



**STAFF REPORT
ACTION REQUIRED
WITH CONFIDENTIAL
ATTACHMENT**

Expropriation of 111 and 113 Finch Avenue West for the expansion of Edithvale Park

Date:	March 19 , 2013
To:	City Council
From:	Chief Corporate Officer
Wards:	Ward 23 Willowdale
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:\2013\Internal services\RE\Cc13001re (AFS #17351)

SUMMARY

This report seeks approval from City Council, as the approving authority under the *Expropriations Act*, to expropriate the Properties known as 111 and 113 Finch Avenue West in order to proceed with the development of Edithvale Park as these properties have been deemed necessary components in the Project.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council, as approving authority under the *Expropriations Act*, having considered the report of the Inquiry Officer, approve the expropriation of the property requirements set out in Appendix "A" herein for the reasons given.
2. City Council, as recommended by the Inquiry Officer, approve the payment of costs in the amount of \$200.00, pursuant to section 7(1) of the *Expropriations Act*, be made to each of the owners of Nos. 111, and 113 Finch Avenue West funded from the 2013 Parks, Forestry and Recreation Capital Budget (account CPR115-42-02).

3. City Council grant authority to take all steps necessary to comply with the Expropriations Act, including but not limited to, the preparation and registration of an Expropriation Plan and service of the Notices of Expropriation, Notices of Election as to a Date for Compensation and Notices of Possession.
4. City Council authorize the Director of Real Estate Services to sign the Notices of Expropriation and Notices of Possession on behalf of the City.
5. Leave be granted for introduction of the necessary Bills in Council to give effect thereto.
6. City Council authorize the public release of the confidential information contained in Attachment 1 once there has been a final determination of the compensation payable for the Properties by arbitration, appeal or settlement to the satisfaction of the City Solicitor.
7. City Council authorize the appropriate City Officials to take the necessary action to give effect hereto.

Financial Impact

Funding for the acquisition and further development of the remaining portions of Edithvale Park are located with the Confidential Attachment-1 to this report.

Negotiations with the affected home owners will be continuing throughout the expropriation process. The City of Toronto hopes to achieve settlement before the Expropriation process is completed.

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

DECISION HISTORY

On June 14, 2011, City Council adopted the recommendations of Report MM9.7, granting authority to initiate the expropriation proceedings, if necessary for the full taking of 111 and 113 Finch Avenue West for the purpose assembling the remaining parkland requirements necessary for the completion of Edithvale Park. 46 Parkview which was also mentioned in the report for the additional land of the Mackenzie Parkette was successfully negotiated and expropriation was avoided.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.MM9.7>

On November 27, 2012, City Council approved a report "Adjustments to the 2012 Parks, Forestry and Recreation Capital Budget to fund Parkland Acquisition in North York City Centre" in order to create a new capital project called "Land Acquisitions for Edithvale Park". The capital project provides funding for the purchase, demolition and sodding of the parkland for the expansion of Edithvale Park, as well as top-up funding for the

expropriation of 111 and 113 Finch Avenue West, as previously approved by Council on May 8, 2012.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.BU29.2>

COMMENTS

City staff sought to secure voluntary acquisition of the necessary properties, as detailed in Appendix "A", through negotiations with the impacted owners, but an agreement has not been reached. 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. A Hearing of Necessity was conducted and completed on January 17, 2013.

On January 30, 2013, the Inquiry Officer's report was released and it concluded that the taking of the stated interests from the two objecting property owners was fair, sound and reasonably necessary pursuant to the *Expropriations Act*. The Inquiry Officer found that the proposed expropriations by the City of Toronto are reasonably defensible in the achievement of the City's objective of the necessary expansion of Edithvale Park, as the taking of the two properties 111 and 113 Finch Avenue West was the most logical, strategic and cost effective choice. Appendix "C" of this report is the Inquiry officer's findings.

Therefore, to ensure that the properties are secured for the completion of the Project, this report recommends that Council approve the proposed expropriation and authorize all necessary steps to proceed with the expropriation in compliance with the *Expropriations Act*. All such steps, including payment of the required compensation, will be undertaken by City staff pursuant to delegated authority as applicable.

CONTACT

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SIGNATURE

Josie Scioli
Chief Corporate Officer

ATTACHMENTS

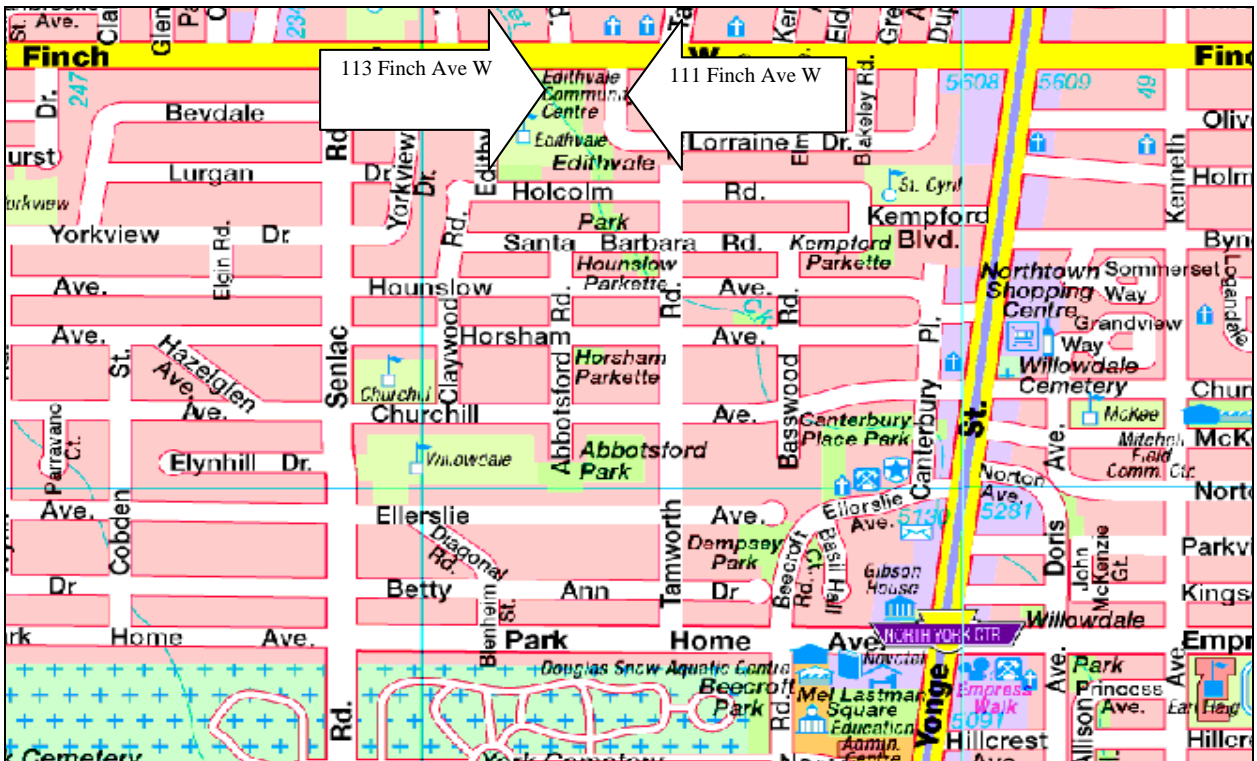
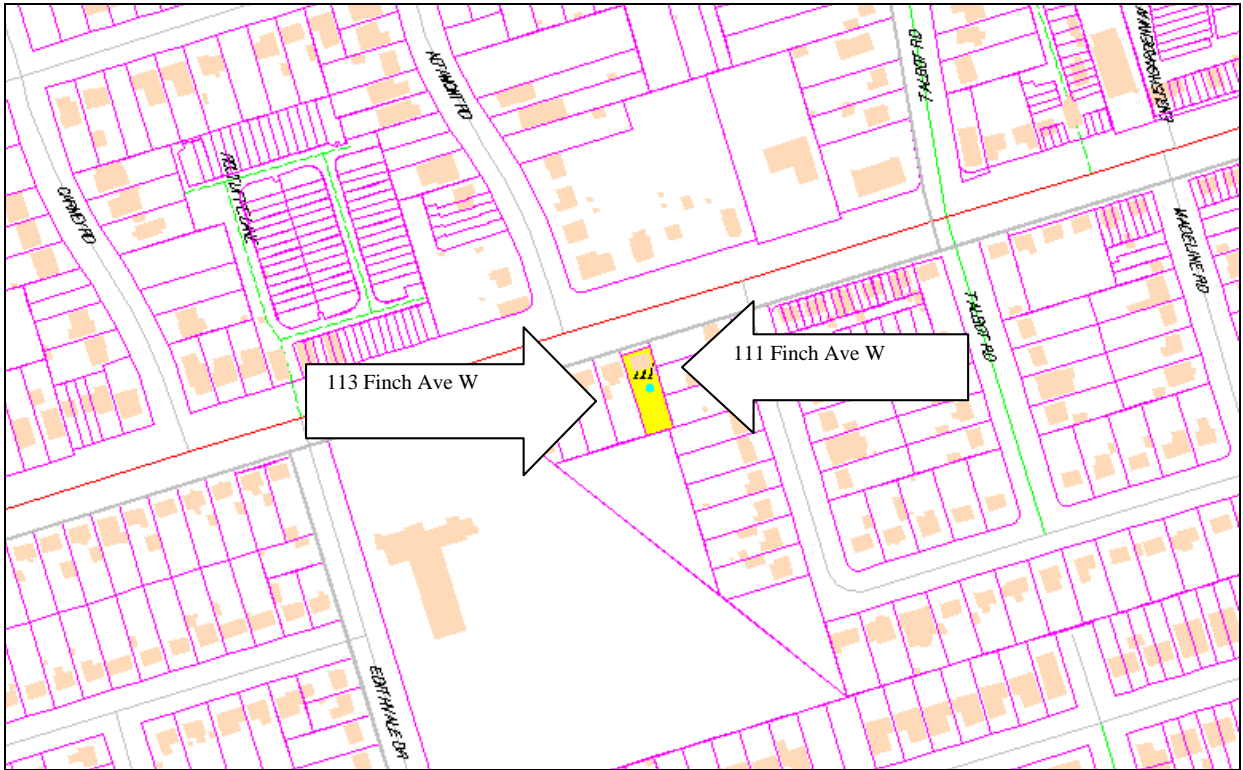
Attachment 1– Confidential Attachment
Appendix A – Table of Private Property Requirements
Appendix B – Site Map
Appendix C – Inquiry Officers Report Dated January 30th 2013

APPENDIX "A"

TABLE OF PROPERTY REQUIREMENTS

PROPERTY ADDRESS		LEGAL DESCRIPTION	PROPERTY REQUIREMENTS
WARD 23 - Willowdale			
1.	<u>Address:</u> All of 111 Finch Avenue West	Pt Lt 4, Plan 3832 North York, designated as Part 1 Plan 66R-19809; T/W ROW over Pt 2 Plan 66R-19809 as in AT7468; Toronto (North York), City of Toronto	All right, title and interest the entire property, approximately 645 m ² (6,943 ft ²) of land, as shown on Appendix "B"
2.	<u>Address:</u> All of 113 Finch Avenue West	Lt 3, Plan 3832 North York, except Pt 8 Expropriation Plan 8769; Toronto (North York), City of Toronto	All right, title and interest the entire property, approximately 679 m ² (7,309 ft ²) of land, as shown on Appendix "B"

Appendix B – Site Map



Appendix C – Inquiry Officers Report Dated January 30th 2013

Expropriations Act, R.S.O. 1990, c. E.26 (as amended)

IN THE MATTER OF the proposed expropriation by the City of Toronto of a fee simple interest in the following lands:

All of 111 Finch Avenue West, described legally as PIN 10142-1266 (LT), being Part Lot 4, Plan 3832 North York, designated as Part 1 on Reference Plan 66R-19809; together with a right of way over Part 2, Reference Plan 66R-19809, as in AT7468 (formerly North York), City of Toronto, for the purpose of expansion of Edithvale Park;

All of 113 Finch Avenue West, described legally as PIN 10142-0004 (LT), being Lot 3, Plan 3832 North York, except Part 8, Expropriation Plan 8769, (formerly North York), City of Toronto, for the purpose of expansion of Edithvale Park.

Date of Hearing	January 17, 2013
Appearances:	
City of Toronto	Brendan O’Callaghan
Johan Hofbauer	In person
Sangho Lee and Jinsuk Jo	Sangho Lee, Min Hung Lee

REPORT

This inquiry was held pursuant to section 7 of the *Expropriations Act*, R.S.O. 1990, c. E.26 (as amended) (the “Act”) to determine whether the proposed taking by the City of Toronto of a fee simple interest in the properties owned by the requesters is “fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority” as the Act states, or is “reasonably defensible” as the courts have interpreted this test.

PARTIES

Mr. O’Callaghan appeared for the City, and the Mr. Lee and his son Min Hung Lee appeared in person, together with a translator. Ms. Jo did not appear.

THE PROPERTIES

The requestors own rectangular parcels on the south side of Finch Avenue West, just west of Lorraine Drive. Mr. Hofbauer presently resides in a two-storey dwelling at 113 Finch Avenue West. Number 111 Finch, although similar in appearance, is used for commercial businesses as well, Jin Acupuncture and Herbs Clinic and Jin Massage Therapy Clinic. Finch Avenue is a

heavily-trafficked four lane arterial in this area, with recent townhouse developments to the east and north of the properties in question. To the south is Edithvale Park, a large urban recreation site. Immediately to the west on Finch is the City-owned Edithvale Community Centre, effectively part of the park. To the south of it is land owned by the Toronto District School Board (“TDSB”), the northern portion of which is now leased to the City and used for park purposes.

THE OBJECTIVE OF THE EXPROPRIATING AUTHORITY

The City wishes to add to the supply of parkland in this area of heavy demand for the amenities provided by large urban parks of this kind. When considering the requisite parkland dedication for a new development at 5000 Yonge Street, it determined to seek parkland away from that site. Properties along Finch close to the intersection of Lorraine Drive had been identified by the parks staff as appropriate and even necessary for expansion of Edithvale Park. The City then set about acquiring these parcels.

SUMMARY OF THE EVIDENCE

The Exhibits filed at the hearing are listed in Appendix A of this Report.

City of Toronto

In his opening statement, Mr. O’Callaghan supplied the legislative background for parks acquisition. The Planning Act and the City’s Official Plan both require parkland in residential areas, and provide the tools to acquire them, through development applications and by expropriation when necessary. The Official Plan provides standards for park acreage per population. Because this area is now solidly developed, there are no greenfield opportunities to acquire new parks. Since it is also rapidly increasing in population, the City determined that the location for park expansion would be the existing Edithvale Park. This would create a more regular shape for the park, as well as provide economies of scale in operation and maintenance.

Ms. Rosanne Clement, Program Standards and Development Officer with the Parks, Forestry and Recreation Department of the City, provided expert testimony as to the history of and rationale for these proposed acquisitions. She has had about 15 years’ experience in parks planning and acquisition for the City. Her evidence was that both the Official Plan and the North York Centre Secondary Plan require parkland to be provided, the latter at the rate of .73 H per 1000 population. Mapping illustrates that the area in question is in the second-lowest quintile of parkland in the city. Council provided authorization as far back as 2000 to acquire additional lands for this park. Both official plans also contain guidelines for parkland expansion. The “squaring-off” of existing parks is included. It is preferable to expand existing larger sites, she testified, as they can contain more amenities and programme options than smaller parks. Maintenance is also easier for larger sites. Because there is an existing Community Centre here for indoor activities, an increase in exterior land would permit a complementary expansion of outdoor activities.

She pointed out that all the other properties nearby proposed as parkland additions, numbers 115, 117 and 119 Finch as well as 101 and 107 Lorraine Drive around the corner, have already been acquired by the City. (This leaves only the two properties in question still shown in white on Exhibit 1; the rest now would be shown in green.) Therefore in her professional opinion, these two remaining properties should be acquired to square off this corner of the park, and to provide additional and continuous frontage on Finch.

She elaborated on the process used in this case. Since the City has been planning to expand this park since 2000, it has required developers who must provide parkland to make purchase offers to owners within the block. In this instance the owners did not accept the developer's offers, as was their right. Since the developer could not provide actual land, the City relied on cash-in-lieu of parkland to enable it to acquire the parcels, by expropriation if necessary. Provision of funds instead of land for parks is authorized by section 42 of the Planning Act, which states:

“Payment instead of conveyance

(6) The council of a local municipality may require the payment of money to the value of the land otherwise required to be conveyed under this section in lieu of the conveyance. 2006, c. 23, s. 17 (1).”

After a developer provides such cash-in-lieu of parkland, the City has the funds to make offers to purchase. If unsuccessful, it can expropriate under the Act.

The landowners

Both owners provided evidence by cross-examining Ms. Clement. Their main concerns appeared to be about the process followed by the developer in making its offers, which they considered to be too low. They also mentioned the City's apparent reluctance to share information about the offers it made, and expressed frustration with the expropriation process in general. Mr. Hofbauer says he never received an offer from the City after he rejected the developer's offer. While he admitted that squaring-off was not an unreasonable goal, and that the design made sense, he recommended that the City acquire parkland elsewhere, such as Albert Standing Park close to the development at 5000 Yonge. He believes that the park is large enough as it is, and that it could be squared off at a later date, or that part of his land could be taken and not all of it.

Ms. Clement stated that the City had looked elsewhere, but smaller parks nearby were passive ones, while Edithvale's master plan would provide greater programmability in this active park. Thus expansion here is more desirable. In addition, the expansion worked efficiently with the TDSB lands and the Community Centre to create a large public space, especially in non-school hours. Were the City to take an equivalent portion of the TDSB lands, there would be no such gain in functionality. Mr. Hofbauer indicated that he might reluctantly agree to the taking if it could be delayed until his retirement in two years.

The owners of 111 Finch West appeared to be mostly concerned about the amount of compensation offered. This is evident from their request letter (Ex. 5.) After its initial offer, they did not hear of any outreach by the City for a conversation about value. They consider individual rights superior to rights of the public, and object to the proposed expropriation on this ground as well. While admitting that the size and shape of the park are important considerations, they wish to see smaller parks rather than an expansion of this one, or a redesign of this proposal so as to exclude them. They suggested a design or directional change for park features around the two properties in question, so that they could be retained. They wish to either remain where they are, or to receive sufficient compensation for moving and business disruption expenses.

In his summation Mr. O'Callaghan submitted that there had been no viable alternative suggested by the owners. He referred to these two properties as the “missing teeth in the smile”, saying that there are no others that could fulfill the same function in fulfillment of the City's objective. The City had engaged in a proper offering process, which the owners were entitled to reject, and to

request the present hearing. He said that there could be some consideration of a delay to permit Mr. Hofbauer to remain longer in his home. Compensation would be determined later in the process, and would be provided by the City. The owners could take the amount offered and still seek a greater amount on arbitration. Therefore in his submission these proposed takings met the statutory test of fair, sound and reasonably necessary.

FINDINGS AND OPINION

The City has long proposed the acquisition of these two parcels (among others) to complete the layout of Edithvale Park. Although it was not formally entered into evidence, the rationale is also outlined in the Notice of Grounds. A Memo of February 21, 2002 to the North York Community Council from the Commissioner of Economic Development, Culture and Tourism sets it out. Subsequent offers by the developer to the owners were not accepted, so the Council authorized expropriation (ibid., Request to Expropriate, June 14, 2011.) It is clear from the elaborate landscaping and electrical plans submitted (Exhibits 5 to 8) that Mr. O'Callaghan's submission is accurate: there would be increased maintenance and other costs if the two parcels were not acquired, and a gap in the park plans is created. To have to skirt these two private properties in maintaining the portions of park surrounding them (cutting grass, tree and electrical maintenance, etc.) does not make sense to me. They would be the only private properties remaining in the entire Community Park site.

There would be no equivalent public benefit in taking a portion of the TDSB lands as suggested by Mr. Hofbauer. This would not square off or complete the existing park in the same way, nor provide the continuous frontage on Finch. Respecting his submission about Albert Standing Park as a substitute taking, it is located approximately at Sheppard and Yonge. This is closer to the developer's project at 5000 Yonge (the source of the funds for park acquisition), as he claimed. However, I accept the expert evidence of Ms. Clement that this park is too small to be expanded. It would not provide the same amenities, nor be available in the area of greatest need for parkland.

The primary concerns for the owners of 111 Finch were adequate compensation for their property, and business disruption costs. As Inquiry Officer I have no jurisdiction to deal with this question. As stated by Mr. O'Callaghan, another offer would be made if the City decides to proceed with the expropriation. If the amount is unsatisfactory, arbitration could be sought at the Ontario Municipal Board.

It is not the fault of the City if the owners of properties proposed to be acquired or expropriated do not attempt to make inquiries, and receive further information about an offer to purchase, especially when requested to do so. The owners here objected to the process, saying they had insufficient information. Once any approach to acquire or expropriate is made, there has to be some onus on the owners to inquire about the specifics if they have questions. Even in the absence of further contact, owners should not merely wait and hope that the situation will somehow disappear. When an offer of further communication is made, it should not be ignored. In this process there was ample opportunity for information to and input from the landowners, even if the City did not appear to be in any hurry and the landowners welcomed any delay. The park expansion is necessary, in the professional opinion of Ms. Clement, and Council has agreed. She stressed that there are no reasonable alternatives for the proposed park expansion. If the owners object to the price offered, there is a remedy in another forum.

Therefore I accept Mr. O'Callaghan's submission that the proposed takings are sound, and reasonably defensible. In balancing the owners' desire to retain their land with the public interest

in adequate and functional parkland (as I must do in deciding whether the proposed taking is fair, sound and reasonably necessary as the Act requires), in this case the private should be subordinate to the public interest. I do not agree with Mr. Lee's submission that private rights should prevail. Indeed, that is the very purpose behind the enactment of a power to expropriate for public purposes, so long as it meets the test of reasonably defensible. Compensation for adverse effects is provided for under the Act.

CONCLUSION

After considering all of the evidence and arguments, I conclude that the proposal meets the test in the *Expropriations Act* and the summation of it as set out by the courts. As mentioned, 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". Decisions such as Re Parkins and the Queen (1977), 13 L.C.R. 327 (O.C.A.) conclude 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 expropriations by the City of Toronto are reasonably defensible in the achievement of the City's objective of the necessary expansion of Edithvale Park. I would also recommend that the City provide the owners with their costs of the inquiry of \$200 as provided for in subsection 7(1) of the Act.

-original signed by-

Gillian. M. Burton
Inquiry Officer

Date: January 30, 2013

APPENDIX A

LIST OF EXHIBITS

1. Sketch of Edithvale Park
2. Curriculum Vitae, Rosanne Clement
3. Concept Plan, Edithvale Park
4. Letter, John Hofbauer (undated)
5. Letter, Sangho Lee and Jinsuk Jo (undated)
6. Landscape Plan, Edithvale Community Park
7. Electrical Plan, Edithvale Community Park
8. Planting Plan, Edithvale Community Park
9. Close-up, Electrical Plan, Edithvale Community Park