeframes and objectives for each property, and allows for the City's continued use of certain properties until such time as these properties are no longer operationally required. These four categories of properties are defined in Appendix A (Major Terms and Conditions of MOU) and the remaining Spadina Expressway Properties are listed according to their category in Appendix B (Property List).

It is the Province, through Infrastructure Ontario, and the City's intention to manage the remaining properties that comprise the Spadina Expressway Properties on the terms and conditions set out in the Memorandum of Understanding (MOU), and summarized in Appendix A.

Infrastructure Ontario will act as the lead for the project, managing the disposal of the surplus Spadina Expressway Properties and abiding by the cost-sharing and revenue-splitting provisions set out in the MOU and summarized in Appendix A. The City will provide assistance to Infrastructure Ontario in carrying out the project.

Upon conveyance of the Nominal Properties (identified in Appendix B) to the City, both the City and the Province will provide confirmation that all historic obligations have been fulfilled as they relate to the *Stewardship Act* and the 1994 MOU.

Further details of the roles and responsibilities of the Province and the City, including cost-sharing and revenue-splitting conditions, are outlined in Appendix A (Major Terms and Conditions of the MOU) to this report.

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SIGNATURE

Josie Scioli
Chief Corporate Officer

ATTACHMENTS

Appendix A: Major Terms and Conditions of Memorandum of Understanding

Appendix B: Property List

Appendix C: Memorandum of Understanding with Infrastructure Ontario

APPENDIX A:

MAJOR TERMS AND CONDITIONS - MEMORANDUM OF UNDERSTANDING

No.	TERM	SUMMARY
1.	Shared Responsibilities	The parties agree to share responsibility for the implementation and delivery of the project, in accordance with the Memorandum of Understanding (MOU).
2.	Province's Responsibilities	<p>Infrastructure Ontario (IO) will act as the lead for the project and shall:</p> <ul style="list-style-type: none"> • Dispose of those properties which have been agreed to be disposed of by IO and the City (the "Saleable Properties"), on terms and conditions mutually acceptable to IO and the City; • Nominally convey the Nominal Properties to the City and provide confirmation from the Province that upon nominal conveyance of the Nominal Properties to the City all historic obligations have been fulfilled to Province's satisfaction as it relates to the <i>Stewardship Act</i> and the 1994 MOU.
3.	City's Responsibilities	<p>The City will:</p> <ul style="list-style-type: none"> • Dispose of the City's interest in the Saleable Properties on terms and conditions mutually acceptable to IO and the City upon the sale of a Saleable Property by IO to third parties; • Provide assistance to IO in carrying out the project; • Arrange/facilitate site visits as necessary, provided that any such site visits will be subject to the City obtaining all necessary consents, approvals and/ or notices as may be required to provide such access; and • Accept conveyance of the Nominal Properties from IO and provide confirmation from the City that upon nominal conveyance of the Nominal Properties to the City all historic obligations have been fulfilled to City's satisfaction as it relates to the <i>Stewardship Act</i> and the 1994 MOU.
4.	Nominal Properties	Properties used and maintained as parkland by the City (including Cedarvale Ravine and Ben Nobelman Parkette) and/or for the other municipal uses (including the Toronto Archives and 13 Division Police station parking lot adjacent to 1435 Eglinton Avenue West). The intention is to transfer the Nominal Properties to the City at nominal consideration.

No.	TERM	SUMMARY
5.	Saleable Properties	<p><i>Immediately Saleable Properties</i></p> <ul style="list-style-type: none"> • Immediately Saleable Properties are properties that are no longer required by the City for its uses. The intention is that the Immediately Saleable Properties be immediately marketed on the open market for sale at fair market value. <p><i>Rear Properties</i></p> <ul style="list-style-type: none"> • Rear Properties are parcels of land adjacent to residential homes along Strathearn Road, Ava Road and Arlington Avenue which are nonviable, rear/backyard lots. The intention is that the Rear Properties be offered to adjacent residential land owners for purchase at fair market value. <p><i>Properties to be Monitored</i></p> <ul style="list-style-type: none"> • Properties that for the most part are encumbered by long-term nominal sum or non-market leases and are to be continued to be leased, used and/or subleased by the City and monitored for future sale on the open market at market value as individual properties are no longer required by the City and can become available for disposition on the open market at fair market value.
6.	Cost-sharing	<ul style="list-style-type: none"> • All necessary due diligence costs (other than environmental or other due diligence matters required only by the Province) such as surveys, appraisals, and/or real estate commissions will be deducted by IO from the gross sale proceeds of the disposal of each Saleable Property (such amount is hereinafter referred to as the "Net Sale Proceeds"). An accounting will occur at the time of each sale so there is no necessity for holdback on future sales. • IO will coordinate and absorb the full cost of any environmental report or class environmental assessment or other provincial due diligence requirement for disposal, which are not required by the City, without any contribution from the City. Such costs shall not be deducted from the gross sale proceeds of the disposal of the Saleable Property. • Each party shall pay its own legal fees and such amounts shall not be deducted from the gross sale proceeds of the disposal of the Saleable Property.

No.	TERM	SUMMARY
7.	Revenue-splitting	<p>Net Sale Proceeds will continue to be split between Province and the City whereby the Province will receive one-third (1/3) of the Net Sale Proceeds on closing of each sale of a Saleable Property up to a total of \$10 Million (City's share \$20 Million) and thereafter one-half (1/2) of the Net Sale Proceeds of each sale of a Saleable Property.</p> <p>IO shall pay to the City within thirty (30) days of closing of the sale of Saleable Property, the City's share of the Net Sale Proceeds of such sale.</p>
8.	Future Sale of Nominal Properties	<p>The MOU does not restrict or prevent the City from using, granting rights and/or disposing of its interest in the Nominal Properties, provided that such use, granting of rights and/or disposal is used for a municipal purpose. In the event of a bona fide arms-length sale or proposed sale of all or any portion of the Nominal Properties by the City, at any time within 20 years from the date of transfer of the Nominal Properties from IO to the City, 50% of any proceeds shall be paid to IO by the City.</p>
9.	Sales Revenue To Date	<p>The total sales revenue of the Spadina Expressway Properties that have been sold to date is \$27,044,421.55 and the apportionment of the net sale proceeds of this total sales revenue has been completed between the Province and the City, with one-third being apportioned to the Province and two-thirds (2/3) being apportioned to the City.</p>

APPENDIX B:
PROPERTY LIST

Nominal Properties *(as described in Appendix A, line 4)*

	Baldwin Park
	Cedarvale Ravine
	Nordheimer Ravine
222	Spadina Road (parkette)
255	Spadina Road (City Archives)
1075	Eglinton Avenue West (parkette)
1435	Eglinton Avenue West (13 Division parking lot)
222	Strathearn Road (strip adjacent to City-owned lot)
203	Ava Road (part 2) (portion of Cedarvale Ravine)
533	Arlington Avenue (portion of Cedarvale Ravine)
543	Arlington Avenue (portion of Cedarvale Ravine)

Saleable Properties *(as described in Appendix A, line 5)*

<i>Immediately Saleable Properties</i>	
203	Ava Road (part 1)
567	Arlington Avenue

(con't) Saleable Properties (as described in Appendix A, line 5)

<i>Rear Properties</i>	
161	Strathearn Road
177	Strathearn Road
179	Strathearn Road
181	Strathearn Road
183	Strathearn Road
185	Strathearn Road
187	Strathearn Road
189	Strathearn Road
191	Strathearn Road
193	Strathearn Road
195	Strathearn Road
197	Strathearn Road
199	Strathearn Road
201	Strathearn Road
203	Strathearn Road
205	Strathearn Road
207	Strathearn Road
209	Strathearn Road
215	Strathearn Road
217	Strathearn Road
219	Strathearn Road
203	Ava Road (part 3)

(con't) Saleable Properties (as described in Appendix A, line 5)

<i>Properties to be Monitored</i>	
19	Spadina Road
25	Spadina Road
33	Spadina Road
35	Spadina Road
73	Spadina Road
77	Spadina Road
106	Spadina Road
111	Spadina Road
113	Spadina Road
115	Spadina Road
117	Spadina Road
118	Spadina Road
134	Spadina Road
136	Spadina Road
140	Spadina Road
158	Spadina Road
161	Spadina Road
163	Spadina Road
164	Spadina Road
169	Spadina Road
191	Spadina Road
205	Spadina Road
209	Spadina Road