

Justification for Recommendation and Legal Implications - PRIVATE

Justification for Recommendation

All of the available information indicates that the Sale Land was acquired in error in April of 1959. The City required the northerly 20 feet of the former Lot 36 for the purpose of road widening along 82 Avenue. The lands could have been acquired by registration of a road plan or by registration of a subdivision plan and transfer of land. However, as a result of registration of a road plan, a subdivision plan and a transfer of land, the City acquired the most northerly 40 feet of the former Lot 36, which was in excess of the City's requirements for road widening. Administration recommends that the less than market sale be approved to rectify the error.

Administration recommends that the above advice remain private, on the basis that it contains advice from officials and that its disclosure could be harmful to the economic interest of the City if the recommendation is not approved and the Buyer subsequently commences a claim against the City.

Legal Implications:

The Buyer's lawyer has indicated that if the City does not agree to transfer the land for nominal value in order to restore title, then they intend on making an application pursuant to Section 190 of the *Land Titles Act* "for an Order to correct the clear and obvious error that was made at the time of registration".

The Buyer has a strong argument that the land was acquired in error, but it is likely that the City could successfully defend against the claim on the basis that the limitation period has expired. The Buyer may be able to make a claim under Section 69 of the *Law of Property Act* for the amount that the value of the Sale Land is enhanced by the improvements. The City may also be able to defend against that claim or a portion of it based on the expiration of the limitation period. However, that will depend on whether any improvements have been made to the interior or exterior of the building on the Sale Land within the limitation period.

Although the City may be able to defend against an application to restore title or for compensation for improvements, Legal Services is in agreement with the recommendation to rectify what appears to be an error made when both a road plan and subdivision plan were registered in 1959.