

Acquisition of a Permanent Easement over a Portion of 36 Shaftesbury Avenue for an Existing Fire Hydrant

Date: January 30, 2024

To: General Government Committee

From: Executive Director, Corporate Real Estate Management

Wards: 11 - University-Rosedale

SUMMARY

The purpose of this report is to seek Council authority to enter into an agreement (the "Agreement") to acquire a permanent easement over a portion of 36 Shaftesbury Avenue (the "Permanent Easement"), as identified in Appendix A, for the continued operation and maintenance of an existing fire hydrant as part of Toronto Water's infrastructure.

Council authority is required for the proposed acquisition of the Permanent Easement because it involves payment of legal costs in addition to the purchase price, and the absence of carrying out undertaking environmental due diligence as required by the General Conditions set out in the Toronto Municipal Code Chapter 213, Real Property. Given the small area in question, the Permanent Easement presents low environmental risk to the City.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management recommends that:

1. City Council authorize the City to enter into an agreement with the owner of 36 Shaftesbury Avenue to acquire a permanent easement over a portion of 36 Shaftesbury Avenue, designated as Part 1 on Reference Plan 66R-33422 shown in Appendix A, on the terms set out in Appendix B, and such other terms and conditions as may be deemed appropriate by the Executive Director, Corporate Real Estate Management, and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The total cost to the City to enter into the Agreement to acquire the Permanent Easement is \$29,514 (net of Harmonized Sales Tax), and is summarized in Table 1 below. Funding is available in the 2024-2033 Staff Prepared Capital Budget and Plan for Toronto Water under Easement Acquisition account (CPW537-05) to be considered by Council through the 2024 Budget process.

Table 1 - Summary of Permanent Easement Acquisition Cost (net of Harmonized Sales Tax)

Description	Amount
Purchase Price	\$21,600
Provincial Land Transfer Tax	\$146
Registration Fees	\$84
Surveying Costs	\$84
Owner's Qualified Legal Expenses	\$7,600
Total Acquisition Cost	\$29,514

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

This report represents a new initiative.

COMMENTS

In 2021, the owner of 36 Shaftesbury Avenue (the "Owner") advised that a City-owned fire hydrant was installed on its private property, without the Owner's consent. City staff investigated the complaint and confirmed that City infrastructure was located on private property, and could not be relocated.

City staff negotiated an amicable resolution with the Owner to resolve the City's trespass and proposed that the City enter into an agreement with the Owner to allow the City to acquire a permanent easement over the 2.42 square metre area for the continued operation and maintenance of the fire hydrant. The terms of the proposed Agreement are set out in Appendix B.

Staff recommend this approach since the fire hydrant is already in place and operating, and avoids the additional costs associated with expropriating the required Permanent Easement. There will be no change in the use of the property as the Owner will retain fee simple ownership while the City will have the Permanent Easement.

The acquisition of the Permanent Easement requires Council authority because it involves payment of legal costs in addition to the purchase price, and the absence of carrying out environmental due diligence as required by the General Conditions set out in the Toronto Municipal Code Chapter 213, Real Property. Given the small area in question, the Permanent Easement presents low environmental risk to the City.

Corporate Real Estate Management in consultation with Toronto Water consider the proposed Agreement to be fair and reasonable.

CONTACT

Alison Folosea, Director, Transaction Services, Corporate Real Estate Management, 416-338-2998, Alison.Folosea@toronto.ca

Ronald Naraine, Project Manager, Toronto Water, 416-338-1336, Ronald.Naraine@toronto.ca

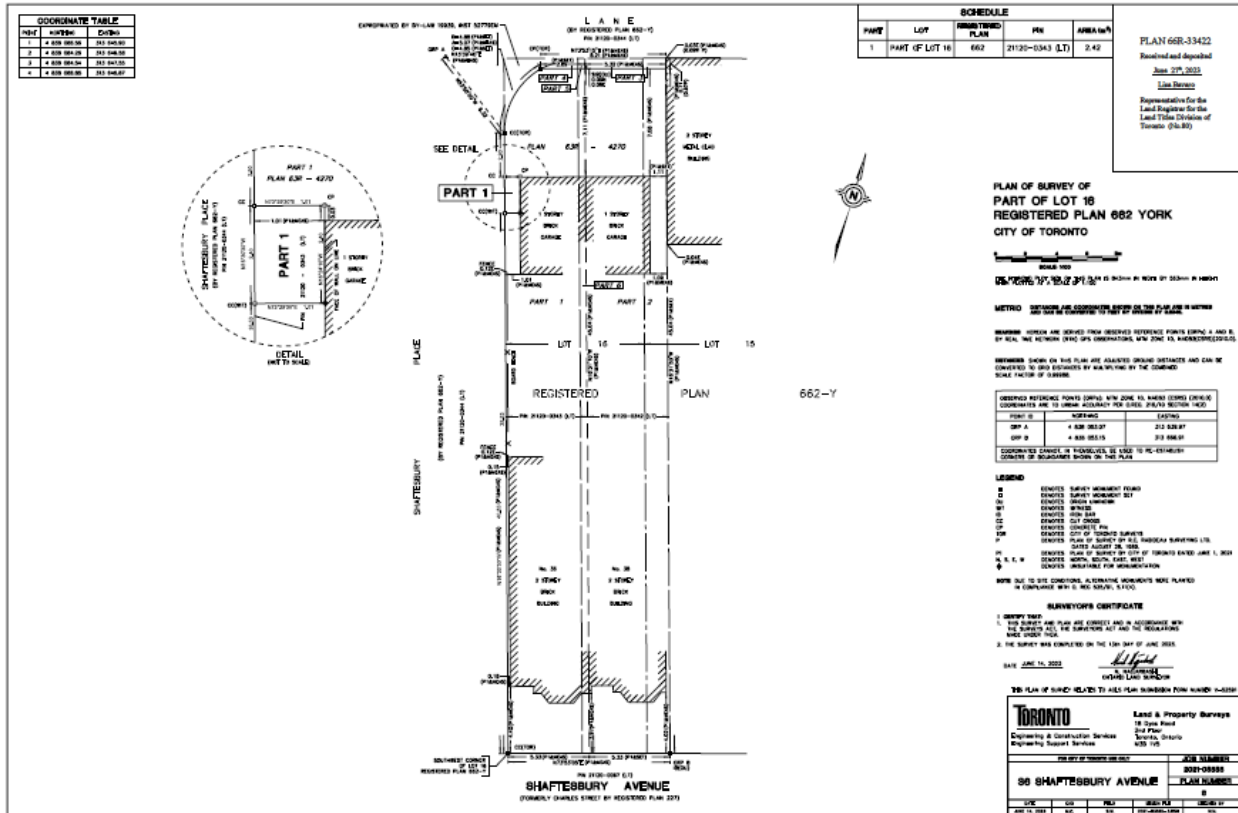
SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Appendix A - Reference Plan, 66R-33422
Appendix B - Major Terms and Conditions of Agreement

Appendix A - Reference Plan, 66R-33432



Appendix B - Major Terms and Conditions of Agreement

Transferor	The registered owner of 36 Shaftesbury Avenue
Transferee	The City of Toronto (the "City")
Permanent Easement Lands	Portion of the Transferor's lands municipally known as Shaftesbury Ave, designated as Part 1 on 66R-33422.
Consideration	The City to pay \$21,600 plus Harmonized Sales Tax for the Permanent Easement and \$7,600 plus Harmonized Sales Tax for Transferor's legal fees actually incurred, demonstrated by invoices.
Permanent Easement	To permit the maintenance, operation, inspection, repair, removal, and reconstruction of a fire hydrant, underground water service connection to the water main, and all works ancillary thereto, including the installation and maintenance of protective measures on the lands designated as Part 1 on 66R-33422. City to acquire Permanent Easement Lands "as is, where is" without any warranties regarding condition.
City's Covenants	To minimize interference with the Transferor's continued use and enjoyment of property, protect structures from damage during maintenance activities, to regularly maintain the fire hydrant on the Permanent Easement Lands, comply with all applicable law and maintain appropriate insurance.
Transferor's Covenants	<p>City may access the Permanent Easement Lands at any time and from time to time without notice to maintain/inspect/repair the fire hydrant.</p> <p>Transferor will not obstruct or hinder the Transferee's access to, nor interfere with the maintenance, use and operation of the fire hydrant.</p> <p>Transferor not to construct any buildings, structures, pavement, trees, landscaping, physical encumbrances, improvements or works of any kind, whether temporary or permanent, in, on, under, over or through the Permanent Easement Lands.</p> <p>Transferor will not grant interest over the Permanent Easement Lands without City's consent.</p>