

Litigation Arising from the Construction of Ethennonnhawahstihnen' Community Recreation Centre and Library

Date: October 1, 2024

To: General Government Committee

From: City Solicitor and General Manager, Parks, Forestry and Recreation

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City of Toronto.

Confidential Attachment 1 to this report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

Ethennonnhawahstihnen Community Recreation Centre and Library was constructed between 2018 and 2023 pursuant to a contract entered into by the City of Toronto with Eastern Construction Company ("Eastern") as general contractor.

During and following construction, Eastern and subcontractors retained by it for the purposes of the Project commenced lawsuits against the City relating to alleged damages and extra costs incurred during construction. The total amount claimed by Eastern on behalf of itself and its subcontractors is \$13,503,992.43.

The City defended the action and advanced a claim against its hydrogeological consultant, Terraprobe Inc.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding the litigation and seeks instructions.

RECOMMENDATIONS

Litigation Concerning the Construction of Ethennonnhawahstihnen' Community Recreation Centre

The City Solicitor and General Manager, Parks, Forestry and Recreation recommend that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1, if adopted by City Council, at the discretion of the City Solicitor.
3. City Council direct that the remainder of Confidential Attachment 1 is to remain confidential in its entirety, as it relates to litigation involving the City and contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

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

DECISION HISTORY

At its meeting on April 30, 2018, the Government Management Committee granted authority to award Tender Call No. 267-2017 for the Construction of Bessarion Community Centre (renamed Ethennonnhawahstihnen') to Eastern Construction Company Limited in the amount of \$85,480,251 net of all taxes and applicable charges (\$86,984,703 net of HST recoveries).

<https://secure.toronto.ca/council/agenda-item.do?item=2018.GM27.8>

At its meeting of April 24, 2018, City Council approved a recommendation to amend the approved 2018-2027 Capital Budgets and Plans for Parks, Forestry and Recreation (PF&R), Toronto Public Library (TPL), and Toronto Parking Authority (TPA) by increasing project costs and adjusting cash flows for construction of the Bessarion shared-use facility (renamed Ethennonnhawahstihnen') project. Additional funds and realignment of cash flows were required in order to award the contract to the lowest bidder. Specifically, Council approved the following recommendations:

a. Amending Parks, Forestry and Recreation's Capital Budget and Plan as follows:

- i. Increase the project cost of the Bessarion Community Centre (renamed Ethennonnhawahstihnen') sub-project in the Community Centre project, by \$12.900 million from \$56.950 million to \$69.850 million;

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ii. Increase the project cost of the Bessarion Stakeholders sub-project in the Community Centre project, by \$3.300 million from \$19.700 million to \$23.000 million;

b. Amending Toronto Public Library's (TPL) Capital Budget and Plan to increase the project cost of the Bayview - Bessarion Library Relocation project by \$2.700 million from \$12.622 million to \$15.322 million; and

c. Amending the Toronto Parking Authority's Capital Budget by adding a project known as Bessarion Community Centre Parking Garage with a total project cost of \$4.000 million in 2018 and cash flow of \$4.000 million in 2020.

<https://secure.toronto.ca/council/agenda-item.do?item=2018.EX33.18>

At its meeting of February 12, 2018, City Council approved the Toronto Public Library 2018 Capital Budget through item EX31.2 (105a.i. and 105b). The timing of the cash flow estimates for Bayview-Bessarion Library Relocation capital project from 2019 to 2021 was approved.

<https://secure.toronto.ca/council/agenda-item.do?item=2018.EX31.2>

At its meeting of February 15, 2017, City Council approved the Parks, Forestry and Recreation 2017 Capital Budget through item EX22.2 (22a.i. and 22a.ii.). Additional funds for the construction of Bessarion CC (renamed Ethennonnhawahstihnen') were approved: \$0.275 million was added to the Bessarion CC (renamed Ethennonnhawahstihnen') Stakeholders Funding sub-project with funding from Children's Services; and \$20.686 million was added to the Bessarion CC (renamed Ethennonnhawahstihnen') Construction sub-project with funding from PF&R Development Charges (\$18.617 million), and City Wide and North District Parkland Development Cash-in-lieu Reserve Funds (\$2.069 million).

<https://secure.toronto.ca/council/agenda-item.do?item=2017.EX22.2>

At its meeting of February 17, 2016, City Council approved Parks, Forestry and Recreation's 2016 Capital Budget through item EX12.2 (28.a.i.). A total of \$43.325 million in funding for three new sub-projects was added to the Capital Budget for the construction of Bessarion CC (renamed Ethennonnhawahstihnen'): \$9.000 million for the Bessarion CC Parking Garage (renamed Ethennonnhawahstihnen' CC Parking Garage) funded from PF&R Development Charges; \$14.900 million for Bessarion CC (renamed Ethennonnhawahstihnen') Additional Funding with funding from PF&R Development Charges and City Wide Parkland Development Cash-in-lieu (CIL) Reserve Funds; and \$19.425 million for Bessarion CC (renamed Ethennonnhawahstihnen') Stakeholders Funding with \$4.000 million from Toronto Parking Authority, \$4.125 million from Children's Services, and \$11.300 million from Toronto Public Library.

<https://secure.toronto.ca/council/agenda-item.do?item=2016.EX12.2>

At its meeting of December 8, 2009, City Council adopted the Parks, Forestry and Recreation (PF&R) 2010 Capital Budget through item EX38.1 (26.a.i.). The Bessarion Community Centre (CC) Construction (former Canadian Tire CC) sub-project was approved with a total project cost of \$12.124 million and funding from various Section 37 and Section 45 benefits. Funds in the amount of \$0.240 million from PF&R Development Charges and North District Parkland Development Cash-in-lieu Reserve Litigation Concerning the Construction of Ethennonnhawahstihnen' Community Recreation Centre

Funds were previously approved for the North District CC Bessarion (former Canadian Tire) Site Design sub-project through item 26.a.iii.

<https://secure.toronto.ca/council/agenda-item.do?item=2009.EX38.1>

The City Solicitor has not previously reported on the litigation discussed in this report.

COMMENTS

Background

Ethennonnhawahstihnen' Community Recreation Centre and Library ("the Centre") is a multi-use facility comprising a Community Recreation Centre with an Aquatic Centre, Child Care Centre and a Toronto Public Library branch. The Centre opened in 2023.

The Centre is a new-build 3-storey plus mezzanine structure with three levels of below-grade parking. The following facilities and community resources have been constructed as part of the Centre:

Recreation Component: 38,000 square feet (net area) including a double gymnasium and change rooms, indoor running/walking track, fitness studio, weight room, art rooms, preschool room, games room, divisible community hall with kitchen, and multi-purpose rooms of varying sizes.

Aquatic Component: 27,000 square feet (net area) including a 25m x 6 lane lap pool complete with barrier free ramp access, leisure pool with barrier free ramp access, complete with various water play features, deck area with public viewing area within the pool enclosure (for leisure swim and tot lessons).

Toronto Library Branch Component: 13,000 square feet (net area) neighbourhood branch.

Child Care Component: 6,400 square feet (net area) child care centre for 52 children designed to meet the requirements of the Child Care and Early Years Act, 2014, complete with outdoor play areas.

Underground Parking Garage Component: 196 spaces, designed to Toronto Parking Authority design standards for commercial operation by the Toronto Parking Authority.

Capital funding for the construction of the Centre was shared by Parks, Forestry and Recreation (PFR), Children's Services (with funding included in PFR's Budget), Toronto Public Library, and Toronto Parking Authority as summarized in the following table:

Table 1: Financial Summary of the Construction of the Centre

Partner	Total
Parks, Forestry and Recreation	\$63,984,703*
Children's Services	\$5,000,000
Toronto Public Library	\$14,000,000
Toronto Parking Authority	\$4,000,000
Total	\$86,984,703

*Includes \$350,000 for a Purchase Order Amendment for additional contingency funding

Construction of the Centre

The Ethennonnhawahstihnen' Community Recreation Centre and Library was constructed pursuant the City's Contract No. 267-2017 entered into with Eastern on April 30, 2018, with a contract price of \$85,480,251 net of all taxes and applicable charges. The Centre opened to the public in July 2023. This complex construction project, constructed throughout the COVID-19 pandemic was, subject to the claims and litigation at issue in this report, constructed in line with the original contracted cost with the addition of one minor Purchase Order Amendment.

Commencement of Litigation

Eastern and its subcontractors have commenced various lawsuits against the City and its hydrogeological consultant, Terraprobe Inc., arising from alleged delay, additional costs and other damages incurred on the Project. The total amount claimed by Eastern on behalf of itself and its subcontractors is \$13,503,992.43.

The City has defended these claims and also claimed that part of any alleged delay was caused by errors made by Terraprobe and is seeking contribution and indemnity from Terraprobe in the lawsuit as a result.

Confidential legal advice about the litigation is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

Howie Dayton
General Manager
Parks, Forestry and Recreation

Wendy Walberg (KF)
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff