

## CITY OF ORILLIA

**TO:** Council Committee – February 24, 2020  
**FROM:** Waterfront Working Group  
**DATE:** February 19, 2020  
**REPORT NO:** WWG-20-02  
**SUBJECT:** **Waterfront Redevelopment Project Legal Update**

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### Recommended Motion

**THAT Council authorize \$195,000 for legal and consulting fees related to the Waterfront Redevelopment Project to be allocated from the Land Acquisition Reserve.**

### Purpose

The purpose of this report is to provide Council with an update on legal matters pertaining to the Waterfront Redevelopment Project, and to seek authorization for additional fees for this purpose.

### Background & Key Facts

- As previously reported to Council and the community there are a number of rights within the Metro lease which currently exist on the municipally owned lands, now referred to as the Waterfront Redevelopment lands, which would prevent and/or obstruct the redevelopment of the southern portion of the site.
- In order to achieve the City's vision through the sale of the waterfront lands, extend Coldwater Road to Centennial Drive, and redevelopment the southern portion of the site, the City sought to remove certain restrictions from the site through an expropriation of lease rights process.
- The City also sought certainty (through the courts) on a number of provisions within the Metro lease on which Metro and the City disagreed, including the lease term date.
- The City is not expropriating Metro's rights to operate a grocery store at 70 Front Street North.
- The City's solicitor, Robert Wood of Borden Ladner Gervais, had provided a preliminary estimate in late 2018 for legal and consulting fees related to the arbitration or civil litigation of the lease term date, expropriation of lease rights process and registration fees at an approximate value of \$390,000.
- At its meeting held on January 21, 2019, Council adopted the following resolution:
  - *"THAT as recommended in confidential Report WWG-19-01 dated January 10, 2019 from the Waterfront Development Team regarding the preparation and sale of 70 Front Street North, Option 1 be adopted as set out in the report;*

- *AND THAT \$7,500 be approved for a reference plan, allocated from the Land Acquisition Reserve;*
- *AND THAT \$390,000 be approved for legal and consultant(s) fees related to the disposal of 70 Front Street North, allocated from the Land Acquisition Reserve”.*

### **Options & Analysis**

The Waterfront Working Group presents the following option for consideration:

**THAT Council authorize \$195,000 for legal and consulting fees related to the Waterfront Redevelopment Project to be allocated from the Land Acquisition Reserve.**

The Waterfront Redevelopment Project is a complex multi-faceted project and the legal process (and associated costs) are dependent upon not only the City's actions, but that of other parties involved.

Since the original estimate for legal fees was provided, the legal matters have greatly evolved. The following outlines actions which have taken place since the original legal estimate was provided, all of which has had an impact on legal costs:

#### **Expropriation of Lease Rights Process**

- The City's solicitor anticipated that the Expropriation of Lease Rights process would likely not include a Hearing of Necessity (HON) because parties must pay their own costs to participate in a HON and because the City's Waterfront Redevelopment Project plan was already well-known to the tenants, particularly Metro.
- Metro did request a HON which was subsequently scheduled for August 14, 2019.
- The City's solicitor and staff proceeded to prepare the required documents for the HON, which included a 600 page document book to support the City's position.
- On August 12, 2019, Metro withdrew their request for the HON, however, they subsequently requested a Judicial Review of the expropriation process.
- Since a Judicial Review is typically only held when there is an error in process, and the City followed the legislated process, this Judicial Review was never contemplated.
- The City's solicitor sought to achieve a hearing date at the end of January 2020.
- In December 2019, the City was advised that a date in January 2020 was not possible, and that the earliest possible date for a hearing in Oshawa (the jurisdiction for City of Orillia judicial review cases) would be the last week of June or the first week of July.
- The City subsequently submitted an application (request) to transfer the judicial review to Toronto, where there are more court dates scheduled for this type of hearing, and therefore an opportunity to have the matter heard in an expedited manner.
- The application to transfer the application to the jurisdiction of Toronto has been approved and the Judicial Review hearing has been scheduled for May 26, 2020, in Toronto.

- The City's solicitor has prepared court materials to respond to Metro's request for Judicial Review and must represent the City through the remainder of the Judicial Review process, including at cross examinations on the affidavits and the hearing itself.
- In addition to the above considerations, and through consultation with Deloitte, staff determined that the creation of development concepts were necessary to more accurately guide the valuation process. This resulted in an unforeseen expenditure of \$11,300 to the legal and consulting fee budget (which is where the appraisal fees had originally been allocated).
- The above noted considerations have, and will continue to, impact legal fees as these necessary proceedings are dispositioned. It's anticipated that the legal fees pertaining to the expropriation of lease rights process will exceed the originally estimated legal fees by approximately \$100,000-\$125,000.

### Lease Term Date Determination

- The City's solicitor originally estimated that determination of the lease term date should have been a straight forward matter which would likely be resolved through arbitration rather than litigation (a much more cost efficient process).
- Metro chose instead to litigate the matter through an action, and the City therefore responded with an application (which is less costly and expensive than an action).
- Metro submitted a counter-application seeking orders to have the City replace the roof and parking lot, and seeking an injunction against the City to prohibit the City from withholding Metro access to the triangle lands.
- The City's solicitor has prepared additional court materials to respond to Metro's counter-application and the counter-application required cross-examinations on the affidavit evidence, and the counter-application ultimately more than doubled the amount of work required from both staff and the City's solicitor to litigate the lease term issue.
- The lease term hearing took place on December 5, 2019, and the results of that decision were received on December 20, 2019.
- Within the decision, the judge ruled in favour of Metro in regards to the lease term and interpreted the lease agreement to have a term of 2039.
- The judge ruled in favour of the City on Metro's counter application resulting in a savings of approximately \$660,000 (for replacement of the roof) and a deferral of approximately \$400,000 (for replacement of the parking lot).
- Metro's addition of three matters which were not originally in the scope of the lease term date determination process added significant workload to this legal matter, as both the City solicitor and staff were subsequently required to prepare to address four separate issues, rather than one issue.
- Following release of the decision, the City carefully reviewed the decision in collaboration with its solicitor, and determined that an appeal of the lease term decision was warranted and consistent with the objectives of Real Property Policy 1.7.1.1. to "manage the Real Property interest of the Corporation of the City of Orillia in a timely, accountable and efficient manner while achieving the maximum benefit to the City, financially or otherwise."
- An appeal of the lease term decision was filed in January 2020.

- Metro cross appealed as it pertains to the decision related to the roof and triangle matter.
- The Waterfront Working Group advised Council of this action in January 2020.
- The additional work on the lease term date determination has resulted in additional expenditures of \$35,500 beyond the original estimate.
- It's currently anticipated that the City's appeal and Metro's cross appeal will incur further legal fees of approximately \$30,000.

### **Financial Impact**

The following chart summarizes the current legal fees and estimated overages for legal and consulting fees related to the expropriation of lease rights process and arbitration of lease term for the Waterfront Redevelopment Project.

<b>Item</b>	<b>Allocated January 2019</b>	<b>Actual to Date</b>	<b>Projected Overage</b>	<b>Notes</b>
Legal/ consulting Metro	\$200K	\$126.5K	~\$100-\$125K	\$11.3K unforeseen costs for development concepts to inform valuation ~\$80k as a result of judicial review (\$50k spent to date)
Legal/ Subway	\$100K	\$0	\$0	
Arbitration of lease term	\$35K	\$70.5K	~\$65-\$70K	~\$35.5K spent on unplanned litigation, unforeseen contested motion hearings, cross examinations, counter application for roof, parking lot and triangle lands  An additional ~\$30K as a result of appeal and cross appeal.
Registration	\$10K	\$0	\$0	
HST	\$45K	Included above	Included above	
<b>Total</b>	<b>\$390K</b>	<b>~\$197K</b>	<b>~\$165-\$195K</b>	<b>Total estimate ~\$555-\$585K</b>

While the direct impact that a successful appeal could have on the overall purchase price is not yet known, staff has assessed that it is worth appealing as the value of a successful appeal would outweigh the costs of the appeal.

The costs above do not include compensation or the tenants' cost amounts related to the expropriation of lease rights process. These estimates do not include the City's cost of a compensation hearing if this becomes a necessity. The calculation of compensation and costs takes place at a later stage of the expropriation process.

The current balance of the Land Acquisition Reserve is negative \$19.6 million, representing a debt to be repaid by future revenue.

### **Consultation**

City staff and the Waterfront Working Group have consulted with the City's solicitor on an as-needed basis.

### **Economic Development Impact**

The Waterfront Redevelopment Project is a critical component of the Downtown Tomorrow Plan and has the potential to have a transformative impact on the downtown core. The above noted legal matters are instrumental in ensuring that Council's transformative vision can be achieved.

The expropriation of lease rights process and appeal of the lease term date will allow the site to be developed to its fullest potential. If these processes are successful, this would facilitate a redevelopment which could add a significant number of jobs, housing units and commercial space to the downtown core, which will add vibrancy to the waterfront area on a year round basis and increase the City's tax assessment.

### **Communications Plan**

The City will continue to be open and transparent in regards to the Waterfront Redevelopment Project. Project updates will continue to be updated on the project webpage [orillia.ca/waterfront](http://orillia.ca/waterfront).

### **Relation to Formal Plans, City of Orillia Policy Manual and/or Guiding Legislation**

The recommended motion supports the following plans, policies and strategies:

- City of Orillia Strategic Plan
  - Vibrant Waterfronts – 3.1. Increase and promote access to engaging, exciting, four-season, waterfronts.
  - Sustainable Growth – 4.1. Manage growth to accommodate 41,000 residents and 21,000 employment opportunities. 4.4. Promote economic development to create employment investment opportunities.
  - Heritage Core - 5.1. Promote a revitalized, vibrant, unique, heritage-oriented, pedestrian-friendly core area that is connected to the City's waterfront.

