STAFF REPORT
ACTION REQUIRED
with Confidential Attachment

357 Birchmount Road – Information Report Regarding Expropriation of the Subject Property

Date:	July 22, 2014
To:	Scarborough Community Council
From:	City Solicitor
Wards:	Ward No. 36– Scarborough Southwest
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege and is about litigation or potential litigation that affects the City.
Reference Number:	

SUMMARY

Habitat for Humanity Toronto Inc. has appealed its Zoning By-law Amendment application to the Ontario Municipal Board (OMB) due to Council's failure to make a decision on the application within the time prescribed by the *Planning Act*. The application seeks to amend the zoning by-law to permit the development of eight (8) semi-detached dwellings and one single detached dwelling on the lands located at the north-east corner of Birchmount Road and Highview Avenue, known as 357 Birchmount Road.

The purpose of this report is to respond to Scarborough Community Council's May 13, 2014 referral motion on the Final Report for Zoning By-law Amendment application 13 203636 ESC 36 OZ which directed that the Director of Community Planning, Scarborough District consider all potential options related to the best use of this site.

This report will outline the process of land expropriation and provides legal advice.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council receive the public report and confidential information in Attachment 1; and.

2. City Council direct that Confidential Attachment 1 remain confidential as it contains advice and information that is subject to solicitor-client privilege and pertains to litigation or potential litigation.

Financial Impact

There is no direct financial impact arising from the recommendations of this report.

DECISION HISTORY

On May 13, 2014 Scarborough Community Council held a Public Meeting to consider a Final Report dated April 14, 2014 for a Zoning By-law Amendment application by Habitat for Humanity Toronto Inc. (HFHT). The Final Report can be found at: http://www.toronto.ca/legdocs/mmis/2014/sc/bgrd/backgroundfile-68694.pdf.

At its May 13, 2014 meeting, Scarborough Community Council referred Planning Staff's Final Report back to staff for further review and consideration to be given to all potential options related to the best use of this site, including, but not limited to, a possible land exchange.

ISSUE BACKGROUND

http://www.toronto.ca/legdocs/mmis/2014/sc/bgrd/backgroundfile-68694.pdf.

This report provides information and legal advice relating to the expropriation of 357 Birchmount Road.

COMMENTS

Expropriation of the land at 357 Birchmount Road is an option available to the City, provided it is done for a valid municipal purpose. For example, use of the land as a park could be a valid municipal purpose. City Council would have to first approve the initiation of the expropriation of the subject property and would then have to provide notice to the applicant of its intent to expropriate the land. The applicant can then request a Hearing of Necessity, which is an inquiry into the validity of the stated interests of the municipality.

At a Hearing of Necessity, the City would be required to prove, with evidence, that the taking of this land is fair, sound, and reasonably necessary. Bad faith and the history of decision making on the subject property are considered when determining whether a purpose is a valid municipal purpose. After declaring the subject property surplus in 2008, City staff identified the subject property as a suitable site for a Habitat for Humanity project and invited Habitat for Humanity to make an offer to purchase the land. The property is in an area of the City that is well serviced by parkland. Parks has indicated that it does not want the land for use as a park. These are factors that would be considered at a Hearing of Necessity in determining whether there is a valid municipal purpose. At the conclusion of a Hearing of Necessity, an Inquiry Officer's Report is prepared and presented to City Council.

Because the City is an approval authority, regardless of the recommendations in the Inquiry Officer's Report, the City can expropriate the land. Council must consider the report in making its decision, but is not bound by the recommendations therein.

If the City proceeds with expropriation, Habitat will be required to be compensated. If the parties cannot agree on the compensation value, the matter of compensation will proceed to a hearing at the Ontario Municipal Board.

If the City proceeds with expropriation of the land, Habitat will be required to be compensated for all reasonable costs associated with the expropriation. This includes the market value of the land, interest on market value of the land, and all planning, appraisal and legal costs incurred so far, as well as all planning, appraisal and legal costs associated with the expropriation. In an expropriation, the expropriating authority will always end up spending significantly more than if the acquisition was a straightforward purchase.

The highest and best use was determined in 2008 to be for housing. An appraisal with an effective date of March 5, 2008 established the market value of the Property at $1,073,000.00. City Council authorized the sale of the Property in EX29.21 at its meeting of February 23, 24 and 25, 2009 in the amount of $1,073,000.00 less a forgivable Vendor Take Back Mortgage in the amount of $973,000.00.

CONTACT

Christina Achkarian, Solicitor,
Tel: 416-338-5792; Fax: 416-397-5624; Email: cachkar@toronto.ca

SIGNATURE

_____
Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1: Confidential Information