



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Expropriation – Covenants held by 26 Country Lane
prohibiting Canadian Film Centre's proposed
improvements to 2489 Bayview Avenue, Windfields Park**

Date:	November 22, 2011
To:	City Council
From:	Chief Corporate Officer
Ward:	25 – Don Valley West
Reason for Confidential Information:	This report is about a proposed or pending land acquisition by the City or one of its agencies, boards, and commissions
Reference Number:	P:\2011\Internal Services\RE\Cc11037 - (AFS – 14894)

SUMMARY

In August 2010, City Council, as landlord of Windfield Park's buildings leased to the Canadian Film Centre at 2489 Bayview Avenue, approved the Film Centre's proposed improvements, which included additional ground floor area of about 2,067sq.ft. for the Gate House and 4,495 sq.ft. for the Actors' Conservatory (23 ft high), as well as 24 additional parking spaces.

As approval to those improvements was also required from five Country Lane property owners adjacent to this Park, due to restrictive covenants on title to the Park, Council also authorized staff to request such approvals and, if any approval(s) were refused, to commence expropriation of that property's covenants.

Four of the five Country Lane property owners approved CFC's proposed improvements but, as the former and current owner of 26 Country Lane have refused their approval, notice has been given of the City's intention to expropriate that property's covenants, in accordance with Council approval in August 2010. To implement the next step in such expropriation, this report now recommends Council's approval, as the approving authority under the *Expropriations Act*, to expropriate the restrictive covenants specified in this report from the 26 Country Lane property and its property owner.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council, as approving authority under the *Expropriations Act*, approve, upon the terms listed below, the application for approval to expropriate the rights, under registered restrictive covenants in favour of 26 Country Lane, to approve structures and parking areas in that portion of the City's Windfields Park described as PART 15 on Reference Plan R.S.-629, (which PART 15 includes the lands and buildings leased by the City to the Canadian Film Centre):
 - (a) the expropriation of the restrictive covenants (quoted below) shall be in effect only for the limited period commencing on the date of registration of the plan of expropriation to December 31, 2013;
 - (b) the limited expropriation of the covenants (quoted below) is being approved for park and municipal purposes, including economic development of the premises leased by the City to the Canadian Film Centre;
 - (c) such limited expropriation is being approved to remove from the property known as 26 Country Lane the benefit of the following two quoted restrictive covenants (where 26 Country Lane is referred to as the "dominant tenement"):
 - "2. No building or structure shall be erected upon the said lands (Part 15 on RS-629 of City's Windfields Park) unless the dimensions (including height) and location thereof as indicated by a siting plan shall have been first submitted to and approved in writing by the owners for the time being of the dominant tenement or the nominee for the time being of such owner, and no building or structure shall be constructed or placed upon the said lands otherwise than in conformity with such dimensions and siting plan."
 - "3. No part of the said lands (Part 15 on RS-629 of City's Windfields Park) shall be used for parking purposes other than areas specifically designated for that purpose, and no parking area shall be laid out or constructed on the said lands or any part thereof unless the plans, dimensions and location thereof have been first submitted to and approved in writing by the owners for the time being of the dominant tenement (or the nominee for the time being of such owners, and no parking area shall be laid out or constructed upon the said lands otherwise than in conformity with such plans, dimensions and location."

2. Authority be granted to apply to Court for an order permitting the City to take early possession of the expropriated property rights set out herein, if necessary, in order to permit expedited construction to commence on the lands leased by the Canadian Film Centre.
3. City Council grant leave to introduce the necessary Bill in Council for the City, as an expropriating authority under the *Expropriations Act*, to exercise its power to authorize the said expropriation, by enacting the Expropriation Bylaw.
4. City Council authorize the public release of the confidential information contained in Attachment 1 once the City Solicitor is satisfied that there has been a final determination by arbitration, appeal or settlement, of the compensation payable by the City arising out of the said expropriation.

Financial Impact

Funding for the estimated compensation payable by the City to the owner of 26 Country Lane arising from the City's expropriation of the said restrictive covenants quoted above is outlined in Attachment 1 – Confidential Information.

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

DECISION HISTORY

At its meeting held on August 25, 26 & 27, 2010, City Council adopted Notice of Motion MM52.41 regarding the City's long term Lease to the CFC and, among other matters respecting such Lease, Council :

- (i) approved, as Landlord of the premises leased to the CFC, CFC's proposed improvements;
- (ii) authorized staff to also obtain approvals to CFC's proposed improvements from the five adjacent Country Lane property owners whose approval is required by restrictive covenants registered against the City-owned Windfield Park; and,
- (iii) if a required consent(s) was refused, authorized that notice be given to such property owner(s) of the City's intention to expropriate the restrictive covenants from such property owner(s).

Although consent to CFC's proposed improvements was received from four of the five property owners, consent has been refused by both the current and previous owners of 26 Country Lane and therefore this report recommends the next expropriation step, namely approval to this proposed expropriation of the covenants quoted above from the property known as 26 Country Lane.

ISSUE BACKGROUND

The City's long term tenant of the buildings at Windfields Park, namely the Canadian Film Centre ("CFC"), has embarked on a capital improvement project to address serious state of good repair aspects of the buildings leased from the City and to implement a modest expansion necessary to fulfill CFC's evolving role as a leader in the Canadian media.

CFC has obtained North York Committee of Adjustment approval to its proposed improvements and CFC has also successfully obtained \$3,250,000 of Federal Infrastructure Stimulus Funding to such improvements. However, the Infrastructure funding shall be lost, if, due to the refusal of one of the adjacent Country Lane property owners to approve such improvements, these improvements are not carried out by the Infrastructure's time limit that has been recently extended to March 31st, 2013. In order to meet that time line, site plan approval and building permit issuance must take place no later than March 31, 2012.

COMMENTS

As authorized by City Council at its August 2010 meeting, due to the fact that the current and former owners of 26 Country Lane have consistently refused to approve CFC's proposed improvements to the buildings at Windfield Park leased from the City, the City's Notice of Application for Approval to Expropriate that property's covenants was published in the newspaper and was served upon the registered owner at the time in accordance with the prescribed procedures under the *Expropriations Act*. Although a request was received from the then owner for a Hearing of Necessity into the proposed expropriation, (as provided in section 7 of the *Expropriations Act*), that request was later withdrawn.

In order to enable our Tenant, the CFC, to construct its proposed improvements and in order to enable the CFC to complete them by the March 31st, 2013 Infrastructure funding time limit, this report recommends that City Council:

- (i) approve the said proposed expropriation, for the limited time from the date of registration of the plan of expropriation to December 31, 2013, of the rights of the 26 Country Lane property owner, as holder of the restrictive covenants quoted above, to approve such improvements proposed by CFC; and,
- (ii) authorize all necessary steps to proceed with such expropriation in accordance with the *Expropriations Act*.

CONTACT

Joe Casali, Director of Real Estate Services; Tel: (416) 392-7202; Fax: (416) 392-1880;
E-Mail: jcasali@toronto.ca

SIGNATURE

Bruce Bowes, P.Eng.
Chief Corporate Officer

ATTACHMENTS

Attachment 1 – Confidential Attachment
Appendix “A” – Site Map