

Expropriation of Property Interests near Old Mill Station for the Easier Access Phase III Project - Stage 2

Date: April 17, 2024

To: General Government Committee

From: Executive Director, Corporate Real Estate Management

Wards: 3 - Etobicoke Lakeshore

REASON FOR CONFIDENTIAL INFORMATION

This report deals with a proposed acquisition of land by the City of Toronto (the "City").

SUMMARY

On February 2 and 3, 2022, City Council authorized the initiation of expropriation proceedings for fee simple, permanent and temporary interests in the properties municipally known as 39 Old Mill Road, 2662 Bloor Street West and 21 Old Mill Road shown on the location map and sketch in Appendix A, for the purpose of constructing elevators at Toronto Transit Commission ("T.T.C.") Old Mill Subway Station as part of the Easier Access Phase III Project (the "Project").

A hearing was held by the Ontario Land Tribunal (the "O.L.T.") in respect of the proposed expropriation on September 25, 26, 27, 28 and 29, 2023, and a report was received from the O.L.T. on February 27, 2024, concluding that the takings are fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

To comply with the legislative requirements of the Expropriations Act, the report of the O.L.T., attached as Appendix B, must be considered by City Council before it exercises its discretion to approve the expropriation. If authorized, the Expropriation Plans will be registered and associated notices served. Statutory Offers of Compensation must be served prior to the City taking possession of the expropriated properties.

The property requirements are set out in Appendix C and shown on the reference plan attached as Appendix D.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management recommends that:

1. City Council, as approving authority under the Expropriations Act (the "Act"), consider the report of the Ontario Land Tribunal attached as Appendix A.
2. City Council authorize and direct the City to pay \$200 in costs arising from the hearing to the expropriated owner of 2662 Bloor Street West, in accordance with the Act.
3. City Council, as approving authority under the Expropriations Act, approve the expropriation for the fee simple, permanent and temporary interests in the properties municipally known as 39 Old Mill Road, 2662 Bloor Street West and 21 Old Mill Road, as set out in Appendix C and shown on the Reference Plans attached as Appendix D (the "Property Requirements").
4. City Council authorize the City, as expropriating authority under the Act, to take all necessary steps to comply with the 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.
5. City Council authorize severally each of the Executive Director, Corporate Real Estate Management, and the Director, Transaction Services, Corporate Real Estate Management, to prepare, execute and serve Offers of Compensation on all registered owners based on reports appraising the market value of the Property Requirements in accordance with the requirements of the Act.
6. City Council authorize the public release of the confidential information contained in Confidential Attachment 1 once there has been a final determination of the compensation payable to the property owners by arbitration, appeal or settlement to the satisfaction of the City Solicitor.

FINANCIAL IMPACT

Confidential Attachment 1 to this report identifies the initial estimated market value of the Property Requirements to be expropriated.

Funding to acquire the Property Requirements and the disbursement of all anticipated costs associated with the proposed expropriation is available in the 2024-2033 Approved Capital Budget and Plan for the T.T.C. under capital project account CTT028-1 Easier Access Phase III.

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

DECISION HISTORY

On February 2 and 3, 2022, City Council adopted Item GL28.10 and approved the initiation of expropriation of the Property Requirements located in the properties municipally known as 39 Old Mill Road, 2662 Bloor Street West and 21 Old Mill Road, for the purposes of constructing elevators at T.T.C. Old Mill Subway Station as part of the Project.

<https://www.toronto.ca/legdocs/mmis/2022/gl/bgrd/backgroundfile-174675.pdf>

On May 8, 2019 the T.T.C. Board approved the 2019-2023 T.T.C. Multi-Year Accessibility Plan. The Project is an important part of the 2019-2023 T.T.C. Accessibility Plan in its objective to fulfill the provincially legislated requirements in the Accessibility for Ontarians with Disabilities Act, 2005 ("A.O.D.A."). As part of the Project, the T.T.C. is proposing to construct two (2) elevators at the Old Mill Subway Station, providing access from street to platform level.

[https://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2019/May 8/Agenda/index.js](https://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2019/May%208/Agenda/index.js)

COMMENTS

Background

City staff commenced negotiations with the owners of the residential condominiums at 39 Old Mill Road, 2662 Bloor Street West and 21 Old Mill Road in an effort to acquire the Property Requirements needed to construct elevators at Old Mill Subway Station as part of the T.T.C. Project. The Project is an important part of the T.T.C. Accessibility Plan in its objective to fulfill the provincially legislated requirements in the A.O.D.A. by making all stations accessible by 2026.

Pursuant to Council's authority and in accordance with the Act, Notices of Application for Approval to Expropriate were served on the registered owners and published in the newspaper.

The Hearing of Necessity

On December 8, 2022, the City received notice of a request for a hearing as to whether the proposed taking is fair, sound and reasonably necessary from the Toronto Standard Condominium Corporation No. 1473 and three individual unit owners from 2662 Bloor Street West. No hearing was requested or held in respect of 39 Old Mill Road and 21 Old Mill Road.

The hearing of necessity (the "Hearing") was held on September 25, 26, 27, 28 and 29, 2023 by the O.L.T. and heard evidence on behalf of the City and evidence on behalf of the Owner. Subsequently, the O.L.T. provided its report (the "Report") to the City on February 27, 2024, attached as Appendix A.

In the Report, the O.L.T. stated that after considering all the evidence and arguments, they concluded that the proposal presented by the T.T.C. meets the test in the Act and

the proposed takings are fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

Conclusion

For the reasons provided in the Report and to ensure the Project's construction deadlines are maintained, it is recommended that City Council, as approving authority under the Act, approve the expropriation of the Property Requirements and that City Council authorize the City, as expropriating authority, to take all necessary steps to proceed with second stage of the expropriation. Negotiations will continue with the owners concurrently with the expropriation process to acquire the Property Requirements on mutually acceptable terms.

CONTACT

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

Vincenza Guzzo, Director, T.T.C. Property, Planning and Development, 416-590-6372, Vincenza.Guzzo@ttc.ca

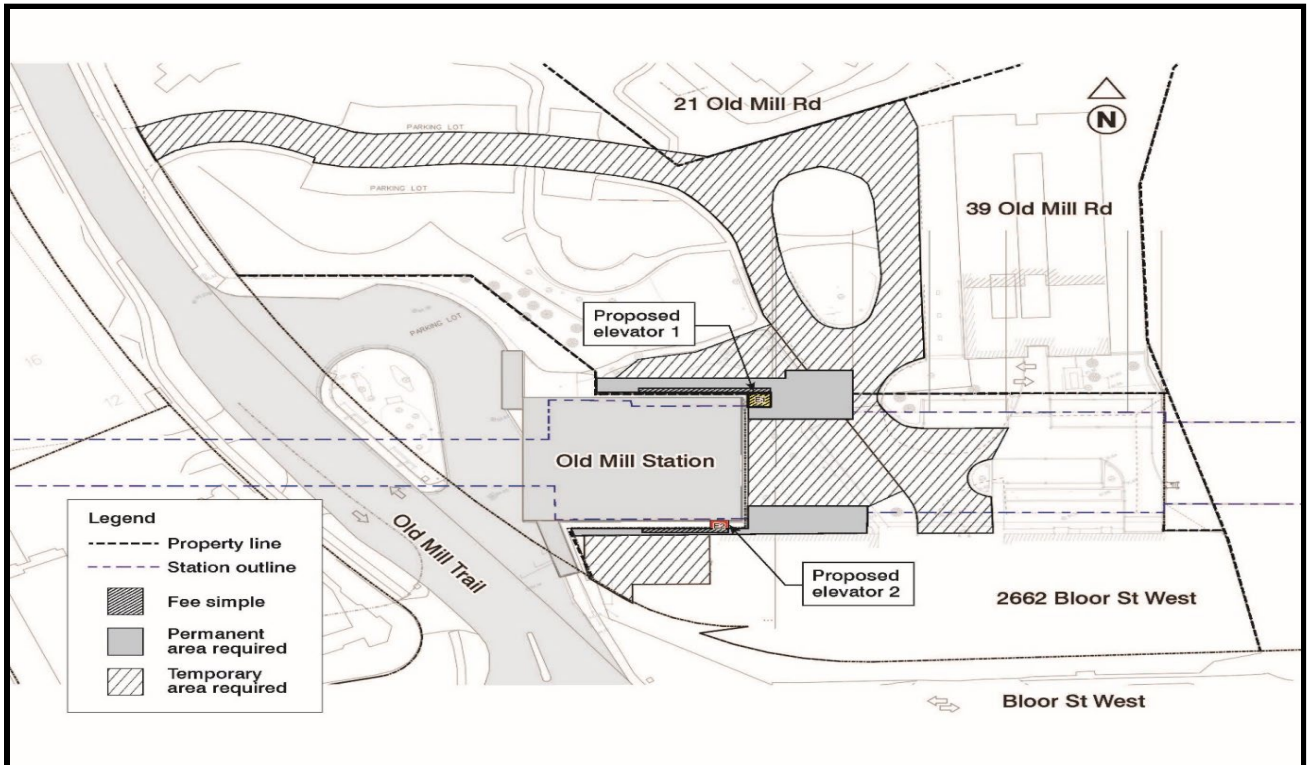
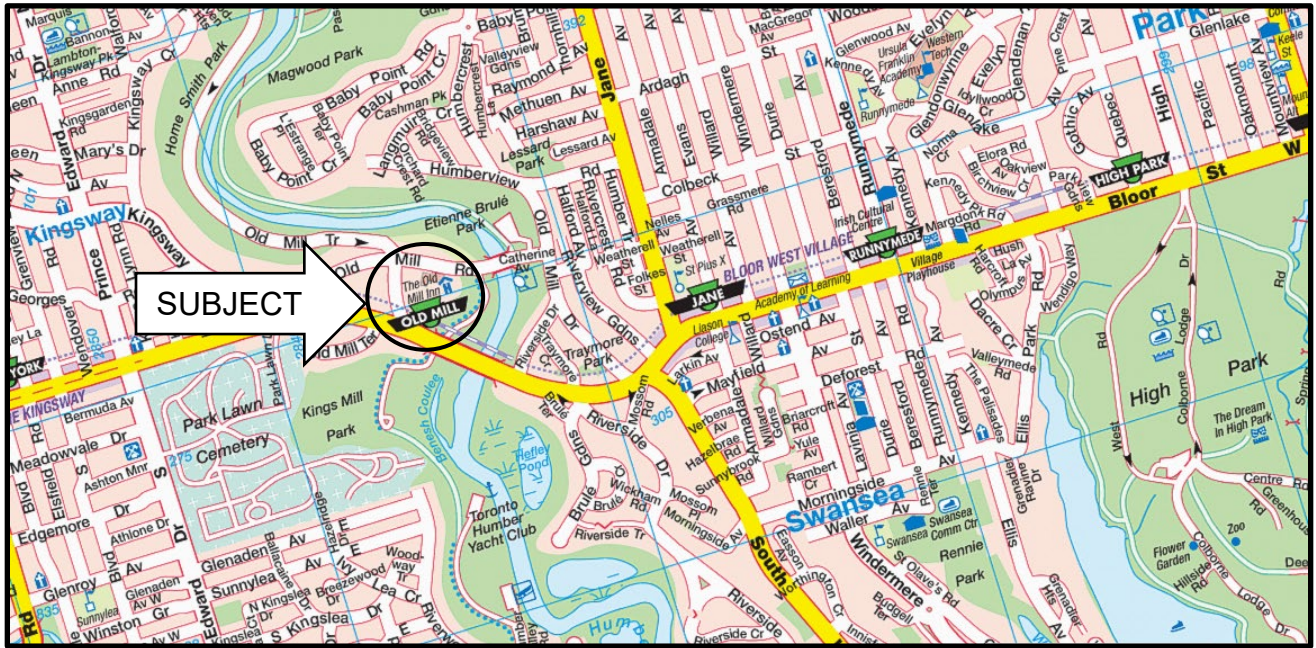
SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Confidential Attachment 1 - Financial Impact Information
Appendix A - Location Map and Sketch
Appendix B - Ontario Land Tribunal's Report
Appendix C - Table of Property Requirements
Appendix D - Reference Plans

Appendix A - Location Map and Sketch



Appendix B - Ontario Land Tribunal's Report

Ontario Land Tribunal Tribunal ontarien de l'aménagement du territoire



ISSUE DATE: February 27, 2024

CASE NO(S):

OLT-23-000051

PROCEEDING COMMENCED UNDER section 6(2) of the Expropriations Act, R.S.O. 1990, c. E.26.

Claimant 1:	Laurie Price
Claimant 2:	Cecile Saccoia and Alex Pavone
Claimant 3:	Donna and Chris Krawczyk
Claimant 4:	Toronto Standard Condominium Corporation
Expropriating Authority:	City of Toronto
Property Address:	2662 Bloor Street West
Municipality:	City of Toronto
OLT Case No.:	OLT-23-000051
OLT Lead Case No.:	OLT-23-000051
OLT Case Name:	Price v. Toronto (City)

Heard: September 25-29, 2023, by video hearing

APPEARANCES:

Parties	Counsel
City of Toronto	M. Piel J. Amey
Toronto Condominium Corporation No. 1473 ("2662")	F. Sperduti M. Grant

REPORT OF THE TRIBUNAL DELIVERED BY D.S. COLBOURNE

[1] This is a Report to the Expropriating Authority, the City of Toronto, following requests, by some owners and the Toronto Condominium Corporation No. 1473 ("2662"), for a hearing on the taking of certain areas of the condominium's property, municipally numbered 2662 Bloor St. W., on a fee simple basis and others as temporary easements for construction purposes, for the installation of elevators at the Old Mill Subway Station. The individual owners withdrew their requests prior to the hearing. Also involved in the project are lands to be taken similarly, some lands on a permanent basis and some lands on a temporary basis, from the adjacent property, municipally numbered 39 Old Mill Road ("39"). That property owner did not request a hearing and did not participate in this hearing.

[2] 2662 Bloor St. W. fronts on the north side of Bloor St. W., just west of the Humber River bridge, and extends to the intersection with Old Mill Trail. The property at 39 is set back from Old Mill Trail, to the north of the subway station, and its access road is north of the station.

[3] This inquiry was held, pursuant to section 7 of the Expropriations Act, RSO 1990. c. E.26 ('the Act'), to determine whether the proposed Takings by the City of Toronto ("City") are "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority", the test, as the Act states, is whether they are "reasonably defensible" as the courts have interpreted this test.

[4] The Takings are for the purpose of improvements to the Old Mill Subway Station to improve customer safety and convenience by constructing two new elevators to provide passenger accessibility to below grade subway platforms. This is part of the Toronto Transit Commission's ("TTC") Easier Access Phase 111 Project ("Project").

[5] Currently, the station is a stand alone building and is not universally accessible. The Project will allow and facilitate increased accessibility and barrier-free travel for TTC commuters and employees.

[6] These objectives are strongly supported by;

- The TTC, in making transit seamless by providing system-wide accessibility; and
- the City Official Plan policies that direct its transportation system be accessible and inclusive of the needs for people of all ages, abilities and means, by modifying stations and facilities to become accessible.

[7] Accessibility is also required by means of Accessibility for Ontarians with Disabilities Act, 2005, ("AODA") and the Integrated Accessibility Standards Regulation under the AODA.

[8] The TTC Board approved the new 2019-2023 TTC Multi-year Accessibility Plan on May 8, 2019. This plan includes 52 initiatives to improve and expand the accessibility

and availability of services and facilities over the following five years. This involves upgrading 21 subway stations with elevators.

[9] For the subject station, there will be two elevators, both to connect platform level to street level, one elevator for the west-bound platform and the other elevator for the east-bound platform.

[10] The fee simple taking will enable the TTC to construct, to permanently house and to maintain the surface portion of the elevator structures and access corridors. The temporary easements are required for construction purposes and to enable the TTC to enter, excavate and construct the various elements of the Project.

[11] The requestor, 2622, is not opposed to the overall purpose of the expropriation.

[12] The issue of concern, to the requestor, is construction access through the middle of its building, which is also its own main pedestrian and vehicle access, and its walkway, between its main building entrance on the east side of the building and the garage entrance on the west side of the building. It is also over the roof of its underground parking garage.

[13] The issue is the impact on vehicle and pedestrian traffic and overall general impact during construction. 2662's garage roof load capacity is up to 37,200 kilograms ("kg").

[14] To set the context, there will be two construction accesses.

[15] The one construction accesses in contention is through the middle of 2662, the other is the driveway for 39, which accesses from Old Mill Trail north of the station. The subway building also fronts onto Old Mill Trail. There are bus bays between Old Mill Trail and the station. There are two major bus routes using the bays from this station, both going west and south. The present building access driveways for 2662 and 39 meet behind the subway station.

[16] The 2662 access from Bloor St. W. is to handle the heavier construction vehicles. Its garage roof design load capacity is for vehicles up to 37,200 kg, and that is at a speed no greater than 15 kph. The 39 driveway also passes over its underground garage. Its roof has a lighter design load capacity for vehicles of up to 16,000 kg. All construction vehicles using both accesses are to be controlled by contractor's flag men and TTC employees.

[17] From the written closing argument, on behalf of 2662:

The owner is opposed to the [temporary] taking of the Breezeway Easement for three primary reasons:

- a. Continuous heavy vehicle traffic over the breezeway threatens the structural stability of the parking garage roof slab, on which the breezeway driveway sits;
- b. Continuous heavy vehicle traffic through the breezeway poses significant risks to the Owner's residents, their guests, and their service providers; and,

c. The proposed expropriation ignores a reasonable and preferable alternative to the use of the breezeway as a construction access as illustrated in Exhibit 5, which would allow the TTC to complete [sic] accomplish its objective without courting risk to the parking garage's structural stability or to the safety of residents, [or] pedestrians users of the breezeway.

[18] The Tribunal was provided with opinion evidence with respect to the weight bearing ability of the 2662 garage roof, proposed to be the heavy construction vehicle access.

[19] The figures in kilograms and design load kilopascals did not differ between the parties, but the combination of factors involved in assuring the weight capacity due, to vehicle speed, the impact load, the ability to control traffic and the assurance of only one vehicle at a time on the breezeway, all gave rise to widely differing opinions on the ability to use that area for construction access and hence unimaginable problems as between the evidence of Mr. Nixon and Mr. Voit.

[20] The TTC proposal is to have contractor's flagmen and TTC employees controlling construction traffic for both accesses. This, and other features, will be included in the site management agreements with the ultimate contractor, which obviously were not before the Tribunal, giving rise to more uncertainty for the requestors.

[21] The structural capabilities of the 2662 garage and its cracks and its replacement plug in the crane area produced different scenarios about the soundness of this 22 year old building, which, by the way, has been monitored over the years by some of the witnesses giving evidence on behalf of the 2662 Condo Board. Witnesses of the requestor were involved in the regular condition reports for the Condo Board. On this, the evidence of Mr. Nixon was "that he did not believe the cracking to be superficial, and that the cracking around the crane cut led him to question the quality of the repair that was completed." and that the concealed conditions of the slab are often "orders of magnitude worse than the conditions seen on the visual inspection". None of these issues were raised by the experts involved in 2662's last condition report.

[22] He did admit that currently garbage trucks, which are at the high end of weight scale, are and have been using the breezeway regularly, without control or direction.

[23] As to the disruption and dirt for the residents, there is no doubt, given the size of the breezeway, that it will be present, and as to inconvenience, care would have to be taken by all traversing the area.

[24] The obvious alternative was the 39 driveway, but its weight capacity was determined to be too low over its garage roof for the heavy construction vehicles.

[25] On the issue of other alternatives Mr. Hamedi, on behalf of the TTC, gave viva voce evidence on an alternative access route for construction vehicles which he says they examined without making a formal report and or a comparison with the breezeway proposal.

[26] The alternative access route was to have the driveway to the north of the subway station involving more of the 39 lands, in the middle of the area between the station and 39's road. It was rejected by the TTC for reasons of the base stability of any road constructed in that area, drainage issues, proximity to the garage roof of 39 and further significant impact on other 39 amenities. Depending upon where it accessed Old Mill Trail, there could be concern over its impact on the bus bays off Old Mill Trail.

[27] The alternative proposed by 2662 was to construct the road right against the north wall of the station, extending from the bus bay area of the station toward the north-east corner of the rear wall. Each of the elevators is proposed to be constructed at the rear wall on each side. This access suffers apparently from potential impact on the buses and the turning movements of construction vehicles accessing the road in the bus bay area. It also suffers from the fact that one of the current 2662 surface parking areas will be used for a lay by for construction materials.

[28] Concerns about this proposal, raised by the TTC, were the potential width of the road necessary to carry construction vehicles, its constructability (ground and base) and the fact that only one elevator could be constructed at a time, thereby doubling the construction time, and increasing impact and cost.

Findings and Conclusion:

[29] On the evidence the Tribunal is not convinced that the alternatives are satisfactory physically, they will provide different and increased impacts on the other property. The 2662 alternative doubles the construction time and cost and, given those factors, it was roundly rejected by the TTC.

[30] After considering all of the evidence and arguments, the Tribunal concludes that the proposal presented by the TTC meets the test in the Act and the summation of it as set out by the courts. The test in section 7 of the Act and the summation of it as set out by the courts is whether the proposed taking is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority."

[31] Court decisions, such as *Parkins v. the Queen in right of Ontario et al*, 1978 CanLII 1254 (ON CA), determined that the test that the inquiry officer must apply can be expressed as whether the proposal is "reasonably defensible" [...] 'in the achievement of the objectives of the [...] authority'.

[32] For the reasons given above, the Tribunal finds that the Takings attached to the Notice of Grounds are reasonably defensible in the achievement of carrying out the accessibility of the TTC at this Old Mill Station.

"D.S. Colbourne"

D.S. COLBOURNE
VICE-CHAIR

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Appendix C - Table of Project Requirements

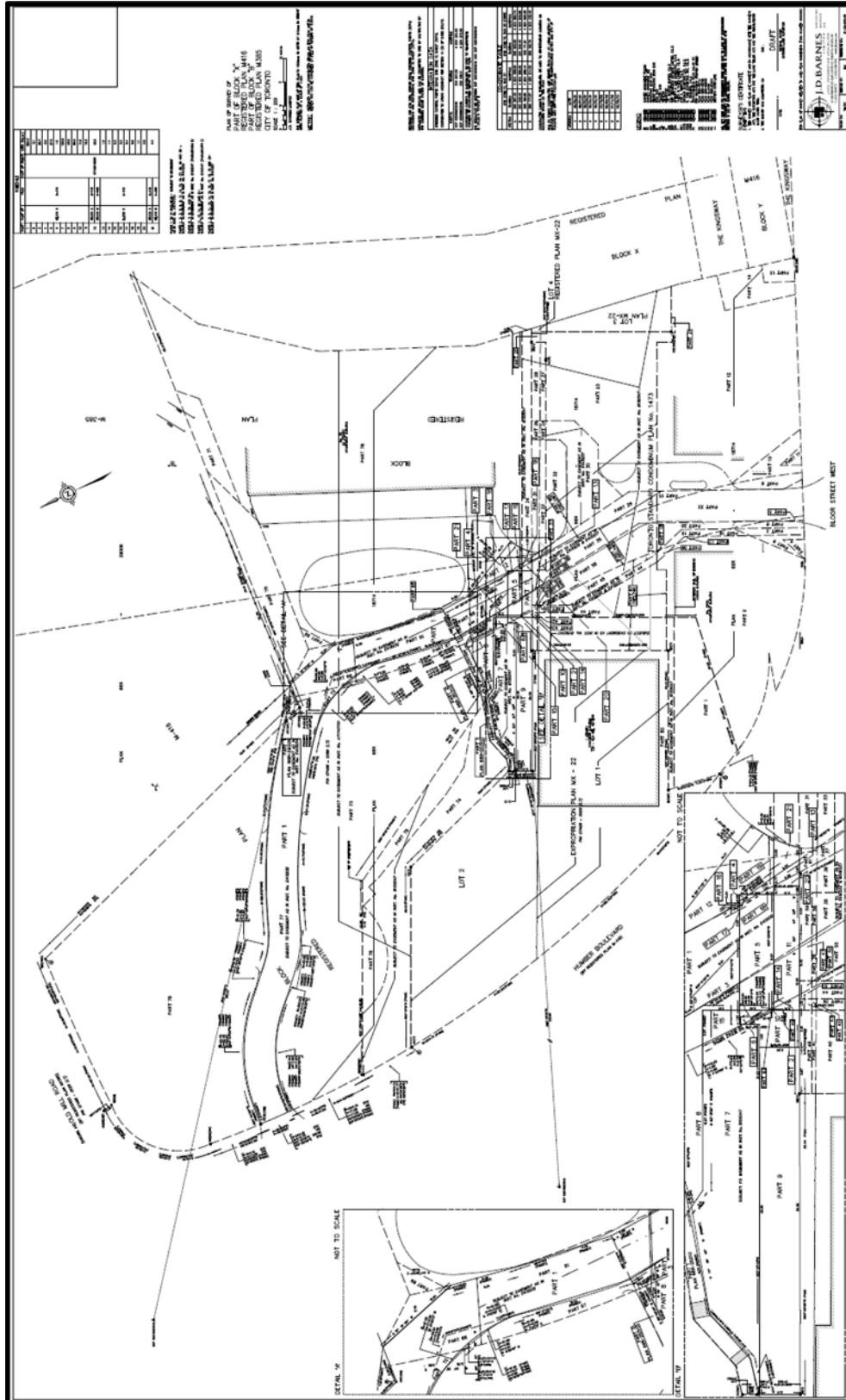
Municipal Address	Required Interest	Legal Description
39 Old Mill Road	Fee Simple shown as Part 9 on the attached Reference Plan	PART OF BLOCK B, PLAN M385; PART OF BLOCK X, PLAN M416, BEING DESIGNATED AS PARTS 34,46,48,57,60,62 TO 79 & 81, PLAN 66R18714, CITY OF TORONTO; S/T EASEMENTS OR RIGHTS IN THE NATURE OF EASEMENTS IN FAVOUR OF MUNICIPALITY OF METROPOLITAN TORONTO TO ENTER UPON, CUT INTO, BREAK UP, FILL IN, USE AND OCCUPY SO MUCH LANDS DESIGNATED AS PARTS 64, 74,75 & 76, PLAN 66R18714 AS MAY BE NECESSARY FOR THE PURPOSES SPECIFIED IN PARAGRAPH (B) OF PLAN MX-22 AS IN B150047; S/T EASEMENTS OR RIGHTS IN THE NATURE OF EASEMENTS IN FAVOUR OF THE MUNICIPALITY OF METROPOLITAN TO ENTER UPON, CUT INTO, BREAK UP, FILL IN, USE AND OCCUPY THE LANDS DESIGNATED AS PARTS 34, 46, 48, 60 & 63 PLAN 66R18714, AS MAY BE NECESSARY FOR THE PURPOSES SPECIFIED IN
	Permanent Easement shown as Parts 2, 4, 5, 6, 10, 11, 14 and 17 on the attached Reference Plan	

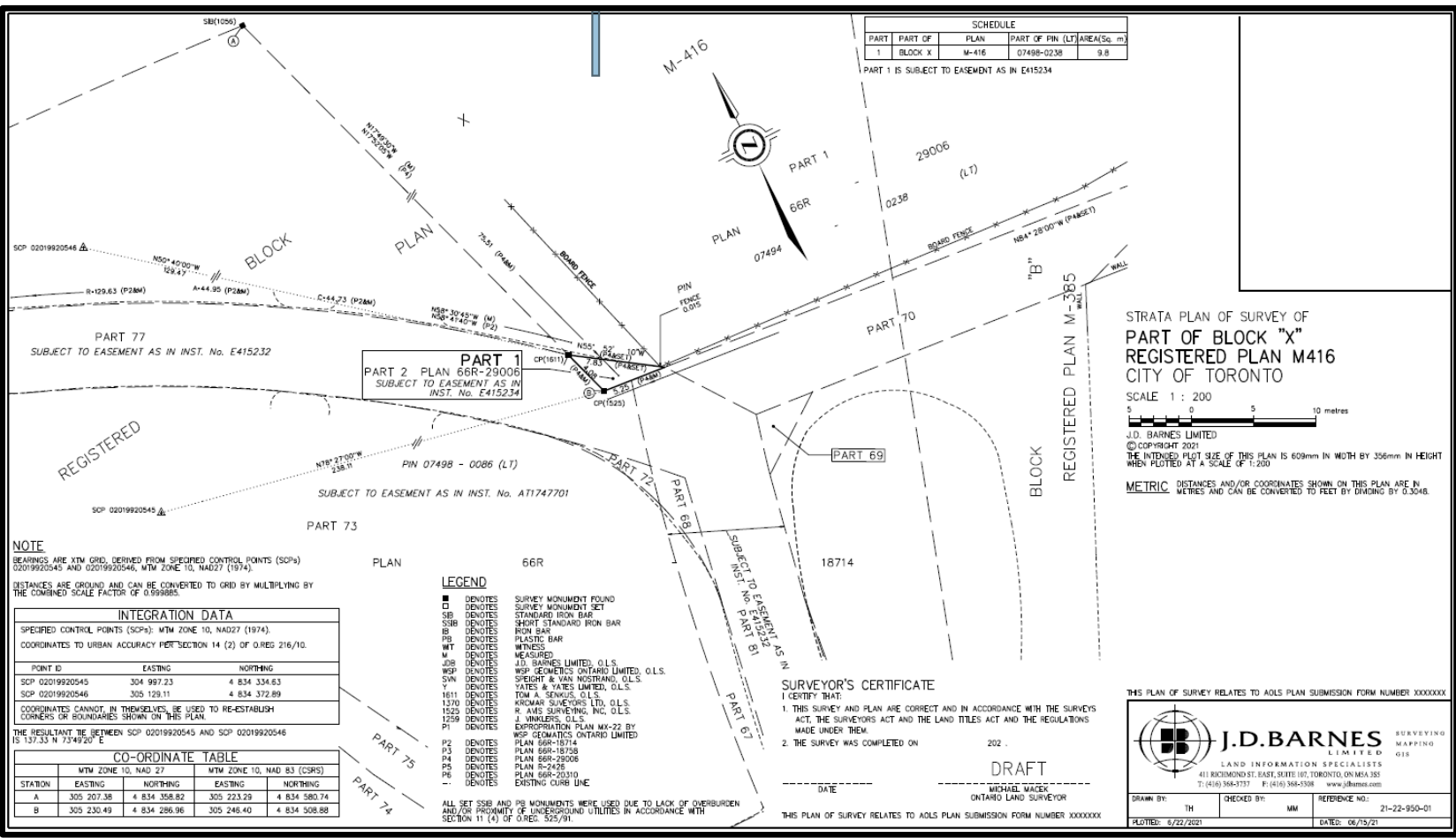
Municipal Address	Required Interest	Legal Description
	<p>Temporary Easement shown as Parts 1, 3, 7, 8, 12, 13, 15, 16, 18, 19, 20 and 21 on the attached Reference Plan</p>	<p>PARAGRAPH (C) OF PLAN MX22 AS IN B150047; T/W EASEMENT OVER PART 1, PLAN 66R18758, AS SET OUT IN E415234; SUBJECT TO EASEMENT IN FAVOUR OF THE TERRACES OF OLD MILL DEVELOPMENTS INC. AS SET OUT IN E415237; S/T EASEMENTS AS SET OUT IN E415232; S/T AN EASEMENT OVER PARTS 34, 46, 48, 57, 60, 62 TO 79 & 81 PLAN 66R-18714 IN FAVOR OF ROGERS CABLE COMMUNICATIONS INC. AS IN AT1747701. CITY OF TORONTO; SUJBECT TO AN EASEMENT AS IN AT411524; CITY OF TORONTO; BEING PART OF PIN 07498-0086 (LT) IN THE LAND REGISTRY OFFICE OF TORONTO (NO. 66) IN THE LAND TITLES DIVISION.</p>
<p>2662 Bloor Street West</p>	<p>Fee Simple shown as Parts 1, 4 and 14 on the attached Reference Plan</p>	<p>CONDO BLOCK 1473 TORONTO STANDARD CONDOMINIUM PLAN 1473 IN THE LAND REGISTRY OFFICE OF TORONTO (NO. 66) IN THE LAND TITLES DIVISION.</p>
	<p>Permanent Easement shown as Parts 2, 3, 5, 6, 7, 9, 22, 25, 26, 27 and 28 on the attached Reference Plan</p>	
	<p>Temporary Easement shown as Parts 8,10,11,12,13,15,16,17,18,19, 20, 21, 23 and 24 on the attached Reference Plan</p>	

Municipal Address	Required Interest	Legal Description
21 Old Mill Road	Temporary Easement shown as Part 1 on the attached Reference Plan	PT BLK X PL M416 TORONTO; PT BLK B PL M385 TORONTO; PT LT 6 BEING PT OF OLD MILL ROAD (CLOSED BY BY-LAW 3533 OF THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE AS IN B298552) RANGE III KINGS MILL RESERVE ETOBICOKE; PT MOSSOM RD PL M385 TORONTO BEING PART 1, 66R29006; PT BLK X, PLAN M416 BEING PART 2, 66R29006; T/W PT 2, R31 AS IN LT340133 ; S/T EASEMENT PT 2, 66R29006 AS IN E415234; T/W EASEMENT AS IN AT411524; TOGETHER WITH AN EASEMENT OVER PT BLK C PL M385 DESIGNATED AS PTS 1 AND 2, 66R26892 AS IN AT3474040; TOGETHER WITH AN EASEMENT OVER PT BLK C PL M385 DESIGNATED AS PTS 3 AND 4, 66R26892 AS IN AT3474044; TOGETHER WITH AN EASEMENT AS IN E415232; CITY OF TORONTO; BEING PART OF PIN 07498-0238 (LT) IN THE LAND REGISTRY OFFICE OF TORONTO (NO. 66) IN THE LAND TITLES DIVISION.

Appendix D - Reference Plans

Reference Plan for 39 Old Mill Road





Reference Plan for 2662 Bloor Street

