

Expropriation of 480 Coxwell Avenue - Stage 2

Date: March 12, 2021

To: General Government and Licensing Committee

From: Executive Director, Corporate Real Estate Management

Wards: Toronto-Danforth

REASON FOR CONFIDENTIAL INFORMATION

This report deals with a proposed or pending acquisition of land by the City of Toronto.

SUMMARY

This report provides City Council with a copy of the Inquiry Officer's Report dated February 3, 2021 and received on February 4, 2021, attached as Appendix A (the "Report") and seeks authority to expropriate the property municipally known as 480 Coxwell Avenue (the "Property") for the purpose of constructing a new Odour Control Facility (the "OCF") associated with the Coxwell Sanitary Trunk Sewer (the "Sewer"). The Property was identified as the preferred location for the OCF through a recently concluded Municipal Class Environmental Assessment. Attempts to acquire the Property through a negotiated agreement were unsuccessful. Staff recommend proceeding with the expropriation process to acquire the Property to enable the proposed construction of the OCF.

To comply with the legislative requirements of the Expropriations Act, this report must be considered and adopted by City Council at its meeting on April 7th and 8th, 2021 to proceed with the expropriation process.

This report also seeks authorization for the City of Toronto (the "City") to serve Notices and make an Offer of Compensation in accordance with the Expropriations Act.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management recommends that:

1. City Council, as approving authority under the Expropriations Act, consider the Report of the Inquiry Officer attached as Appendix A.
2. City Council, as approving authority under the Expropriations Act, approve the expropriation of 480 Coxwell Avenue as set out in Appendix B for municipal purposes including the construction and development of a new odour control facility.
3. City Council authorize the City of Toronto, as expropriating authority under the Expropriations Act, to take all necessary steps to comply with the Expropriations Act, including but not limited to the preparation and registration of an Expropriation Plan, and service of Notices of Expropriation, Notices of Election and Notices of Possession, as may be required.
4. City Council authorize the Executive Director, Corporate Real Estate Management, or their designate to obtain an appraisal report to value 480 Coxwell Avenue, and to prepare and serve an Offer of Compensation on all registered owners of 480 Coxwell Avenue, at the appraised value, all in accordance with the requirements in the Expropriations Act.
5. City Council authorize the Executive Director, Corporate Real Estate Management, or their designate to sign the Offer of Compensation for 480 Coxwell Avenue on behalf of the City.
6. City Council authorize the public release of the confidential information contained in Confidential Attachment 1 once there has been a final determination of all claims and compensation payable for 480 Coxwell Avenue by arbitration, appeal or settlement to the satisfaction of the City Solicitor.

FINANCIAL IMPACT

Confidential Attachment 1 to this report identifies the initial estimated value of the Property.

Funding to expropriate the Property and disburse all anticipated costs associated with the proposed expropriation has been included in the Toronto Water 2021 Approved Capital Budget and 2022-2030 Approved Capital Plan under account CWW014.

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

DECISION HISTORY

At its meeting held on July 28 and 29, 2020, City Council adopted the recommendations contained within Staff Report GL 14.13 titled "Initiation of the Expropriation of 480 Coxwell Avenue" authorizing the Executive Director, Corporate Real Estate Management to continue negotiations for the acquisition of the Property and to initiate the expropriation process if deemed necessary for the purpose of constructing the proposed OCF related to the Sewer.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.GL14.13>

COMMENTS

The Sewer is a large diameter pipe servicing 15,100 hectares of the City, carrying sanitary sewage from the East York area as well as parts of North York and Scarborough to the Ashbridges Bay Wastewater Treatment Plant. Operation of the Sewer releases foul odours through manholes at ground level in parts of the Coxwell-Rhodes Avenue community, resulting in frequent sewer odour complaints from residents and businesses nearby.

A Municipal Class Environmental Assessment (the "MCEA") Study identified the Property as the preferred location to construct an OCF to address the existing sewer odour complaints in the area. During the MCEA process, the City completed public and stakeholder consultation, including a Public Information Center where potential locations, evaluation criteria and preferred solutions were presented.

City staff commenced communication with the property owner in 2019 in an effort to acquire the Property through a negotiated agreement. Negotiations did not result in a mutual agreement between both parties. Expropriation is deemed necessary to complete the proposed construction project of the OCF within the established schedule.

Notices of Application for Approval to Expropriate were served on the registered owners in September 2020. The City received notice of a request for an inquiry into whether the proposed taking was fair, sound and reasonably necessary (the "Inquiry") from the owner of the Property.

The Inquiry was held on January 22, 2021, with Ms. Gillian M. Burton presiding as Inquiry Officer. Ms. Burton heard evidence on behalf of the City from Adam Zietara, Manager of Divisional Operations Services in the Toronto Water Division and Dina Kuvandykova, Senior Engineer, Infrastructure and Development Services in the Engineering & Construction Services Division. The Inquiry Officer provided her Report to the City on February 4, 2021, which is attached as Appendix A.

In the Report, the Inquiry Officer noted that the evidence supported the selection of the Property for the OCF, in light of the objectives of the authority. She concluded that the

proposed expropriation is fair, sound and reasonably necessary in the achievement of the City's objective.

The Expropriations Act requires the City to render its approval decision and serve it on the applicable owners within 90 days of receiving the Report (received on February 4, 2021).

For the reasons provided in the Report and to enable the City to construct the OCF as recommended in the Municipal Class Environmental Assessment Study to mitigate odour complaints arising from the continued operation of the Sewer, it is recommended that City Council, as approving authority under the Expropriations Act, approve the expropriation of the Property and that City Council authorize the City as expropriating authority to take all necessary steps to proceed with the expropriation.

Once an Expropriation Plan is registered and the Property is expropriated, the Expropriations Act requires the City to serve an Offer of Compensation based on an appraisal report valuing the Property as of the applicable date selected by the owners of the Property. This report seeks direction to obtain an appropriate appraisal report and serve it on the registered owners, along with an Offer of Compensation for the appraised value.

CONTACT

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SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Appendix A – Inquiry Officer Report of Gillian M. Burton - February 3, 2021

Appendix B – Property Interests to be Expropriated

Appendix C – Location Maps

Confidential Attachment 1 - Financial Impact

APPENDIX A - INQUIRY OFFICER REPORT

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 land, known municipally as 480 Coxwell Avenue, legally described as LT 78-79 PL 1301 TORONTO; PT LT 87 PL 655 MIDWAY AS IN CT422239; City of Toronto, being all of PIN 21034-0745 (LT), in the City of Toronto, for municipal purposes, including for the construction of an odour control facility for the Coxwell Sanitary Trunk Sewer, and works ancillary thereto.

Date of Hearing **January 22, 2021**

Appearances:

City of Toronto Vanessa Bacher

Zircon Design and Development Ltd. Michael Paiva

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 the property owned by the requester 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

Ms. Bacher appeared for the City of Toronto, and Mr. Paiva represented Ms. Hazel Sealey, Principal of the owner, Zircon Design and Development Inc. (Zircon).

THE PROPERTY

The subject parcel is L-shaped and located on the west side of Coxwell Avenue, in the east part of the City and south of Danforth Avenue, immediately south of a Metrolinx rail line. To the west it backs on to Rhodes Avenue, a dead-end subdivision road. It is at grade at Coxwell, but lower in grade than Rhodes by perhaps 8 to 10 feet, and is also below the height of the rail line. It contains a structure built in about 1954, now used for automotive purposes, together with another small building. This is a low density residential district in general, with a Neighbourhood designation in the Official Plan, but this parcel is zoned Industrial (I1D2).

THE OBJECTIVE OF THE EXPROPRIATING AUTHORITY

The Coxwell Sanitary Trunk Sewer (STS) is a large diameter [2.59 -2.74 m] sewage pipe running along Coxwell Avenue and then Rhodes Ave in the subject area. The City has received many complaints from nearby residents about excess odours from maintenance holes at ground level. In the immediate area the STS is located along Rhodes Avenue to the west of the property, running from Monarch Park Collegiate to the north, then south under the rail line. The City had conducted a Municipal Class Environmental Assessment Study (EA) by AECON Canada Ltd. to determine the appropriate methodology and location for an improvement to address this problem. The subject site (No. 5) was the preferred alternative selected in the EA for the location of an Odour Control Facility (OCF).

SUMMARY OF THE EVIDENCE

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

The City of Toronto

The City's evidence was provided first by Mr. Adam Zeitara, Manager, Toronto Water, who has had long experience in waste management collection, and has knowledge of all the trunk sewers in the City. There are four main trunk sewers in this area, leading south to the Ashbridges Bay treatment plant. The Coxwell STS services 750-800,000 people in North York and Scarborough as well as East York. There have been many complaints from nearby residents of foul odours from maintenance holes from its operation, resulting from insufficient air movement in the sewer pipe. As stated in the AECON report (below), the City attempted to minimize the odour emissions from the Coxwell STS in this area by installing a vent stack with carbon filtration on Rhodes Avenue. It also sealed nearby maintenance holes to prevent sewer gases from escaping to the surface. This solution was intended to control the release of treated sewer gases into the air and to prevent a build-up of gases inside the sewer headspace (the part of the sewer not filled with water- see Exhibit 2, EA, Section 2.1.1). Mr. Zeitara explained that a gravity-fed trunk sewer had no need of an OFC, but those like Coxwell had insufficient water and thus air circulation, and thus do require this mechanism.

Odour components like hydrogen sulfide also attack the pipe's concrete, requiring air in order to dissipate. The vent stack at 237 Rhodes Ave. has only passive ventilation at present, since fans do not work to disburse the odour. Essentially there are no further mitigation measures possible. Thus the City hired AECON in 2018 to conduct a Class B Municipal Class Environmental Assessment. This would identify appropriate odour control technology as well as the location of a new OCF to mitigate the neighbourhood complaints.

The EA concluded that the preferable odour control technology is a dual-stage treatment system (bioscrubber and dry media scrubber). This would be best suited to treat odorous gases from the Coxwell STS within the Study Area. This system would provide the best gas removal efficiency within a relatively small footprint, the key factor for the OCF here. Each component has been proven to be reliable and effective for similar sewer system applications. Replacement of the contents in the bioscrubber and dry media is required at the end of their life span, which is typically ten years for the

bioscrubber and about three years for the dry media. By using a dual-stage system, the frequency of the dry media change-outs will be decreased, while maintaining a high level of odour removal.

The conceptual layout of the proposed OCF on the subject Site 5 can be seen at Figure 4-4 of the EA, Exhibit 2. The two elements, bioscrubber and carbon scrubber, would be located above ground on the site. The stack is located to the west, closest to the rail line, at about the midpoint of the residential structure to the south on Rhodes.

Mr. Zeitara justified the choice of this site because it is the closest of the selected sites to the sewer, is accessible to staff and is easily managed. The sites preferred by the owner Zircon, Nos. 7A and B, were north of the rail line and further from the sewer. These would require longer pipes, higher construction costs, acquisition of an easement from the School Board, additional power consumption and filter medium. The public use of the school and park sites could lead to increased vandalism. For public safety, and for the most effective operation, he prefers the chosen site 5.

Ms. Dina Kuvantkova, Senior Engineer, Engineering and Construction Services for the City, managed the EA process by AECOM, and will supervise the detailed plans and construction for the chosen site. The EA presented the chosen site at a public information meeting in September 2019, for which there was wide notice. The site selection criteria in Table 4.6 of the EA are derived from the Class EA Manual, and tailored to the needs of the specific project. For this project, these were the criteria used:

1. Constructability of the connection duct from the potential OCF location to the Coxwell STS. Preference for close proximity to it to minimize the length of the connection duct to maintain acceptable construction duration and cost;
2. Sufficient available area to host the OCF footprint, and construction, operation and maintenance activities. Based upon modelling and the conceptual OCF layout, the minimum site area was estimated to be 300 m² (excluding the construction footprint);
3. Preference for minimal impact to the public during construction and operation activities (e.g. secluded, vacant or unutilized land); and
4. Ability to avoid displacing lands with natural features, residences, and intense use with significant investment.

Two of the 8 alternate sites chosen were 7B and C. These are within City-owned property, north of the Metrolinx line. The OCF would be located at the southwest corner of Monarch Park (within a dog off-leash area). Site 7B would have the duct connection to the STS on Parkmount Road (a park/access road) then east on Hanson Street. For Site 7C, the duct connection would be within TDSB property, but adjacent to the Metrolinx Corridor. This would require an easement from Metrolinx.

The factors favouring these sites were, as stated in the EA, Table 4-4:

Site 7B:

- City property (Parks) and OCF can be integrated with restored park (e.g., include public washrooms or building dedicated to dog off-leash area).
- OCF can be constructed above grade which would reduce overall construction costs.

- Large site size for construction, operations and maintenance activities (including access).
- Favourable connection point (upstream of the sewer flow surcharge location).
- Duct work connection avoids the Metrolinx ROW and TDSB property, however a longer duct connection (approximately 410 m) and trenchless construction would be required.
- Location is away from residential areas.

7C:

Same factors as 7B, except for:

- Shorter duct connection (approximately 120 m) to the Coxwell STS.

Respecting 7C, Ms. Kuvantykova testified that a permanent easement would be required from the TDSB because of the sports facility there, and from Metrolinx. In addition, construction space and removal and replacement of bleacher structures and parking spaces would be needed. Construction costs are an unknown, such as relocation of utilities, and a very deep shaft would be needed there.

As far as Metrolinx was concerned, the proposal was rejected because of its own expansion plans on the north side of the existing tracks, and for safety reasons.

If either alternative 7B or 7C were chosen, there would be need for an access road, requiring removal of some of the 117 trees there and damage to others.

In the Public Information sessions, support was seen for site 5 as chosen. Services were close by on Rhodes, a dead end street, and construction there would not impede a major street like Coxwell. Utilities would not need to be relocated. No greenspace would be lost. As detailed design work has not yet been done (this is typical, as approvals are needed first), no exact costing is possible now.

Ms. Kuvantykova testified that the Class EA has now been approved by the Minister with no requests for a Part II order, so it was now in effect and the City can implement it. This would require only an Environmental Compliance Approval (ECA) certificate.

Should another site now be preferred, it will be necessary to repeat the entire EA process, leading to unacceptable delay in resolving the odour issue.

She was asked whether the odours from the proposed stack on the subject site would be permanent. She pointed out that the proposed OCF facility does not produce odours, but instead cleans and reduces them. The result cannot be a 100% reduction – only about a 95 to 99% efficiency. With treatment on site 5 as recommended, the impact on residents would be much superior to the present, on the Ministry guideline. A maximum of 7 odour units (see Mr. Sulley's evidence below) at peak control, closest to the nearby residents, will result in a much better condition than the present. Exact solutions will be found during the detailed design work, given the necessary boreholes and other testing. This is one reason why the City is seeking expropriation now, having not been able to purchase the land from Zircon.

The landowner

Mr. Brian Sulley is a professional engineer with RWDI Consulting Engineers and Scientists, with focus on air quality and emissions estimation, especially (for this application) respecting Environmental Compliance Approvals (ECA) for sewage treatment plants and pumping stations. He reviewed the EA document, here with emphasis on his concerns about AECON's evaluation of potential OCF sites under the heading of "Socio-Economic Environment". This topic dealt with odour and air quality, as one factor in the selection of the preferred site. He did not object to the identification of possible sites, as described in Section 4.2.1 of the EA, or to the screening of sites (Section 4.2.2). The methodology there follows good engineering practices, and acknowledges the practicalities of constructing such a facility.

Mr. Sulley discussed the alternative sites preferred by his analysis, Sites 7B and especially 7C. It is the detailed evaluation presented in Section 4.2.3.1 that causes him concern, as it could be a subjective one. There is no objective consideration given under Socio-Economic Environment to ongoing air quality impacts on residences near Site 5 due to emissions from the OCF. These impacts are essentially permanent, affecting residents long after the construction phase of the project is completed. In comparison, Table 4-7 indicates that for Site 7B/C, "Monarch Park Collegiate has potential health concerns during operation." Mr. Sulley pointed out that Monarch Park Collegiate is well over 100 m from the proposed OCF stack. Based on available imagery, the nearest operable windows or air handling equipment at Monarch Park Collegiate is located even further away.

He compared Site 5, where the closest residence to the south (Receptor R5 in the EA) is only 30 m from the proposed OCF stack, with over 50 residences within 100 m. (see Schedule C to his Witness Statement, Exhibit 2.) There are less than 20 residences within 100 m of Sites 7B/C, separated from the OCF by Metrolinx and heavy vegetative screening, as well as portions of a dog park and the Monarch Park Stadium (see Schedule D, Ex. 2). From an odour perspective, the long term, ongoing impacts due to operation of the OCF pose far less of a concern at Site 7B/C than at Site 5, in his opinion. Park users would experience odours only for the short time that they use these facilities.

Respecting the OCF air quality assessment, he agreed that a dual-stage treatment system (bioscrubber and dry media scrubber) is an appropriate control technology. However, no odour control technology is 100% effective. On-going proactive and preventative maintenance is critical to the successful operation of these systems, and to ensure effective odour control. Levels of control vary because of fluctuations in the concentrations of contaminants in the incoming gases, especially considering the large volumes of wastewater moving through the system.

This gives rise to his significant concern with Section 5.1 of the EA, where he found an error. The odour emission rate shown for the Table 5-1: Future Conditions with Average Inlet Loading is identical to the odour emission rate in Table 5-2: Future Conditions with Peak Inlet Loading, despite the emissions of hydrogen sulphide increasing by a factor of 3. Table 5-1 and Table 5-2 display predicted odours levels at the nearby residences. Not increasing the odour emission rate is fundamentally incorrect. Odour emissions would normally be expected to fluctuate in a similar manner

as hydrogen sulphide emissions. This is a significant oversight, he testified, in the dispersion modelling assessment. It suggests that odour concentrations at residences near Site 5 will likely experience unacceptably high levels of odour.

Thus he concluded that the odour emissions, and the predicted impacts at nearby residences due to those emissions, are potentially 3 times higher than what has been assessed in the EA. This is a significant concern.

Odours are measured using a unit called an "Odour Unit" ("OU"), which is the commonly accepted method for conducting these assessments. Odour emissions are measured in the number of OU per second ("OU/s") leaving a source such as the OCF stack. Once released into the atmosphere, odours are then measured as a concentration, in OU per cubic metre of air ("OU/m³").

1 OU/m³ is the odour level at which 50% of the population can detect an odour. At 3 OU/m³, the concentration of odorous compounds is 3 times higher.

At this level, odours can typically be recognized, and if objectionable, annoyance can begin at levels as low as 3 OU/m³. At 5-7 OU/m³, odours tend to lead to annoyance regardless of the nature of the odour. For waste treatment facilities, the Ministry of Environment, Conservation and Parks uses an odour benchmark of less than 1 OU/m³, 99.5% of the time (he provided examples in Schedule E). However, Tables 5-1 and 5-2 show odour levels of 7 OU/m³, based on the 99.5th percentile modelling results. In his experience this is unacceptably high. 7 OU/m³ is very likely to generate adverse effects on nearby receptors, especially residential properties. Here he found that odour levels at the 3rd floor balconies of the apartments to the south are likely to be higher than at the 2nd floor. At 7 OU/m³, it is highly likely that residents would not be able to enjoy the normal use of these balconies. There the odour levels from the stack may be much higher than 7 OU/m³, making the situation even worse.

The EA, however, stated that the maximum odour concentration from the proposed OCF will be well below existing odour emissions and concentration in the area from the operation of the Coxwell STS. In addition, the proposed OCF has a two-stage treatment, and lowering the odour impact will require a significant capital cost investment and a much taller stack. Mr. Sulley rejects the rationale given for Site 5, as the projected odour levels are sufficiently high to pose a risk of adverse effect on the residences nearby.

Mr. Sulley points out that the EA states that existing odour levels in the study area are 158 OU/m³, and agreed that this is unacceptably high. However, this does not mean that odour levels of more than 7 OU/m³ at residences near Site 5 are therefore acceptable. The Environmental Assessment Act, s. 14 (g) proscribes discharge of a contaminant that would have an adverse effect, such as loss of enjoyment of the normal use of property. Here a discharge stack of 12.4 m would in his opinion have this effect. He prefers Sites 7B/C for their significantly lower odour levels at residential receptors in the area. They are also over 100 m from Monarch Park Collegiate, having less impact there.

He also opined that to excuse higher odours levels based on higher capital costs for a taller stack is simply unacceptable. Based on his experience with conducting odour

assessments in support of ECA applications, no new industrial facility in Ontario would be allowed to cause odour levels of this magnitude. A proposed level at least 7 times higher than the benchmark of 1 OU, and potentially much higher, is not acceptable, especially considering the residential nature of the receptors.

Mr. Sulley challenged the findings shown in pie charts in Table 4-7 of the EA, as showing different results not justified by the somewhat subjective analysis.

He also addressed the separation distances required by the Ministry for sensitive land uses, which would include Monarch Park Collegiate here. He recommended at least a 70 m setback from the stack here, calling separation distances the cheapest form of odour mitigation.

FINDINGS AND OPINION

Mr. Paiva for the owner Zircon had the difficult task of challenging the expert opinions of the scientists who recommended his client's land as the appropriate site for the required OCF. Mr. Sulley made best efforts at challenging the selection, arguing that the stack to be located at the west end of Site 5 would be at the height at which undesirable odours (7 odour units, rather than 1 OU) would be perceptible at the second storey balconies of the many residences to the southwest on Rhodes, and permanently so. While his opinion may well be true, I accept the City's evidence that despite this conclusion, and lack of specific modelling, there were many more factors in favour of this site rather than the sites 7B and/or 7C to the north of the Metrolinx tracks, preferred by Zircon.

In summary, these are:

a direct connection to the STS, and the shortest duct length from the OCF to the sewer;

- space and flexibility for the design, construction and operation of the OCF;
- avoids conflict with major utilities on busy roads;
- avoids displacement of public facilities such as parks, bleachers and municipal parking;

the OCF can be installed at grade level, lessening impacts to ground and surface water;

avoids conflicts with any Metrolinx corridor expansion;

only minor tree removals and other impacts to the natural environment;

minimizes permits and approvals process (e.g. avoids obtaining approvals from TPA board, Toronto Land Corp. or Metrolinx for easement); and

does not contravene the present Neighbourhood designation.

Table 4-4 of the EA had stated that Site 5 was carried forward for further consideration for the following reasons:

Very close to the Coxwell STS on Rhodes Avenue, short open-cut duct connection (approximately 33 m) to the Coxwell STS is possible.

- Favourable connection point (upstream of the sewer flow surcharge location).
- Sufficient site size for the OCF and construction activities.
- The location of the OCF would not be directly adjacent to sensitive land uses.
- OCF can be constructed above grade, minimizing construction costs.
- Acceptable access for construction, operations and maintenance activities.
- No traffic impacts during construction (duct work avoids highly traveled roads).
- Fewer utility impacts than other sites.

- Reduced noise and visual impacts to residents (on Rhodes Avenue) as OCF will be built on the northeast corner of the property.
- Likely that minimal tree removals would be required.

These appear to me to be very acceptable reasons to favour this site over any immediately to the north of the Metrolinx corridor and closer to established public uses. I note that the sizes of the two technological features here (8 m by 5 m for the bioscrubber, and 8.6 by 3.65 m for the dry media system) will fit very well on the subject site.

Mr. Paiva challenged Ms. Kuvantykova on the issue of obtaining an easement from the TDSB (now Toronto Land Corp). Not only was this statement presented in sworn testimony, but is also reflected in the EA document. Under the consideration of Site 8, it is stated:

“Through consultation, Toronto Lands Corporation (on behalf of the TDSB) indicated that they would not support the City’s request for any easement requirements.”

Metrolinx plans for expansion in their ROW, and even absent a necessary easement, this could cause conflicts during construction.

Mr. Paiva submitted that the subject site was developable as infill housing, much needed by the City. This is its highest and best use, he argued. However, no evidence was led on the topic of alternate uses proposed by the owner for development of the site, although much information on this subject was contained in the City’s brief. While drawing no conclusions from this, as it is outside the jurisdiction of an Inquiry Officer in this hearing, I note only that it appeared that the owner’s plans over time for development of the site did not bear fruit. I also note that the Metrolinx rail line has a 30-metre setback from the corridor for residential uses, most likely affecting future development on the site.

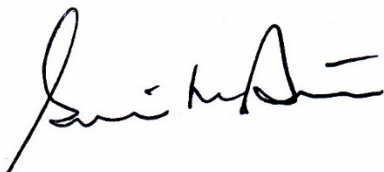
I conclude that the proposed takings meet the statutory test of reasonableness, as there was no realistic, less costly alternative to solve the many issues involved. The EA stated that this system will provide the best odorous gas removal efficiency within a relatively small footprint, which were key criteria for the selection of the OCF technology. I am persuaded by the opinion of the City’s professional witnesses, Ms. Kuvantykova and Mr. Zeitara, that the proposed taking is necessary for the proper construction of an OCF, and on the Zircon property.

I am satisfied from the evidence in this case that the City’s choice is reasonably defensible. In balancing the owner’s desire to retain the parcel with the public interest in effective odour control for this major STS (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 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”. Court 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 taking by the City of Toronto of a fee simple interest in the following land, known municipally as 480 Coxwell Avenue, legally described as LT 78-79 PL 1301 TORONTO; PT LT 87 PL 655 MIDWAY AS IN CT422239; City of Toronto, being all of PIN 21034-0745 (LT), in the City of Toronto, for municipal purposes, is reasonably defensible in the construction of an odour control facility for the Coxwell Sanitary Trunk Sewer, and works ancillary thereto.



Inquiry Officer

Date: February 3, 2021

APPENDIX A

LIST OF EXHIBITS

Notice of Application for Approval to Expropriate
Class B Environmental Assessment, Coxwell Sanitary Trunk Sewer Odour Control
Study
Document Brief – Zircon Design and Development Inc.

APPENDIX B - PROPERTY INTERESTS TO BE EXPROPRIATED

Municipal Address	Legal Description	Approximate Area
480 Coxwell Avenue	LT 78-79 PL 1301 TORONTO; PT LT 87 PL 655 MIDWAY AS IN CT422239; S/T ET109511E; CITY OF TORONTO	24,628 square feet

APPENDIX C - LOCATION MAPS

