

Proposed Approval of Expropriation

41st Avenue Interchange

Recommendation:

That City Council, in its capacity as the Approving Authority under the *Expropriation Act*, having considered the report of the Inquiry Officer in Attachment 4:

1. Approve the expropriation of the properties shown on Attachment 1, and legally described in Attachment 2 of the February 20, 2013, Corporate Services report 2013COL005, and the reasons for such approval shall be deemed to be those reasons as set out in this report.
2. Authorize Administration to take all steps required by the *Expropriation Act* in furtherance of the expropriations including the registration of Certificates of Approval of Expropriation.

Report Summary

Through its statutory capacity as an Approving Authority under the *Expropriation Act*, City Council approval is required in order to complete the expropriation of the properties shown on Attachment 1, and legally described in Attachment 2 (the “Subject Properties”).

Previous Council/Committee Action

At the November 22, 2011, City Council meeting, the following motion was passed:

That City Council, in its capacity as the Expropriating Authority under the *Expropriation Act*:

- Approve the commencement of the expropriation process to acquire the lands shown on Attachment 2 and legally described in Attachment 1 of the October 19, 2011, Sustainable Development report 2011SCO025.
- Authorize Administration to enter into Section 30 Agreement(s) with the owner or owners of any lands described in Attachment 1 of the October 19, 2011, Sustainable Development report 2011SCO025, where the owner is willing to consent to the expropriation of the land by the City.

Report

Transportation Services requires the subject lands for the construction of the 41 Avenue SW Interchange at QEII Highway.

Major construction on this project is scheduled to commence in summer of 2013.

Notices of Intention to Expropriate were registered on title to the Subject Properties, published in issues of the Edmonton Journal on October 30, 2012, November 3, 2012, November 8, 2012, and November 12, 2012, and served on registered owners and other necessary parties, all in accordance with the *Expropriation Act*.

Attachment 3 contains the Affidavits of Service and Affidavits of Publication (Exhibits excluded) evidencing proof of service and proof of publication of the Notices of Intention to Expropriate the Subject Properties.

Four Notices of Objection were received by the City in respect of the proposed expropriation of three of the Subject

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Properties (the “Objections”). Pursuant to section 15 of the *Expropriation Act*, when a Notice of Objection is filed, a hearing is to be held to inquire as to whether the proposed taking is fair, sound and reasonably necessary in the achievement of the objectives of the Expropriating Authority. No objection was filed in respect of Property #4 in Attachment 2, thus this property was not the subject of the Inquiry.

An Inquiry was conducted before an Inquiry Officer on January 22, 23, 24 and 29, 2013, and the Inquiry Officer provided his report on February 1, 2013, in accordance with the *Expropriation Act*.

Council is required by the *Expropriation Act* to consider the Inquiry Officer’s report in Attachment 4 prior to approving the expropriation of the Subject Properties.

Inquiry Officer’s Report:

The Inquiry Officer found the following:

- the proposed takings in respect of which the Objections were filed were fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.
- the Objectors did not disagree that the 41 Avenue SW Interchange Project was required and they did not disagree that the lands were required for the Project.
- the interchange is required to handle growth and anticipated traffic volumes arising from the Heritage Valley developments and surrounding commercial and industrial developments.

The Inquiry Officer found the Objectors’ concerns were only directed at the City’s processes and recommended that the City should reasonably consider; conducting another noise study, taking such steps in respect of noise attenuation as required by such study and sharing such study with affected owners; preparing another Safety Audit which should include access considerations and providing affected owners with a copy of such study; and making reasonable efforts to determine whether acquiring the Objectors’ residences in order to allow them to relocate as a family is a feasible option.

In this regard, City Administration is prepared to have a noise study and a Safety Audit conducted and share the results of each with the Objectors. Administration is prepared to discuss acquiring additional properties where appropriate.

The Inquiry Officer did not recommend any modifications to the proposed takings. Administration concurs with this position.

Reasons:

The reasons the Approving Authority should approve the expropriation of the Subject Properties without modification are as follows:

- The Subject Properties comprise lands required for the construction and operation of the 41 Avenue SW Interchange at QEII Highway.
- The Inquiry Officer found that the expropriation of Property 1, Property 2 and Property 3 in Attachment 2 to be fair, sound and reasonably necessary in the

- achievement of the objectives of the expropriating authority.
- City Administration has been unable to reach an agreement with the owners to acquire the Subject Properties on a voluntary basis and in order to acquire the Subject Properties on a timely basis, expropriation is necessary.

Policy

The policy for this report falls under the *Expropriation Act* of Alberta.

Corporate Outcomes

The Way We Move

Budget/Financial Implications

Funding for the acquisition of lands required for this project will be through Capital Program 10-66-1484.

Legal Implications

Pursuant to Section 18 of the *Expropriation Act*, Council in its capacity as the Approving Authority shall approve or disapprove the proposed expropriations with any modifications that the Approving Authority considers proper but no approval shall be modified so as to affect land of a person who was not party to the inquiry.

Pursuant to the *Expropriation Act*, Council as the Approving Authority shall give written reasons for its decision and cause its decision to be served on all parties within 30 days of the Approving Authority having been provided with the Inquiry Officer's report.

Justification of Recommendation

1. Approval of the expropriation will enable Administration to proceed with finalizing the expropriation of these properties which are required for this project. The expropriation of those of the Subject Properties in respect of which the Inquiry was held were found to be fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.
2. A Certificate of Approval must be registered in order to effect the expropriation.

Attachments

1. Plan of Subject Properties
2. Legal Descriptions and Registered Interests for Properties
3. Affidavits of Service and Affidavits of Publication (Exhibits excluded)
4. Copy of the Inquiry Officer's report

Background Information Available Upon Request from the Department

1. Exhibits to Affidavits of Service and Affidavits of Publication in Attachment 3.

Others Reviewing this Report

- R. G. Klassen, General Manager, Sustainable Development
- R. Boutilier, General Manager, Transportation Services