



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Expropriation of Portion of 18 Willingdon Boulevard –
TTC Royal York Subway Station Easier Access Project**

Date:	November 26, 2015
To:	City Council
From:	Deputy City Manager & Chief Financial Officer
Ward:	5 – Etobicoke-Lakeshore
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:\2015\Internal Services\Re\cc15046re - (AFS #22252)

SUMMARY

This report provides City Council with a copy of the Inquiry Officer's report dated November 4, 2015 on the proposed expropriation and seeks approval from City Council, as the approving authority under the *Expropriations Act* to expropriate permanent and temporary easements in, over and through a portion of 18 Willingdon Boulevard as identified in Appendix "A" ("the Property") in order to proceed with the construction of one of the elevators within the Royal York Subway Station in connection with the station's Easier Access Phase III Project and to provide for access, support and maintenance of the subsurface transit and/or other municipal systems located on Royal York Subway Station.

This matter is urgent because Section 8 of the *Expropriations Act* requires the City to notify the owners of the Property of its decision to approve of the expropriation within 90 days from the date the City received the decision of the Inquiry Officer. City Staff received the Inquiry Officer's report on November 4, 2015 and therefore, the statutory deadline to notify the owners of the Council decision is February 2, 2016. Due to City Council's schedule, City will be outside the statutory time frame if Council does not approve this matter at its December 9, and 10, 2015 meeting. The next Council meeting after the December meeting is not until February 3, 2016.

RECOMMENDATIONS

The Deputy City Manager & Chief Financial 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" for the purpose of the Royal York Subway Station Easier Access Phase III Project and to provide for access, support and maintenance of the subsurface transit and/or other municipal systems located on Royal York Subway Station for the reasons outlined herein, and based on the recommendations of the Inquiry Officer.
2. City Council, as expropriating authority under the *Expropriations Act*, authorize all necessary steps to comply with the *Expropriations Act*, including but not limited to the preparation and registration of an Expropriation Plan, service of Notices of Expropriation, Notices of Election as to a Date for Compensation and/or Notices of Possession, as may be required.
3. City Council authorize City Staff to obtain an appraisal report to value the property requirements set out in Appendix "A", updated to the date of expropriation or, if the owner so elects in accordance with the *Expropriations Act*, to the date of service of the Notices of Expropriation; and to prepare and serve offers of compensation on all required parties, at the appraised value, all in accordance with the requirements in the *Expropriations Act*.
4. City Council authorize any one of the Chief Corporate Officer, Director of Real Estate Services and Manager of Acquisitions and Expropriation to sign the Notices of Expropriation, Notices of Possession and any related documents required under the *Expropriations Act* on behalf of the City.
5. Leave be granted to introduce the necessary Bill 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 Property by arbitration, appeal or settlement to the satisfaction of the City Solicitor.

Financial Impact

Funding for the Property identified in Appendix "A" is available in the Council approved TTC 2015 Capital budget and TTC 2016-2024 Capital Plan within the Easier Access Phase II & III Project.

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

DECISION HISTORY

On August 25, 26, 27 and 28, 2014, City Council adopted the recommendations in Report GM32.13 dated July 24, 2014, granting authority to negotiate to acquire or, if unsuccessful, to initiate expropriation proceedings of the Property.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.GM32.13>

COMMENTS

City staff sought to secure voluntary acquisition of the property requirements as detailed in Appendix "A", through negotiations with the owners, but an agreement has not been reached. As authorized by City Council and in accordance with the *Expropriations Act*, Notices of Application for Approval to Expropriate were published and served on the registered owners of 18 Willingdon Boulevard. A Hearing of Necessity was conducted and completed on October 28, 2015.

On November 4, 2015, the Inquiry Officer's report was released and concluded that the taking of the Property was fair, sound and reasonably necessary pursuant to the *Expropriations Act*. The Inquiry Officer found that the proposed expropriation by the City of Toronto of lands and interests as described in Appendix "A", for improvements to transportation systems, is reasonable and defensible in the achievement of the municipality's objective of constructing an elevator for access in the Royal York Subway Station. Set out in Appendix "C" of this report is the Inquiry Officer's findings.

For the reasons stated in the Inquiry Officer's report and herein, it is recommended that City Council approve this 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

Joe Casali, Director of Real Estate Services; Tel: (416) 392-7202; jcasali@toronto.ca
Joanna Kervin, Head of Property, Planning & Development, Engineering, Construction & Expansion; TTC; Tel: (416) 393-7884; joanna.kervin@ttc.ca

SIGNATURE

Roberto Rossini
Deputy City Manager & Chief Financial Officer

ATTACHMENTS

Attachment 1– Confidential Attachment
Appendix A – Table of Private Property Requirements
Appendix B – Site Map
Appendix C – Report of Gillian M. Burton, Inquiry Officer, dated November 4, 2015

Appendix "A"
Table of Private Property Requirements

Municipal Address	18 Willingdon Boulevard
Legal Description	Part of PIN 07511-0033(LT) being part of Lot 50 on Plan 1685, Etobicoke, City of Toronto ("Lands")
Property Requirements	<p>A permanent easement in, on, over and through part of the Lands, designated as Part 1 on Draft Plan of Survey Drawing No. 0337-PS-054, approximately 15.16 m² (163.18 ft²) of land, for access, support and maintenance of the subsurface transit and/or other municipal systems, including the elevator to be built on adjacent lands owned by the City, and all works and uses ancillary thereto.</p> <p><i>[Note: The owners will retain rights, subject to the prior written approval of the relevant transit and/or municipal authority to alter the easement lands or effect changes to the use thereof, provided that the safety or stability of the subsurface systems are not adversely impacted, such approval not to be unreasonably withheld or delayed].</i></p>
	<p>A temporary easement in, on, over and through part of the lands designated as Part 2 on Draft Plan of Survey Drawing No. 0337-PS-054, approximately 84.57 m² (910.33 ft²) of land, for access, erection of hoarding around the subsurface transit and/or other municipal systems, including the elevator to be built on adjacent lands owned by the City, and all works and uses ancillary thereto during the construction and restoration of adjacent City owned lands for a period of three (3) years from the registration of the Expropriation Plan.</p>

Appendix "C"
Inquiry Officer's Report dated November 4, 2015

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

IN THE MATTER OF the proposed expropriation by the City of Toronto of the lands and interests in lands described as Part of PIN 07511-0033 (LT), being Part of Lot 50 on Plan 1685 as in Instrument No. TB844937 (the "Lands"), known municipally as 18 Willingdon Boulevard, Toronto, for municipal purposes, namely improvements to transportation systems, and described as follows:

Firstly: A permanent easement in, on, over and through part of the Lands, designated as Part 1 on Draft Plan of Survey Drawing No. 0337-PS-054 for access, support and maintenance of the subsurface transit and/or other municipal systems, including the elevator to be built on adjacent lands owned by the City, and all works and uses ancillary thereto *[Note: The Owners will retain rights, subject to the prior written approval of the relevant transit and/or municipal authority to alter the easement lands or effect changes to the use thereof, provided that the safety or stability of the subsurface systems are not adversely impacted, such approval not to be unreasonably withheld or delayed];* and

Secondly: A temporary easement in, on, over and through part of the Lands designated as Part 2 on Draft Plan of Survey Drawing No. 0337-PS-054 for access, erection of hoarding around the subsurface transit and/or other municipal systems, including the elevator to be built on adjacent lands owned by the City, and all works and uses ancillary thereto during the construction and restoration of adjacent City-owned lands for a period of three (3) years from the registration of the Expropriation Plan.

Date of Hearing October 28, 2015

Appearances:

City of Toronto **Brendan O'Callaghan**

Corbin Andrews and Danielle Honour In person

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 easements over the subject parcel 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. Brendan O'Callaghan appeared for the City of Toronto, and the owners of 18 Willingdon Boulevard, Mr. Andrews and Ms. Honour, were present on their own behalf.

This residential parcel on Willingdon is located immediately to the north of the present Royal York Subway Station owned by the Toronto Transit Commission (TTC). Also to the south of the property and east of the station is a Toronto Parking Authority (TPA) lot. In addition to the residence there is a garage at the rear southwest portion of the property, accessed by a driveway from Willingdon Boulevard.

THE OBJECTIVE OF THE EXPROPRIATING AUTHORITY

As outlined in Exhibit 1, the Notice of Grounds, the TTC proposes to construct an elevator for ease of access to the westbound platform of the station. Although entirely on TTC land, the elevator structure would be located very close to the TTC property line to the south of the owners' parcel, and also close to their garage. This would require a permanent easement over 15.0 m² of their property for access, support and maintenance of the elevator, and a larger, temporary easement of 85.0 m² for construction and tree removal purposes. This "E2" elevator, one of three proposed for the Royal York station, is part of a widespread elevator construction program to enable the Commission to be in compliance with the *Easier Access for All Ontarians Act* within the statutory time frame of 2025.

SUMMARY OF THE EVIDENCE

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

The City of Toronto

Ms. Joanna M. Kervin, Head of Property, Planning and Development Engineering, Construction and Expansion, for the Toronto Transit Commission, testified as to the rationale for the location of the proposed elevator, as well as to the necessary construction. She has had very extensive experience as a professional engineer, and in property acquisition for TTC projects.

This project is very well illustrated in Exhibit 2, "Royal York Station – Easier Access Project and Public Art", slides from a public meeting held on October 6, 2015. Ms. Kervin pointed out that the location chosen for Elevator E2 was mandated by existing structures within the station, as shown on Page 9 of Ex. 2. Elevators must be placed in areas close to the main station entrances. She provided a description of the extensive construction required for the elevator shaft support structure. Its anticipated lifespan would be the same as the subway, about a century or so.

Ms. Kervin said that the period of construction is expected to be about three years; thus the length of the temporary easement proposed for Part 2 on the draft Plan No. 0337-PS-054. Hoarding around this portion of the owners' land would permit access for construction vehicles, and prevent damage during necessary tree removal to accommodate the caissons (See Exhibit 4, P7, Royal York Station, Shoring and Excavation at Street Level, and P6 for trees to be removed.) Up to 5 trees would be removed from the north side of the TPA lot (Ex. 1, p. 13). However, Ms. Kervin indicated that only one large tree at the rear of the subject parcel is proposed to be removed.

It is not anticipated that the existing garage would have to be altered or removed, although more trees than proposed may have to be cut down.

While the permanent easement proposed as Part 1 on the Plan would include a corner of the existing garage, this is the minimum required to retain the necessary distance from the caissons supporting the new tunnel shaft. This would permit additional caissons if required, and future

maintenance. The TTC would not access the easements by means of the existing driveway on the owners' parcel.

Therefore in her professional opinion, the elevator must be constructed in the location proposed.

The landowners

During cross-examination the owners sought clarification on some of the issues. Any trees removed would be replaced where possible. The corner of their garage must be included in the permanent easement, for the reasons given. They asked about the clause added in the description of the easements, respecting their right to alter the area and the structures only with the TTC's approval. Ms. Kervin clarified that the Commission would probably approve the removal or rebuilding of the garage, but that a structure such as an in ground pool might not be acceptable. Any rebuilding on the area of the permanent easement would have to be within the expressed purpose for the taking. There is a review process for any construction within 60 m of TTC structures. If such changes on the easement were approved, they would be carried out by way of an easement agreement, in a standard format, and the terms would not subject to negotiation.

Mr. O'Callaghan submitted that the proposed taking met the statutory test of fair, sound and reasonably necessary for the TTC's accessibility project in this station. The TTC must meet the statutory requirement to provide accessible entrances and elevators within stations. This location is the least impactful and invasive for the neighbours. The need for the elevator location and structure had not been challenged.

He also outlined to the owners the process that the *Expropriations Act* provides following any expropriation.

The owners stated that they had never objected to the project. They merely wish see the least possible impact on their property rights, now and in the future.

FINDINGS AND OPINION

Mr. Andrews and Ms. Honour do not appear to challenge the TTC's need for the proposed easements over their land. Ms. Honour said that they recognized that the project was necessary, and did not really object to the location chosen. They offered no alternatives. Since the need for the taking in the proposed location is the one issue that an Inquiry Officer can examine and address in a Hearing of Inquiry, this should have been the end of the matter. Detailed questions about the proposed construction (that could have been asked without a hearing) perhaps should not have been allowed in the hearing itself. However, since it was useful for the owners to obtain the assurances by Ms. Kervin on the matters of changes to the land, tree removal, and so on, I allowed what is a very informal process to be even more so.

Ms. Honour questioned the presence of the following Note in the description of the permanent easement:

“[Note: The Owners will retain rights, subject to the prior written approval of the relevant transit and/or municipal authority to alter the easement lands or effect changes to the use thereof, provided that the safety or stability of the subsurface systems are not adversely impacted, such approval not to be unreasonably withheld or delayed].”

She said that it was not present in the first Notice of Application for Approval to Expropriate that she had received. I explained that the copy of the Notice that I received from the Chief Inquiry Officer did contain such a Note, and thus I had included it in the property description for information purposes. It appeared that Ms. Kelvin's explanation of the meaning of and process for this standard clause was sufficient to alleviate the concerns of the owners.

I am satisfied from the evidence in this case that the location chosen meets the statutory test. In balancing the owners' desire to have full ownership rights over their property with the public interest in accessible transit (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. 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. 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". In *Re Parkins and the Queen* (1977), 13 L.C.R. 327 (O.C.A.), the test is distilled into whether the taking 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 Toronto of lands and interests in lands described as Part of PIN 07511-0033 (LT), being Part of Lot 50 on Plan 1685 as in Instrument No. TB844937 (the "Lands"), known municipally as 18 Willingdon Boulevard, Toronto, for improvements to transportation systems, is reasonably defensible in the achievement of the Municipality's objective of constructing an elevator for access in the Royal York Subway Station.

-original signed by -

Gillian. M. Burton
Inquiry Officer

Date: November 4, 2015

APPENDIX A

LIST OF EXHIBITS

1. Notice of Grounds, City of Toronto Council Minutes
2. Toronto Transit Commission, Royal York Station, Easier Access Project and Public Art, Community Update, October 6, 2015.
3. Curriculum Vitae, Joanna M. Kervin, P. Eng.
4. P 1 to P 13, Detailed Plans, Royal York Station