



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**121-123 Industry Street – Potential Settlement of Ontario
Municipal Board Hearing**

Date:	April 17, 2007
To:	City Council
From:	City Solicitor Deputy City Manager and Chief Financial Officer
Wards:	Ward 12 – York South Weston
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. It contains confidential advice from the City Solicitor and seeks instructions with respect to a potential settlement of an Ontario Municipal Board hearing scheduled for June 5, 2007.
Reference Number:	

SUMMARY

In April 2004, the City expropriated the property at 121-123 Industry Street to construct a TTC bus garage. Both the owner and a tenant have claimed compensation as a result of the expropriation. A hearing is scheduled for six weeks commencing June 5, 2007. The purpose of this report is to provide solicitor-client advice and seek instructions with respect to a potential settlement of the Ontario Municipal Board hearing.

RECOMMENDATIONS

The City Solicitor and Deputy City Manager and Chief Financial Officer recommend the following:

1. that Council adopt the confidential instructions to staff in Attachment 1;
2. the recommendations in Attachment 1 can be made public if any settlement is finalized to the satisfaction of the City Solicitor. The remaining confidential

information and advice can only be made public at the discretion of the City Solicitor; and

3. the Chief General Manager of the Toronto Transit Commission report back in conjunction with the first quarter capital variance report on re-allocations within the TTC's 2007 Approved Capital Budget to accommodate this additional expenditure.

FINANCIAL IMPACT

Funding will be provided from within the TTC's 2007 Approved Capital Budget by re-allocating funds from underspent or delayed capital projects. The Chief General Manager of the TTC will report back in conjunction with the first quarter capital variance report on re-allocations necessary to accommodate this additional expenditure within its 2007 Approved Capital Budget.

DECISION HISTORY

By approval of Clause No. 15 of Report No. 1 of the Administration Committee, on January 27, 28 and 29, 2004 City Council authorized the expropriation of the entire property municipally known as 121 and 123 Industry Street (the "Property") for a TTC bus garage in the western part of the City. All the required steps were taken pursuant to the *Expropriations Act* and the expropriation plan was registered on April 16, 2004. The City obtained possession of the property in August 2004. The tenant was allowed to remain in possession until April 1, 2005 to allow the existing lease to expire. The required offers of compensation pursuant to the *Expropriations Act* were authorized by City Council at its meeting held June 22, 23 and 24, 2004 by its adoption of a confidential report from the Commissioner of Corporate Services.

ISSUE BACKGROUND

Both the owner and tenant have initiated claims for compensation at the Ontario Municipal Board pursuant to the *Expropriations Act*. The owner has claimed \$7,800,000 for market value and a further \$1,000,000 for disturbance damages (recently reduced to \$660,000). Maple Leaf has claimed \$4,058,851 for disturbance damages. Examinations for discovery have been held, expert reports exchanged and witness statements filed. A six week hearing is scheduled to start on June 5, 2007 to determine the compensation owing to both the owner and the tenant. A pre-hearing / mediation session was held on Thursday, April 12, 2007 with one of the senior Ontario Municipal Board members. This report provides advice from the City Solicitor with respect to the outcome of the mediation session and seeks Council direction with respect to the upcoming Ontario Municipal Board hearing.

COMMENTS

The Ontario Municipal Board hearing is scheduled to commence on June 5, 2007. If this matter is to be settled before the parties expend significant time and financial resources preparing for the hearing, Council direction is required immediately. The Chief Corporate Officer concurs in this settlement. A companion report to TTC's Committee of the Whole also recommends the settlement and will address TTC budget implications.

CONTACTS

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SIGNATURES

Anna Kinastowski,
City Solicitor

Joseph P. Pennachetti,
Deputy City Manager and
Chief Financial Officer

ATTACHMENTS

Confidential Attachment 1