



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: July 10, 2007
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Meeting Date: July 26, 2007

TO: Vancouver City Council

FROM: The Director of Real Estate Services, in consultation with the General Manager of the Park Board and the Director of Legal Services

SUBJECT: Expropriation of 1990 Seymour Street and 515-585 Davie Street for the expansion of Emery Barnes Park - Approval of Advance Payment

RECOMMENDATION

- A. THAT, given that Vancouver City Council, as approving authority under the *Expropriation Act*, R.S.B.C. 1996, C.125, has approved the expropriation of the fee simple interest of Clarry Enterprises Ltd. ("Clarry") in those properties at 1190 Seymour Street and 515-585 Davie Street legally described as:

Parcel Identifier: 006-337-651, Lot 17, Block 94, District Lot 541, Plan 210;
Parcel Identifier: 006-337-716, Lot 18, Block 94, District Lot 541, Plan 210; and
Parcel Identifier: 006-337-775, Lot 19, Block 94, District Lot 541, Plan 210

(together, the "Property"),

Council authorize the Director of Real Estate Services, on behalf of the City as the expropriating authority, to pay Five Million Six Hundred Sixteen Thousand Dollars (\$5,616,000) plus GST (if applicable) to Clarry as the advance payment made under the *Expropriation Act*.

- B. THAT the source of funding for such payment will be the Downtown South development cost levies, with interim financing, if required, from the Emerging Neighbourhood Fund. This funding was previously approved by Council on January 17, 2006.

CITY MANAGER'S COMMENTS

The City Manager recommends approval of A and B.

COUNCIL POLICY

Section 532 of the *Vancouver Charter* provides that if, in the exercise of any of its powers of acquiring real property, the City fails to come to an agreement with its owner as to the terms of acquisition, the City may, by by-law or resolution of the Council, expropriate such real property.

PURPOSE

The purpose of this report is to request that Council authorize the Director of Real Estate Services on behalf of the City, as expropriating authority under the *Expropriation Act*, to pay Five Million Six Hundred Sixteen Thousand Dollars (\$5,616,000) to Clarry as the advance payment made under the *Expropriation Act* for the expropriation of Clarry's fee simple interest in the Property.

BACKGROUND

On January 17, 2006, Council authorized the City, as expropriating authority, to commence expropriation proceedings to acquire the fee simple interest in the Property for the expansion of Emery Barnes Park.

Approval to commence expropriation proceedings was sought after approximately 10 years of attempts by the Real Estate Services Department to purchase the Property, the last property that is required in order to complete phase 2 of Emery Barnes Park in Downtown South. The City started acquiring properties for the park in 1992 and was successful in acquiring all the properties required for the park on a willing seller, willing buyer basis with the exception of the Property.

To date, the City has been unsuccessful in its attempts to negotiate an outright purchase of Clarry's fee simple interest in the Property or to enter into a Section 3(1) Agreement allowing for the immediate transfer with later settlement of compensation for such interest in the Property.

An expropriating authority that intends to expropriate land must serve an Expropriation Notice on all owners as defined under the *Expropriation Act* (which in this case is Clarry as the registered owner of the fee simple interest, the tenants of the Property, and any chargeholders, including the Greater Vancouver Transportation Authority which holds a statutory right of way over part of the Property), as well as the approving authority.

The required Expropriation Notice has now been filed in the Land Title Office and served on all necessary parties and the required sign setting out a copy of the Expropriation Notice has been posted on the Property.

DISCUSSION

On or before July 23, 2007, Clarry may request an inquiry before an inquiry officer.

If such a request is made, the inquiry officer must hold a public hearing for the purpose of inquiring into whether the proposed expropriation of the Property is necessary to achieve the City's objectives with respect to the proposed phase 2 of Emery Barnes Park or whether those objectives could be better achieved by an alternate site or by varying the amount of land (or the interest in land) to be taken.

THIS ADMINISTRATIVE REPORT IS TO BE CONSIDERED BY COUNCIL AT ITS MEETING ON JULY 24, 2007, ONLY IF CLARRY DOES NOT REQUEST AN INQUIRY

If Clarry requests an inquiry, this Administrative Report will be withdrawn before the July 24, 2007 meeting of Council and a new Administrative Report will be prepared in due course, since Council, as the approving authority, must then wait for the report from the inquiry officer before considering this matter.

The City, as expropriating authority, must not pay the advance payment to Clarry until the expropriation has been approved by the approving authority.

Procedure

The *Expropriation Act* provides as follows:

- if an inquiry is requested:
 - the inquiry officer must submit to City Council, as approving authority, a written report of his or her findings of fact and recommendations with respect to the proposed expropriation, generally within 30 days after the first day of the inquiry
 - after considering the report of the inquiry officer, City Council, as approving authority, must approve, approve with modifications, or reject the expropriation
- if an inquiry is not requested:
 - before the City makes the advance payment to Clarry, the expropriation must be reviewed and approved by City Council, as approving authority, however if an inquiry is not requested the approving authority **MUST** approve the expropriation
- within 30 days after Council, as approving authority, has approved the expropriation, the City, as expropriating authority, must pay Clarry the amount the City estimates is or will be payable as compensation for the taking of Clarry's fee simple interest, and must serve on Clarry a copy of all appraisal and other reports on which the payment is based

- within 30 days after it has made the advance payment and served copies of the appraisal and any other reports, the expropriating authority must file in the Land Title Office a vesting notice, a copy of which must be served on all owners, and once the vesting notice is filed the fee simple interest in the Property vests in the City
- payment to Clarry of the advance payment is without prejudice to Clarry's right to have the amount determined in the manner provided for in the *Expropriation Act*, but Clarry must apply to the court to determine compensation within one year after the advance payment is made

Payment to Clarry

Since Council considered this matter on January 17, 2006, the Director of Real Estate Services obtained an independent appraisal report (first provided in the spring of 2006, and updated in January, 2007) of the Property which estimates the market value of the fee simple interest in the Property is in the order of Five Million Six Hundred Sixteen Thousand Dollars (\$5,616,000), which amount will be paid to Clarry as the advance payment.

FINANCIAL IMPLICATIONS

The Director of Real Estate Services is of the opinion that the compensation offered as advance payment is reasonable and is within the parameters set by the *Expropriation Act*. This funding was previously approved by Council on January 17, 2006.

CONCLUSION

If Clarry has not requested an inquiry by July 23, 2007, and if Vancouver City Council, as the approving authority, has approved the expropriation of the fee simple interest in the Property, the Director of Real Estate Services recommends that the City pay Five Million Six Hundred Sixteen Thousand Dollars (\$5,616,000) to Clarry as the advance payment made under the *Expropriation Act* for the expropriation of Clarry's fee simple interest in the Property.

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