



REPORT TO

REGULAR BOARD

**ST. JOSEPH'S MORROW PARK SITE EXPANSION –
TCDSB RESPONSE TO INQUIRY OFFICER REPORT**

In all your ways acknowledge him, and he will make straight your paths. Proverbs 3:6

Created, Draft	First Tabling	Review
August 18, 2015	August 27, 2015	Click here to enter a date.
Michael Loberto, Senior Coordinator of Development Maia Puccetti, Superintendent of Facilities Services		
RECOMMENDATION REPORT		

Vision:

At Toronto Catholic we transform the world through witness, faith, innovation and action.

Mission:

The Toronto Catholic District School Board is an inclusive learning community rooted in the love of Christ. We educate students to grow in grace and knowledge and to lead lives of faith, hope and charity.



G. Poole

Associate Director of Academic Affairs

A. Sangiorgio

Associate Director of Planning and
Facilities

Angela Gauthier

Director of Education

A. EXECUTIVE SUMMARY

This report provides staff recommendations to inform the Toronto Catholic District School Board (TCDSB) response to the findings and recommendations of the Inquiry Officer arising from the Hearing of Necessity regarding the lands which the Board Notice of Intent to expropriate in order to accommodate the construction of a new secondary school for St. Joseph's Morrow Park Catholic Secondary School (SJMP). The Hearing was held on April 29, 30, and May 5, 2015, and the Inquiry Officer's report was completed on June 9, 2015.

This staff report attaches the Report of the Inquiry Officer into the proposed expropriation of 26 Townhouse units on west side of Bayview Avenue, between Cummer Avenue and Ruth Avenue for the purpose of completing a school site for SJMP. The Board of Trustees, in its capacity as Approving Authority under the *Expropriations Act* is required to consider the Report of the Inquiry Officer in deciding whether to approve the proposed expropriations, not approve any of them, or approve several but not all of them (approve with modifications).

The Inquiry Officer concluded that the taking of all of these lands was not fair, sound, or reasonably necessary to achieve the TCDSB objectives of providing a new secondary school facility for SJMP on the former Cummer LINC school site (500 Cummer Avenue), including the provision for accommodating projected enrolment growth.

The Hearing Officer made two key recommendations:

- That the townhouse residents and the TCDSB enter into discussions for the shared use of the existing laneway and vehicle entrance off Bayview Avenue.
- That the Board continue with its appeal for the minor variance for the three-storey school, with the townhouse owners supporting the appeal and finding a way to work with the TCDSB and City to make the smaller site work.

The TCDSB reached out to both the City and the legal counsel for the townhouse owners who objected to both the minor variance application and expropriation in order to determine the support for the Hearing Officer's recommendations.

The Report of the Inquiry Officer is a recommendation which the Board as Approving Authority can accept or not, in whole or in part. The Inquiry's

Officer's report offers an independent review of the matters put before him at the hearing, and thus a full consideration of that report appropriately bears on the exercise of the discretion to Approve or not Approve or Approve with modifications. However, the ultimate decision on this matter rests with the Board of Trustees as the Approval Authority.

At the conclusion of its considerations at this meeting, the Board will issue a Decision, with written reasons. This decision will be immediately served on all parties to the hearing. If it determines to expropriate with or without modifications, it will cease to act as an Approval Authority and act as an Expropriating Authority to pass an implementing resolution authorizing execution of a certificate of approval and further authorizing proceeding with the expropriation process.

If the Board elects to proceed with the Approval with Modifications option, staff have prepared a draft Reasons for Decision and draft Implementing Resolution, attached as *Appendix 'D'* and *Appendix 'E'* to this report. In passing that Resolution, the Board will then be acting again as an Expropriating Authority. The staff drafts include acceptance of several of the alternative recommendations of the Inquiry Officer as to extended possession and costs.

B. BACKGROUND

1. The Toronto Catholic District School Board (TCDSB) has been seeking a permanent accommodation solution for St. Joseph's Morrow Park Catholic Secondary School (SJMP) since the Sisters of St. Joseph advised the TCDSB that they sold the Morrow Park property to Tyndale University College and Seminary in June 2006.
2. Since being notified of the sale, the school has been operating in its current location through short-term leases with Tyndale. The uncertainty surrounding the future of SJMP has negatively impacted student enrolment, staff, and the local community. The Board was able to secure one further three year lease extension, which expires June 30, 2018 in order to provide sufficient time for the completion of the new secondary school.
3. The Board has diligently explored numerous options for a permanent relocation of the SJMP school since the sale of the existing property. These options, including the construction of a replacement facility as part of a k-12

school on the Blessed Trinity site, and a stand-alone school on the former St. Leonard site, did not provide suitable long-term accommodation solutions for the school community. The Blessed Trinity solution, which had school community support, was not supported by the Ministry of Education and did not received funding despite being identified by the TCDSB as an urgent capital priority.

4. On November 26, 2010, the TCDSB received funding approval from the Ministry of Education to construct an 800 pupil place replacement facility for SJMP. On October 19, 2012, the Ministry approved the TCDSB purchase of the 5.04 acre former Cummer LINC site, located at 500 Cummer Avenue, from the Toronto District School Board in order to build a replacement facility for St. Joseph's Morrow Park.
5. TCDSB Education Development Charges (EDC) By-law No. 178 was adopted by the Board on June 6, 2013, and came into effect on July 1, 2013. In accordance with the By-law, the Board is eligible to acquire 8.03 acres of land to accommodate the construction of the new secondary school. The purchase of the 500 Cummer Avenue property, expansion of the Cummer site, as well as the demolition of the existing structures is funded by monies generated by this EDC By-law.
6. The existing school site is 5.04 acres in size, and as such, is less than the 8.03 acres that the Board is eligible to acquire. The TCDSB is eligible to acquire an additional 2.99 acres of land to expand the property, which still falls below both the Board standard for secondary school sites (10 acres) and the EDC By-law site size of 8.03 acres. The EDC guideline for a secondary school site is 1.2 acres per 100 students, which would result in a site size of 9.6 acres.

The Board is also proposing the provision of underground parking in order to reduce its land surface area requirements and minimizing the acquisition of additional residential properties.

7. There are thirty townhouse units fronting Bayview Avenue adjacent to the future SJMP site (*Appendix 'A'*). The townhouse dwellings, which include 12 common elements condominium-style units (Block 4: 3336-3340 Bayview Avenue), and eighteen freehold units (Block 1-3: 3348 Bayview Avenue, Units A-R) occupy approximately 1.42 acres of land, and back onto the existing school site.

8. The townhouse owners and area residents were invited to three community meetings, which included presentations on design options for the construction of an 800 pupil place school. The option of expanding the existing 5.04 site in order to right-size the school property and gain access to Bayview Avenue was presented at each meeting. Arising from these meetings, Board staff actively pursued the purchase of townhouse units.
9. The Board has purchased four townhouse dwellings (3348 Bayview Units F, I, K, and M), and submitted through its realtor Agreements of Purchase and Sale to acquire fourteen additional units contiguous to the northern end of the school site fronting Bayview Avenue.
10. On June 28, 2013, the Board submitted a Site Plan application to construct a new three-storey school on the existing 5.04 acre property. The zoning review results received from the City of Toronto in August 2014 identified that the three-storey structure required a minor variance for height, from 9.50 metres (two-storeys) to 13.32 metres (three-storeys). The Committee of Adjustment (C of A) Hearing was held on November 26, 2014 at the North York Civic Centre.
11. The hearing was approximately two hours in length, and representatives from the school community (alumni, staff, and students) were in attendance to speak in support of the application. However, several local residents, primarily those who reside in the Bayview townhouses adjacent to the school site, spoke against both the height variance and the project in general. They expressed concern that the school was too large for the existing 5.04 acre property. The Committee of Adjustment did not approve the minor variance by a vote of 2 to 1.
12. The Board has sought similar or identical variances for the previous six new school projects, and in each instance, the C of A has approved these applications. Staff have appealed the Committee of Adjustment decision to not grant the variance request for the construction of a new three-storey secondary school for SJMP to the Ontario Municipal Board.
13. Following the C of A decision, the Board began design work on a two-storey school to eliminate the need to obtain a height variance. The two-storey option offered significant additional benefits in terms of design flexibility, efficient site use, and maximized the amount of functional greenspace for

school and community use. The two-storey option requires the acquisition of townhouses along Bayview Avenue. In addition, the two-storey option with a second access to Bayview Avenue addresses a significant concern of the City related to a single entry/exit on Cummer Avenue for the three-storey option. This second point of entry and exit to the school site will assist in alleviating the current traffic congestion issues on Cummer Avenue.

14. Given the noteworthy benefits associated with the two-storey option, on January 22, 2015, the TCDSB approved initiating expropriation proceedings to acquire the remaining twenty six townhouse units, and served a Notice of its Application for Approval to Expropriate on the registered owners of these properties.
15. Twenty two townhouse owners requested a Hearing of Necessity to determine whether the TCDSB's taking of the subject lands was fair, sound, and reasonably necessary to achieve its objective of constructing a replacement facility for SJMP on the former Cummer LINC site.
16. The Hearing of Necessity was held on April 29, April 30, and May 5, 2015. The TCDSB called on three expert professional witnesses (the project architect, a professional land use planner, and an economic consultant/EDC expert) to provide evidence. Five townhouse owners provided evidence on behalf of those requesting the Hearing.
17. On June 9, 2015, the Inquiry Officer submitted a report outlining the findings and recommendations from the Hearing of Necessity (*Appendix 'B'*). The inquiry officer concluded that the taking of all of these lands was not fair, sound, or reasonably necessary to achieve the TCDSB objectives of providing a replacement facility for SJMP at 500 Cummer Avenue, and accommodating projected enrolment growth.
18. A Hearing of Necessity is not a legal contest to be won or lost, but an opportunity for the Board to receive an independent recommendation to consider carefully and inform its decision. The recommendations put forth in the report result in neither the Board nor the townhouse owners achieving their preferred outcome. The Board is being asked to return to the option of constructing a three-storey school on the smaller site, which it moved away from following the unsuccessful Committee of Adjustment hearing. The townhouse owners are being asked to consider accepting a three-storey school, which they opposed at the Committee of Adjustment, and share the

laneway with the new school, which has never been offered in discussions with the TCDSB.

19. The Inquiry Officer questioned both the demographic projections for the area, and the rationale for constructing an 800 pupil place replacement facility. The size of the school, approved by the Ministry of Education, was determined by projections which take into account historic trends, census data, City of Toronto population forecasts, and new residential development. In addition, the projected future growth in the area was identified in TCDSB Education Development Charges By-law no. 178, which underwent a public consultation process, and was also approved by the Ministry of Education. It is the opinion of staff that the Inquiry Officer clearly overstepped both his jurisdiction and the scope of the Hearing in questioning the demographic rationale for the project. But regardless of that legal issue, the demographic analysis is supported by expert opinion and implemented by the EDC By-law, and Provincial acceptance of that By-law.
20. The Inquiry Officer made two key recommendations in the report:
 - That the townhouse residents and the TCDSB enter into discussions for the shared use of the laneway and service vehicle entrance off Bayview Avenue.
 - That the Board continue with its appeal for the minor variance for the three-storey school, and that the townhouse owners support the appeal and find a way to work with the TCDSB to make the smaller site function.
21. The TCDSB has engaged both the City and the legal counsel for the townhouse owners who objected to the expropriation in order to address the recommendations outlined above.
22. With respect to the City, the Board solicitor sent a communication to the City's legal counsel on June 19, 2015 regarding potential support for the three-storey option. At the inquiry, one of the residents testified that a meeting took place between the townhouse owners, Councillor Shiner, and a City Planner, where it appeared that the City was open to approving the Site Plan application subject to minor modifications to address Cummer Avenue traffic concerns. The TCDSB requested to be advised whether the local Councillor would both support the minor variance to allow a three-storey secondary school on the smaller site, and would he further support granting Site Plan approval for the smaller school property.

The TCDSB did not receive a response from the City to its communication.

23. On June 19, 2015, the Board's legal counsel sent a communication to the solicitor representing the townhouse owner regarding the laneway and service vehicle entrance, as well as the three-storey school option. The TCDSB was seeking consent for the shared use of both the service vehicle entrance off of Bayview Avenue and laneway from Ruth Avenue to Cummer Avenue, as well as an agreement to expand both if required.

The Board was also seeking the townhouse owners' support with respect to the Ontario Municipal Board appeal of the height variance for the three-storey school on the smaller site. This included having the solicitor attend the Ontario Municipal Board hearing on behalf of the residents to support the appeal of the minor variance, and advising the City Councillor that the owners support the approval of the Site Plan for a three-storey school on the smaller site.

24. On June 29, 2015, the TCDSB received an email response from the resident's solicitor. The townhouse owners expressed concern regarding sharing the laneway, as it already serves many functions including a fire route, location for visitor's parking, sole access to their parking garages, and access for municipal services. They are concerned about the increased frequency of use, and the potential for the laneway and service entrance becoming a public thoroughfare.
25. With respect to the outstanding appeal on the height variance, the solicitor referenced the Inquiry Officer's questioning of the enrolment projections for the new facility. The townhouse owners share the same concerns, and feel that the Board can only justify the construction of a 500 pupil place school, which could potentially be accommodated on the existing site without a height variance.

As previously mentioned, staff is not recommending that the TCDSB reconsider the capacity of the new secondary school.

C. EVIDENCE/RESEARCH/ANALYSIS

1. Arising from the Hearing of Necessity, the Board is required to consider three options:
 - **Option 1:** Approval of none of the Expropriations for which the application has been made.
 - **Option 2:** Approval of all of the Expropriations for which the application has been made.
 - **Option 3:** Approval of some, but not all of the Expropriations for which the application has been made (Approval with modifications).
2. **Option 1:** This option would involve proceeding with Ontario Municipal Board (OMB) appeal for the Committee of Adjustment decision regarding the variance for the three-storey school on the existing school site. Proceeding with the OMB appeal allows the Board to maintain the design submitted as part of the Site Plan application, saving the time associated with redesigning the school. However, there is a time delay associated with securing a hearing date, which adds further interruptions to the project.

The lack of response from the City, and the feedback received from the townhouse owners regarding this option creates concern. If the local Councillor is not prepared to support the minor variance, and the residents continue to oppose the concept of a three-storey school, there is potential for an unfavourable OMB decision, which can only be appealed to Divisional Court on the grounds of an error in law.

3. **Option 2:** The option of proceeding with the expropriation of the twenty six townhouse units would provide a school site which accommodates both a two-storey school building, and maximizes the amount of functional greenspace available for student and community use. The larger site would provide a more suitable playfield for secondary programming requirements.

Proceeding with this option does respond in any manner to the Inquiry Officer's recommendations, and negatively impacts the private interests brought to light during the Hearing of Necessity. It has the most significant impact on the community.

4. **Option 3:** This option involves proceeding with the expropriation of some townhouse units in order to accommodate the construction of the replacement secondary school. If the Board elects to proceed with this option, staff recommends a reduced number of expropriations on the following basis to accommodate the construction of a two-storey facility:

The Board proceed with the expropriation of 17 townhouse units adjacent to the southern end of the school site: the 12 common elements condominium-style units (3336-3340 Bayview Avenue) including the common element condominium, five freehold units (3348 Bayview Avenue, Units A to E), and a remnant parcel. The Board already owns Unit F in the 3348 Bayview complex.

5. The reduced taking allows the Board to deliver a two-storey secondary school (*Appendix 'C'*) to meet its current future needs, and provides numerous advantages:

- Acquiring a portion of the properties avoids further delay and risk of the lack of success which would result if the Board proceeds to appeal the Minor Variance.
- This option eliminates the height variance and increases design flexibility options, resulting in an efficient use of the site.
- Acquiring the properties along Bayview Avenue would also permit the construction of a second point of entry and exit to the school site, which would assist in alleviating the current traffic congestion issues on Cummer Avenue.
- This option also creates flexibility by being designed to accommodate a future addition on the first and second floor, which could be constructed without impacting the operations of the school, avoiding costly temporary relocation.
- A further benefit of this option is Bayview frontage for the new SJMP facility. This ensures a main street presence and exposure, and provides a direct connection to the existing public transit, vehicular and pedestrian networks.

- While a partial acquisition leaves the school with an undersized playing field, this clear loss of a public interest is acceptable in light of the private interests brought to the attention of the Board in the Inquiry Officer's report.
 - Moreover, this option accepts the Inquiry Officer's recommendations with respect to costs and offering extended possession to owners until the demolition of the units must proceed
6. The TCDSB is prepared to direct staff to seek reasonable arrangements to accommodate expropriated owners by offering leases or other appropriate interest in the three townhouse units it owns as a result of voluntary acquisition. These units are not located in blocks to be expropriated.
 7. Given that the Ministry of Education provided funding to for the replacement secondary school in 2010, and the lease with Tyndale expires on June 30, 2018, it is imperative that the Board move forward with the construction of the new SJMP.

D. STAFF RECOMMENDATIONS

The Board is required to exercise its statutory power as Approval Authority. To inform the exercise of Authority, staff has set out recommendations of Approval with modification as the preferred option.