



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Expropriation of Storm Sewer Easement, 34 Plymbridge Crescent

Date:	February 2, 2016
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Ward 25- Don Valley West
Reason for Confidential Information:	This report is about a proposed or pending land acquisition by the City, One of its agencies, boards, and commissions.
Reference Number:	P:\2016\Internal Services\RE\Gm16009re (AFS #22548)

SUMMARY

This report seeks approval from City Council, as the approving authority under the *Expropriations Act*, to expropriate a permanent storm sewer easement from 34 Plymbridge Crescent. The expropriation of this easement is required to upgrade the storm drainage system in the area, which is one of the main objectives of the 2005 Hogg's Hollow Stormwater Management and Roads Improvement Environmental Assessment Study.

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, continue to approve the expropriation of the property requirements set out in Appendix "A".
2. City Council, as recommended by the Inquiry Officer, approve the payment of costs in the amount of \$200, pursuant to section 7(10) of the *Expropriations Act*, to the owner of 34 Plymbridge Crescent funded from the 2016-2025 Approved Capital Budget and Plan for Toronto Water (account CWW447-11).

3. City Council authorize all actions 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. 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.

Financial Impact

Funding for the acquisition or expropriation for the storm sewer easement to be located on 34 Plymbridge Crescent is set out in Attachment 1 - Confidential Information to this report.

City staff will continue to attempt to negotiate a settlement with the owners of the lands through which the easement is required rather than complete the expropriation process.

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

DECISION HISTORY

On June 10th 2015, City Council adopted the recommendations of Report GM4.9, granting authority to initiate the expropriation proceedings, if necessary for the acquisition of the permanent storm sewer easement on 34 Plymbridge Crescent for the purpose of upgrading the storm drainage system in the area, which is one of the main objectives of the 2005 Hoggs Hollow Stormwater Management and Roads Improvement Environmental Assessment (EA) Study..

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.GM4.9>

COMMENTS

City staff sought to secure voluntary acquisition of the necessary easement, as detailed and shown in Appendices "A", "B", and "C" through negotiations with the impacted owner, 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 November 30th, 2015.

On December 22nd 2015, the Inquiry Officer's report was released and it concluded that the taking of the stated interests from the objecting property owner was not fair, sound

and reasonably necessary in furtherance of the municipal objective. City Staff, and more specifically its Engineering and Construction Services division, disagree with the Inquiry Officers report and are of the considered opinion that the proposed expropriation by the City of Toronto is reasonably defensible in achieving the flooding control objective of the 2005 EA Study. Therefore the direction of the necessary easement through the property known as 34 Plymbridge Crescent remains the most logical, strategic and cost effective choice. The Inquiry Officer's Report is attached hereto as Appendix "D".

Therefore, to ensure that the easement interest is 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

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

SIGNATURE

Josie Scioli
Chief Corporate Officer

ATTACHMENTS

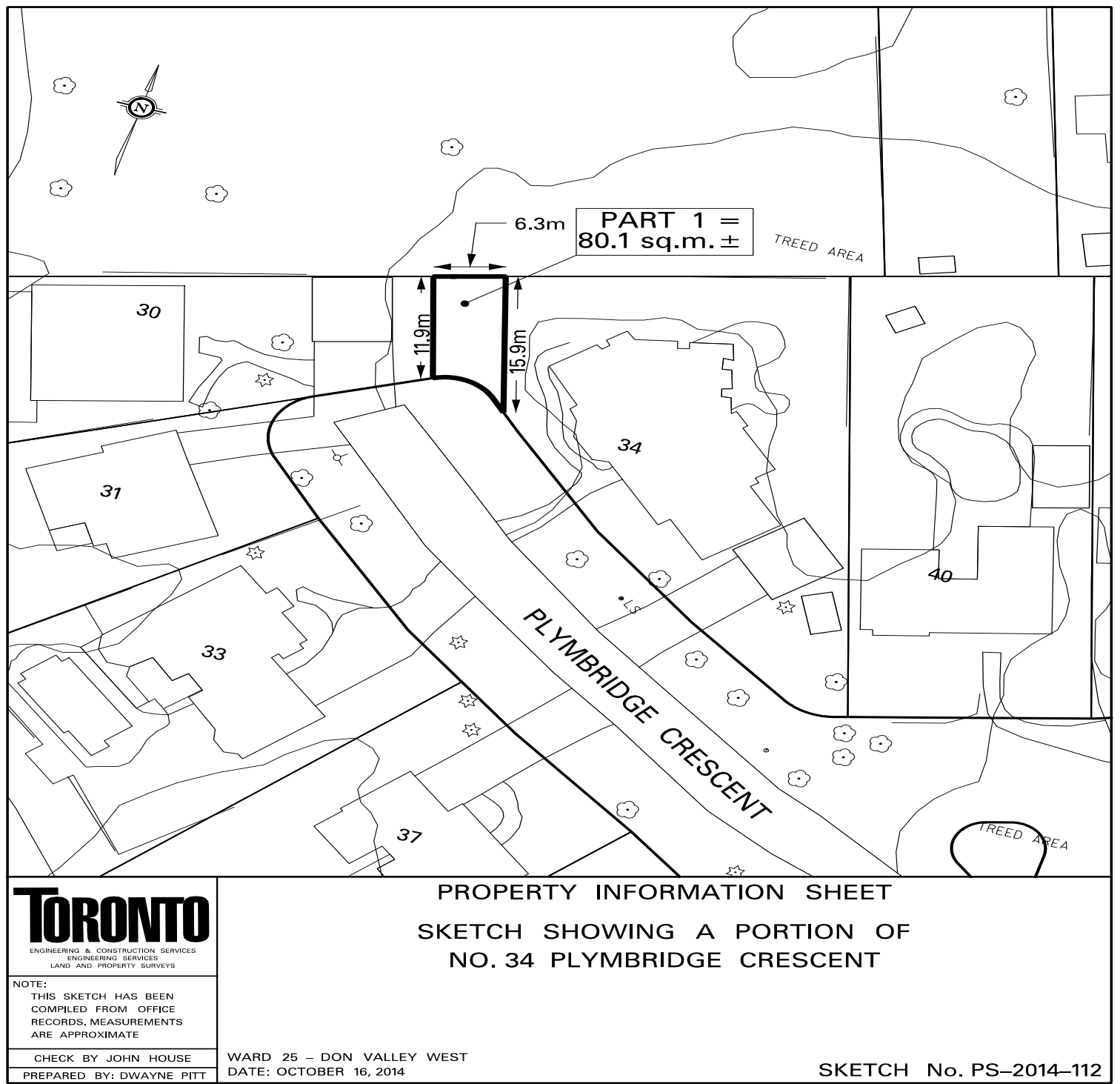
Attachment 1- Confidential Attachment
Appendix A - Table of Private Property Requirements
Appendix B - Survey Sketch
Appendix C – Location Map
Appendix D - Inquiry Officers Report Dated November 30 2015

APPENDIX "A"

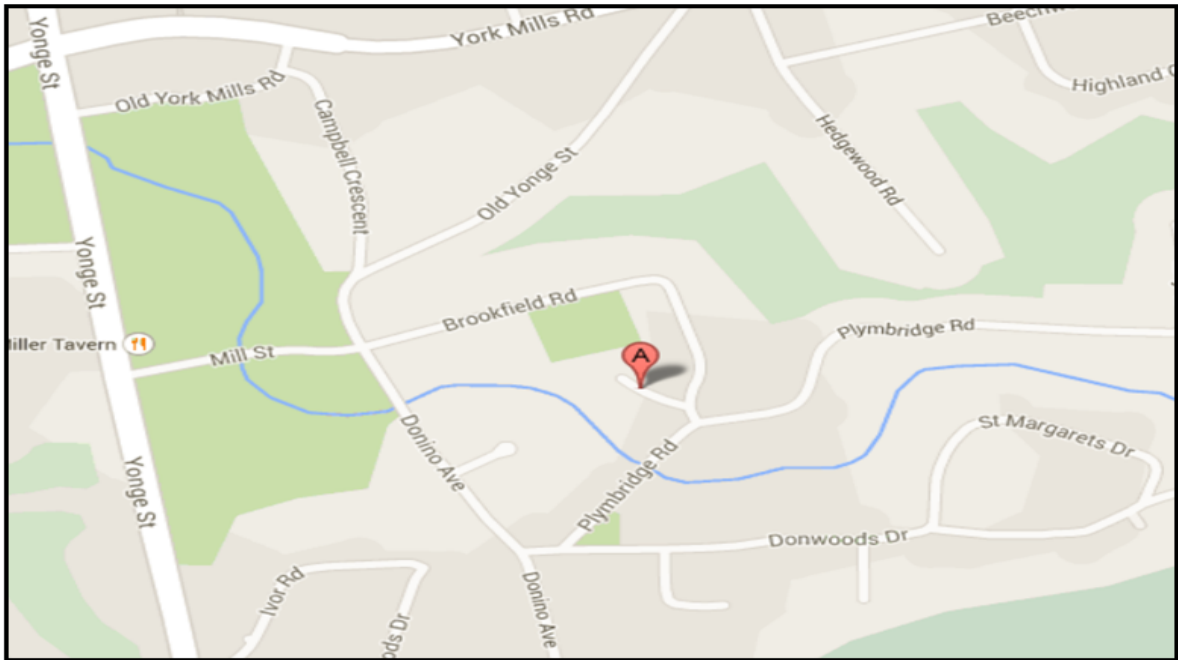
TABLE OF PROPERTY REQUIREMENTS

PROPERTY ADDRESS		LEGAL DESCRIPTION	PROPERTY REQUIREMENTS
WARD 25 – Don Valley West			
1.	<u>Address:</u> 34 Plymbridge Crescent	Described as Lot 9 and Part of Lot 10, Plan 2478, as described in TB-735672, North York, City of Toronto, Recorded as PIN 10537-0080 (LT)	Permanent Easement interest in a portion of the property, shown as approximately 80.1 m ² (862.19ft ²) of land, as shown on Appendix "B"

Appendix "B" Survey Sketch: Easement Area Required



Appendix " C " Location Map



Appendix "D" – Inquiry Officers Report

-INQUIRY HEARING-

Hearing of Necessity requested by Robert Michael Franklin and Lesley Taylor Franklin, owners of 34 Plymbridge Crescent, Toronto, Ontario, regarding the proposed expropriation by The City of Toronto for a permanent easement in a portion of land known as 34 Plymbridge Crescent, Toronto and legally described as Lot 9 and Part of Lot 10, Plan 2478, as described in TB-753672; North York, City of Toronto, recorded as PIN 10537-0080 (LT), for the municipal purposes, namely installation of a storm sewer over a portion of the property to drain Brookfield Avenue.

**Toronto Metro Hall
26th Floor
Toronto, ON**

**Monday, November 30, 2015
2:00pm**

IN THE MATTER OF THE EXPROPRIATIONS ACT

AND IN THE MATTER OF a Hearing of Necessity requested by Robert Michael Franklin and Lesley Taylor Franklin, owners of 34 Plymbridge Crescent, Toronto, Ontario, regarding the proposed expropriation by The City of Toronto for a permanent easement in a portion of land known as 34 Plymbridge Crescent, Toronto legally described as Lot 9 and Part of Lot 10, Plan 2478, as described in TB-753672; North York, City of Toronto recorded as PIN 10537-0080 (LT), for the municipal purposes, namely installation of a storm sewer over a portion of the property to drain Brookfield Avenue.

MONDAY, NOVEMBER 30, 2015 AT THE HOUR OF 2:00 O'CLOCK IN THE AFTERNOON AT THE CITY OF TORONTO METRO HALL, 26TH FLOOR, 55 JOHN STREET, TORONTO, ONTARIO.

INQUIRY HEARING

Inquiry Officer

DAVID R. VINE, Q.C.
638-121 Richmond St. W
Toronto, ON, M5H 2K1
Tel: 416-863-9341
Fax: 416-863-9342

Representing the City of Toronto

Brendon O'Callaghan
Solicitor, Real Estate Law
City of Toronto
Legal Services Division
Metro Hall, 26th Floor
55 John Street
Toronto, ON M5V 3C6

Representing Owners: Robert Franklin & Lesley Franklin

Stewart J. Wallace
Dickson Wright LLP
199 Bay Street, Suite 2200
Toronto, ON M5L 1G4

Chief Inquiry Officer

Todd Sherman
Crown Law Office-Civil
Ministry of the Attorney General
720 Bay Street, 8th Floor
Toronto ON M5G 2K1

FINDING & RECOMMENDATIONS

It is recommended and I find that the taking of the land herein is not fair, sound, nor reasonably necessary in the achievement of the objectives of the expropriating authority taking:

a portion of land known as 34 Plymbridge Crescent, Toronto and legally described as Lot 9 and Part of Lot 10, Plan 2478, as described in TB-753672; North York, City of Toronto, recorded as PIN 10537-0080 (LT), for the municipal purposes, namely installation of a storm sewer over a portion of the property to drain Brookfield Avenue.

Mr. O'Callaghan, counsel for the City of Toronto indicated that the city planned to bore a hole underground, beneath the lands in question, creating no damage at grade level. He said that even though the storm sewer pipe would be below grade, its existence would restrict the construction of a garage or swimming pool at grade, however trees would survive.

Mr. O'Callaghan said the city had examined alternatives to the 34 Plymbridge Crescent site, but the alternatives were considered more impactful, longer and more costly.

The option of going under 30 Plymbridge Crescent would require the installation of a large concrete outfall that would mean driving heavy machinery over the property and in the river bed.

Mr. Ramburrun, the city's project engineer, said the boring process would not physically impact the property in question. He said going through 30 Plymbridge would mean going through the backyard and into the river. He said the 34 Plymbridge option was the least impactful.

Mr. Wallace, counsel for the owners, examined his witness Mr. Giuliano, a civil engineer and consulting engineer. Mr. Giuliano said the city relied on an Environmental Assessment filed in 2005 which determined the extent of flooding within Hogg's Hollow. He said the report did not show 100-year flood lines extending beyond the channel of the river and that the design criteria for that scenario were extreme. Mr. Giuliano said by locating a storm sewer across Plymbridge Crescent could in itself create the possibility of flooding, where none exists today. He said that possibility was not examined in the EA report.

In cross-examination, Mr. Giuliano said the city's normal criteria for local roads is a two-year storm event. He said he couldn't see flood lines beyond the banks of the river so couldn't understand the need for another storm sewer when there's already an existing storm sewer that provides adequate service.

In re-examination by Mr. O'Callaghan, Mr. Ramburrun said another option, called the Donino option was mentioned in the EA, but that there is currently a sanitary sewer crossing Donino Road and it is not shown in the EA. Mr. Ramburrun said another large pipe couldn't go over or under the existing pipe.

In cross-examination by Mr. Wallace, Mr. Ramburrun said most of the recommendations made in the EA report were adopted, including the recommendations concerning storm sewers. Mr. Ramburrun also said the EA report did not cover 34 Plymbridge Crescent.

Mr. Wallace asked Mr. Giuliano whether he felt the Donino option was a viable alternative. Mr. Giuliano said he'd superimposed city drawings and sanitary sewer elevations and said there was clearance for a storm sewer.

Mr. O'Callaghan concluded by saying the municipal objectives were to improve the storm sewer water drainage system and basement flooding in the Hogg's Hollow area. He said the Donino option is hundreds of metres in length and the outfall too low. He said the 34 Plymbridge options was the shortest and least impactful.

Mr. Wallace concluded by saying that there was no environmental assessment done on the project affecting 34 Plymbridge Crescent. He said the EA the city relied upon was flawed in many ways. It missed the sanitary pipe on Donino. He said proceeding with a course of action without an environmental assessment is wrong at law. He said the EA was not honest, therefore unfair. It was flawed, therefore unsound. He said the taking of the land at 34 Plymbridge Crescent was not reasonably necessary and that there are two viable alternatives.

Mr. O'Callaghan said an environmental assessment is not required for expropriation.

Mr. Wallace said the project in question was part of a large seven stage project that did require an environmental assessment, but the EA was full of holes and was ignored as it relates to this property.

Mr. Wallace asked that costs be awarded. Mr. O'Callaghan agreed.

I disagree with Mr. O'Callaghan's argument that the 34 Plymbridge Crescent is the least impactful. If the Donino option is indeed viable, it would be less impactful and less costly, despite the additional pipe required, because it requires no taking of private land. It was also the option recommended by the EA report. I agree with Mr. Giuliano, that his calculations question the need for a storm sewer in this particular location. I also have concerns about his warnings that a storm sewer in this location could in fact produce flooding where there is no history of flooding to date. I also agree with the arguments presented by Mr. Wallace, in which he pointed out the deficiencies of the environmental report, especially since the report did not consider a storm sewer in the proposed location.

For these reasons, I find the taking to be unfair, unsound and not reasonably necessary. I also recommend to counsel for the owners, the payment of costs in the amount of \$200.00 (two hundred dollars) pursuant to Section 7(10) of the Act.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATE AT TORONTO THIS 22 DAY OF DECEMBER 2015



David R. Vine, Q.C.
Inquiry Officer

PURPOSE

The purpose of this expropriation is to acquire an easement of 80.1 m² in a linear alignment for the purposes of constructing, installing and maintaining a sub-surface 750mm diameter storm sewer. The easement is illustrated on Survey Numbered PS-2014-112.

A handwritten signature in black ink, appearing to read "D. R. Kie".