

# Abandonment of Expropriation – City Centre Redevelopment Lands

## Recommendation:

That Executive Committee recommend to City Council:

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

1. Approve the abandonment of the commencement of the expropriation of the interests legally described in Attachment 2 of the Corporate Services report 2012COL006, which City Council approved on October 3, 2012, and was subsequently registered on title to the lands on October 5, 2012, as a Notice of Intention to Expropriate. (Attachment 1).
2. Authorize Administration to take the steps necessary to effect this abandonment.

## Report Summary

**City Council approval is required to abandon its Notice of Intention to Expropriate.**

## Previous Council/Committee Action

On October 3, 2012, City Council passed the following motion in its capacity as the Expropriating Authority under the *Expropriation Act*:

- Approve the commencement of the expropriation process to acquire the interests in land shown on

Attachment 1 and legally described in Attachment 2 of the September 19, 2012, Corporate Services report 2012COL006.

- Authorize Administration to enter into agreements pursuant to section 30 of the *Expropriation Act* (Section 30 Agreement) with the owner or owners of any interests outlined in Attachment 2 of the September 19, 2012, Corporate Services report 2012COL006.

## Report

The City of Edmonton is the fee simple owner of the lands municipally known as the City Centre Airport.

The *Expropriation Act* (“Act”) governs the process to be followed in any expropriation.

Following City Council’s authorizing resolution on October 3, 2012, Administration registered a Notice of Intention to Expropriate (“Notice”) (Attachment 4) on title to the City Centre Airport lands and served the Notice on the registered and unregistered interests set out in Attachment 2 of the Corporate Services report 2012COL006, and published the Notice in two issues of the Edmonton Journal, in accordance with the *Act*.

Under the *Act*, any owner who is served with a Notice has a right to object to the proposed expropriation.

The *Act* gives objecting property interest holders or owners the right to have an Inquiry Officer appointed by the Province to conduct an Inquiry into whether the proposed expropriation is fair, sound and reasonably necessary in

the achievement of the objectives of the expropriating authority. Administration received 7 objections.

In accordance with the requirements of the *Act*, Administration forthwith notified the Minister of Justice and Attorney General (“Minister”) of receipt of the objections.

On November 15, 2012, in accordance with the time limit set out in the *Act*, the designate of the Minister appointed an Inquiry Officer to conduct an Inquiry into the proposed expropriation.

An Inquiry was scheduled to proceed within the designated time period. Legal counsel for the objecting parties brought an intervening Court application and on December 13, 2012, by way of Order from the Court of Queen’s Bench, the appointed Inquiry Officer was recused and prohibited from proceeding with the scheduled Inquiry because of a reasonable apprehension of bias (Attachment 2).

On December 18, 2012, the designate of the Minister then appointed a second Inquiry Officer to conduct an Inquiry.

- A preliminary hearing took place on January 17, 2013, and on January 21, 2013, the second appointed Inquiry Officer issued a Report which concluded that his appointment was not in accordance with the mandatory provisions of the *Act* (i.e. that he was appointed outside the 15 day time period) which resulted in the Inquiry Officer being without jurisdiction to conduct an Inquiry. The second appointed Inquiry Officer further determined that he had a conflict of interest that would

necessitate his recusal (Attachment 3).

### **Policy**

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

### **Corporate Outcomes**

*The Way We Grow*

*The Way We Move*

### **Budget/Financial Implications**

Funding will be through Land Enterprise Retained Earnings

### **Legal Implications**

Expropriation is a legal right granted to expropriating authorities, such as municipalities to acquire land, or an interest in land, from a party who might otherwise be unwilling to sell it, in order to fulfill various specified purposes.

Expropriation must be conducted in strict compliance with the requirements of the *Act*.

Under the *Act*, if an objection is made, an Inquiry must be held and the Inquiry Officer must issue a written report within a specified time.

City Council as the approving authority is required to consider the Inquiry Officer’s report and approve or disprove the proposed expropriation with any modifications it considers proper. Written reasons for its decisions must be provided.

Because the Minister cannot comply with its obligation to appoint an Inquiry Officer in the prescribed time, it is Administration’s opinion that the City will not be able to meet the requirements set out in the *Act*. As a result,

Administration cannot complete the expropriation process initiated with the Notice.

The *Act* further provides a designated time period within which the Certificate of Approval must be registered at the Land Titles Office, failing which the expropriation is presumed to be abandoned. If the Certificate of Approval is not registered on title within the specified time period, the expropriation shall be conclusively presumed to be abandoned.

Property Interest holders who sustain actual damages as a result of an abandonment have a right to compensation pursuant to the *Act*.

Another expropriation for these lands cannot be commenced until the current process has been abandoned either formally or by presumption.

The current expropriation will lapse March 4, 2013.

Formal abandonment, if approved, will be effective the date the Notice of Abandonment is registered at Land Titles, which registration can take place shortly after Council approval.

- Approval of the formal abandonment will enable another expropriation to commence sooner and clarify which timelines are relevant to any new expropriation proceedings for the same lands.

### Justification of Recommendation

Council approval is required to formally abandon a Notice of Intention to Expropriate once registered.

### Attachments

1. Commencement of Expropriation of Lands – City Centre Redevelopment - September 19, 2012, Corporate Services report 2012COL006
2. Transcript of Proceedings, Court of Queen’s Bench - December 13, 2012, excerpt page 16
3. Report of Inquiry Officer - January 21, 2013
4. Notice of Intention to Expropriate - October 5, 2012

### Others Reviewing this Report

- R. G. Klassen, General Manager, Sustainable Development