



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Expropriation of a Portion of 3038-3040 Danforth Avenue for Laneway Purposes

**Date:** August 20, 2019

**To:** General Government and Licensing Committee

**From:** Executive Director, Corporate Real Estate Management

**Wards:** Ward 19 - Beaches-East York

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report deals with a proposed or pending acquisition of land by the City of Toronto.

#### **SUMMARY**

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This report seeks approval from City Council, as the approving authority under the Expropriations Act, to expropriate a portion of the property municipally known as 3038-3040 Danforth Avenue, being a triangular area located at the rear of the property. The fee simple acquisition of this property is required for the reconstruction, maintenance and any future repairs of the laneway behind 3038-3040 Danforth Avenue.

#### **RECOMMENDATIONS**

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The Executive Director, Corporate Real Estate Management recommends that:

1. City Council, as approving authority under the Expropriations Act, consider the Report of the Inquiry Officer regarding the proposed expropriation of a portion of the property municipally known as 3038-3040 Danforth Avenue attached as Appendix E.
2. City Council, as approving authority under the Expropriations Act, approve the expropriation of the portion of the property municipally known as 3038-3040 Danforth Avenue, as legally described in Appendix A and designated as Part 1 on the draft Plan of Survey attached as Appendix B (the "Property"), for public highway purposes and for all works and uses ancillary thereto.
3. City Council authorize the City of Toronto, as expropriating authority under the Expropriations Act, to take all necessary steps to comply with the Expropriations Act, including but not limited to, the preparation and registration of an Expropriation Plan and

service of Notices of Expropriation, Notices of Election as to a Date for Compensation, and Notices of Possession for the Property.

4. City Council grant leave for the introduction of the necessary Bills in Council to give effect thereto.

5. City Council authorize the public release of the confidential information contained in Confidential Attachment 1 once there has been a final determination of all claims for compensation by arbitration, appeal or settlement to the satisfaction of the City Solicitor.

## **FINANCIAL IMPACT**

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The initial estimated market value of the Property is set out in Confidential Attachment 1 to this report.

Funding to acquire the Property is available in the 2019-2025 Capital Budget and Plan for Transportation Services (CTP315-05-02).

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting held on March 31 and April 1, 2016, City Council adopted Item GM10.18, "Expropriation of a Portion of 3038-3040 Danforth Avenue for Laneway Purposes", which authorized staff to initiate expropriation proceedings to acquire the Property. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.GM10.18>

## **COMMENTS**

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Transportation Services has identified the laneway north of Danforth Avenue extending between Thyra Avenue and Victoria Park Avenue as being in need of major repairs and resurfacing, as its poor condition has been a source of frustration for area residents and businesses who use the lane. However, Transportation Services has been unable to proceed with the necessary repairs because a triangular portion of the lane at the rear of 3038-3040 Danforth Avenue, being the Property, is not owned by the City. The Property is shown as Part 1 on Sketch No. PS-2009-004 attached as Appendix C.

Corporate Real Estate Management staff have been in negotiations with the owner of the Property, Square Boy Limited (the "Owner"), since August of 2014. There has been little progress in terms of reaching an agreeable acquisition solution between the Owner and City staff. City staff will continue to negotiate with the Owner, however due to the lack of progress so far, it is expected that it will be necessary to proceed with expropriation to meet project time lines to reconstruct the laneway in 2020.

Pursuant to Council's authority and in accordance with the Expropriations Act, Notices of Application for Approval to Expropriate were served on the registered owners and published in the newspaper. The City received notice of a request for an inquiry as to whether the proposed taking is fair, sound and reasonably necessary (the "Inquiry") from WeirFoulds, solicitors for the Owner on February 28, 2017.

The Inquiry was held on July 10, 2019 with Mr. D.S. Colbourne presiding as Inquiry Officer. During the Inquiry, Mr. Colbourne heard evidence on behalf of the City from Phil Pendleton, Transportation Coordinator, Transportation Services, and he heard evidence on behalf of the Owner from Dan Cherepacha, President of Read, Voorhees & Associates and Michael Sitzer, President of the Owner. The Inquiry Officer provided his report to the City on July 16, 2019, a copy of which is attached as Appendix E (the "Report").

The Report concludes that the proposed taking of the Property by the City meets the test in the Expropriations Act as it "is reasonably defensible in the achievement of the authority's objective of the regularization of the laneway."

For the reasons provided in the Report, it is recommended that City Council, as approving authority under the Expropriations Act, approve the expropriation of the Property and that City Council authorize the City, as expropriating authority, to take all necessary steps to proceed with the expropriation in order to meet project timelines.

## **CONTACT**

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Director, Real Estate Services  
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## **SIGNATURE**

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Patrick Matozzo  
Executive Director, Corporate Real Estate Management

## **ATTACHMENTS**

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Appendix A - Property Requirements

Appendix B - Draft Plan of Survey

Appendix C - Sketch No. PS-2009-004

Appendix D - Location Map / Aerial View

Appendix E - Inquiry Officer's Report

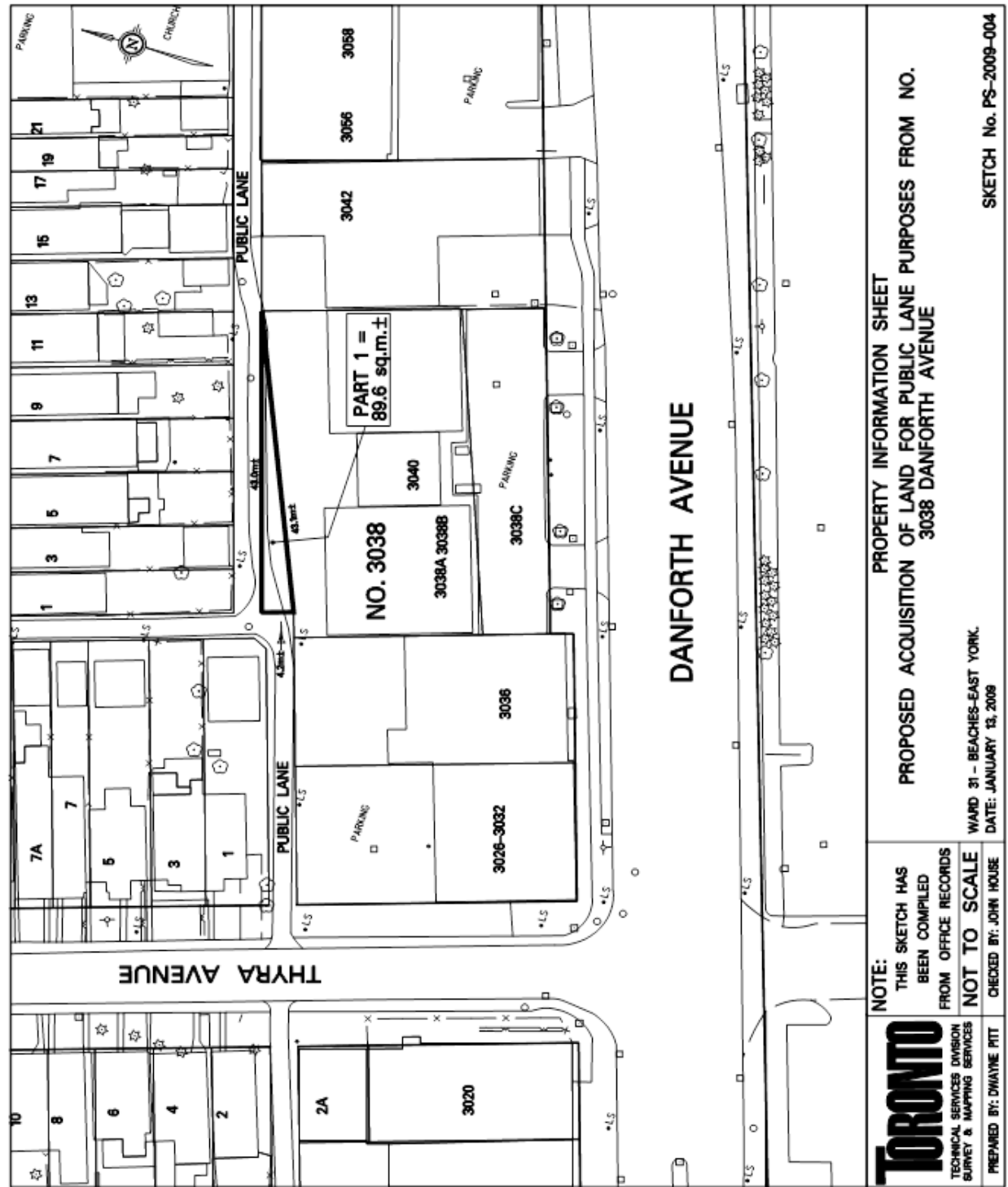
Confidential Attachment 1 - Initial Estimated Market Value of 3038-3040 Danforth Avenue

## Appendix A - Property Requirements

PROPERTY ADDRESS	LEGAL DESCRIPTION OF PROPERTY	PROPERTY INTEREST REQUIRED	
WARD 19 - Beaches-East York			
	<p>Portion of 3038-3040 Danforth Avenue, Toronto</p>	<p>Part of PIN 10536-0179 (LT), being Part of Lots 1, 2 and 3, Plan 2236 Township of York/Scarborough, Toronto (E YORK), City of Toronto, designated as Part 1 on the Draft Plan of Survey prepared by City of Toronto, Land &amp; Property Surveys Section, labelled, "3038 Danforth Avenue", Job Number &amp; Plan Number 2016-04359, dated October 27, 2016, attached as Appendix "B"</p>	<p>Fee simple interest and all other right, title and interest (full taking)</p>



Appendix C - Sketch No. PS-2009-004



**TORONTO**  
 TECHNICAL SERVICES DIVISION  
 SURVEY & MAPPING SERVICES

PREPARED BY: DWAYNE PITT

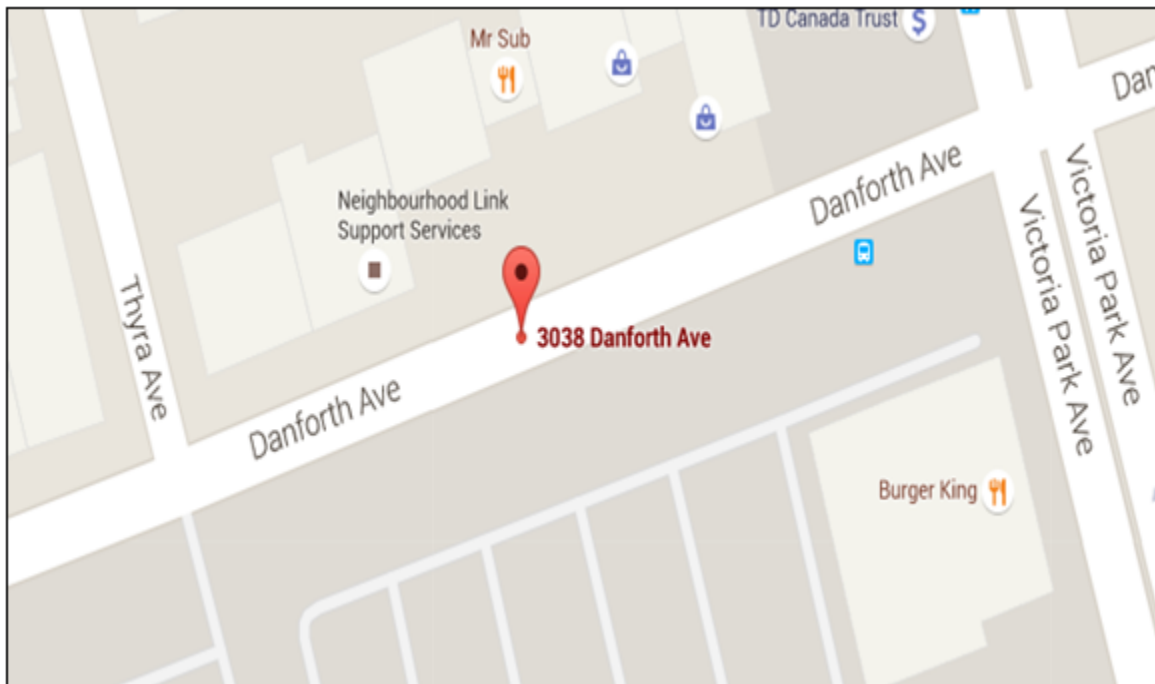
NOTE:  
 THIS SKETCH HAS  
 BEEN COMPILED  
 FROM OFFICE RECORDS  
 NOT TO SCALE  
 CHECKED BY: JOHN HOUSE

PROPERTY INFORMATION SHEET  
 PROPOSED ACQUISITION OF LAND FOR PUBLIC LANE PURPOSES FROM NO.  
 3038 DANFORTH AVENUE

WARD 31 - BEACHES-EAST YORK.  
 DATE: JANUARY 13, 2009

SKETCH No. PS-2009-004

## Appendix D - Location Map / Aerial View





## Appendix E Inquiry Officers Report

### IN THE MATTER OF THE EXPROPRIATIONS ACT

*IN THE MATTER OF an application by the City of Toronto for approval to expropriate the land described as Part of PIN 10536-0179, being Part of Lots 1, 2 and 3, Plan 2236 Township of York/Scarborough, Toronto (EYORK), City of Toronto, designated as Part 1 on the Draft Plan of Survey Prepared by City of Toronto, Land & Property Surveys Section, labelled, "3038 Danforth Avenue" Job Number & Plan Number 2016-04359, dated October 27, 2016*

Hearing: July 10, 2019  
Venue: Metro Hall Toronto  
Appearance:  
B. O'Callaghan for City of Toronto  
  
C. Tzekas for Square Boy Limited

### REPORT

*This hearing was held pursuant to Section 7 of the Expropriations Act to determine whether the taking by the City of Toronto of the land is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.*

### THE LANDS

*The triangularly shaped parcel is adjacent to the public lane north of the properties on the north side of Danforth Ave. The lane runs east and west between Victoria Park Avenue and Thyra Avenue. The proposed taking extends for most of the lane frontage for the properties 3038-3040 Danforth Rd, as set out on the plan filed as Exhibit 6. It is 89.6 sq. m. in area.*

### THE OBJECTIVE

*The land is required to regularize the size and configuration of an existing laneway that runs behind the subject property, which houses a linear mall and series of commercial tenancies. The laneway is currently in need of repair and resurfacing, but the city cannot repair and resurface the laneway because the city does not own this 89.6 sq. m. sliver of land that they feel should form a portion of the driveway.*

*Mr. Pendleton on behalf of the City outlined that evidence and also raised the issue of public safety and liability.*

*Exhibit 6, sets out both the current lane usage in black, and the owner's proposed lane alignment, the alternate, in red. There is no fencing or delineation of the limits of the privately owned lands, and the photos Exhibits 3 & 7 support that the laneway is relatively open except for hydro poles. At the westerly end of the property (3038-3040) there is an intersection with a lane running north, and at that point the east west lane alignment shifts southerly. This is obvious on photo Exhibit 7G. This is also where the alignment shift utilizes part of the private lands and all agree the current laneway utilizes some of the private property. The owner also agrees with the other property owners that the laneway is in need of repair.*

*The portion of the lands to the rear of the buildings for 3038 & 3040 Danforth are utilized for staff parallel parking and delivery trucks as show in some of the photos. The evidence is that the proposed taking will not interfere with the parking.*

*Mr. Cherepacha on behalf of the owner agrees to the rationalization of the jog but proposes the laneway in red, usage of less of the private property, and a much smaller triangle all as set out on Exhibit 6.*

*The President of Square Boy, Mr. Sitzer proposes by agreement to allow the city to use that triangle for free and undertakes to sell it if he redevelops his property, which he admits is not his usual practice. It saves money for the City.*

*The argument on behalf of the owner is that the situation has been in place since acquisition of the property in 1968, and the full extent of the land proposed to be taken is not necessary, since it can according to Mr. Cherepacha can be accomplished by the smaller area proposed.*

**FINDING**

*The owner's proposal ignores the issue of safety and liability and the upgrading and repair by the City of private property. In my view the public interest outweighs desires of the property owner. The evidence does not support any significant impact of either the property or operations of 3038-3040 Danforth Avenue.*

**CONCLUSION**

*After considering all of the evidence and arguments, I conclude that the proposal meets the test in the expropriations Act and the summation as set out by the courts. The test in subsection 7 (5) of the Act is whether the proposed taking is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority". Court decisions such as in Re: Parkins and the Queen (1977), 13 L.C.R., 327 (O.C.A) concluded that the test that the inquiry officer must apply can be expressed as whether the proposal is "reasonably defensible in the achievement of the Authority's objectives". For the reasons given above, I find that the proposed taking by the City of the property described is reasonably defensible in the achievement of the authority's objective of the regularization of the laneway.*

July 16, 2019

*original signed  
D.S. Colbourne  
Inquiry Officer*

**SCHEDULE A**

**Witnesses:**

*Phil Pendleton P. Eng. City- Transportation coordinator-  
Infrastructure Asset Management  
Programming*

*Dan Cherepacha P. Eng. President Read, Voorhees & Associates*

*Michael Sitzer President Square Boy Limited*

**Exhibits:**

- 1. Notice of Grounds*
- 2. C.V. Pendleton*
- 3. A-D Photos*
- 4. Staff Report (Stage 1)*
- 5. C.V. Cherepacha*
- 6. Map of Proposed & Alternate Lane alignment*
- 7. A- G photos*