Presentation to Executive Policy Committee

(March 18, 2015)

Agenda Item #20 –
Proposed Expropriation of "Holding #1" for Polo Park Infrastructure Improvements Project –
Westside of St. James Street

Submission on behalf of 0197468 Manitoba Ltd. (Canada Auto)

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Holding No. 1: **Civic Address – 1688 St. Matthew's Avenue**
Property Owner: **0197468 Manitoba Ltd. (Canada Auto)**

Overview

On May 27, 2014, City Council approved the administrative report titled "Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street."

The City proposed a partial taking expropriation of approximately 1,522 square feet from Canada Auto. This would result in the loss of 7 of 16 parking stalls, and all street parking that is currently available.

Canada Auto objected to the proposed expropriation, because it would destroy its business. The Owner proposed that the City expropriate the entirety of the property.

In light of the objection filed by Canada Auto (and other property owners), it became necessary to hold a public inquiry (as required by *The Expropriation Act)*. The mandate of the inquiry officer was to determine whether the expropriation was "fair and reasonably necessary"

The Business of Canada Auto

Canada Auto is a 3rd generation Winnipeg business. It operates a full auto service centre (with seven service bays), a machine repair shop, and is also in the business of selling vehicles on site. The business is a Goodyear Tire distributor.

The principal owner of Canada Auto is Dan Iwanchuk. The business was started by his grandfather in the 1930's. It was originally located on Fort Street.

Canada Auto relocated to a 12,000 s.f building situated at 1688 St. Matthews Avenue in 1990 where it was able to maintain, and grow its business.

Canada Auto initially had difficulty obtaining an occupancy permit for the St. Matthews location due to the limited parking spaces on site (See Pg 39 of the Inquiry Officer's report). The City now proposes to effectively cut the already congested lot in half, alter its access points, and eliminate all street parking along St. Matthews.

Conclusions of the Inquiry Officer

After considering the evidence submitted by Canada Auto and the City, the Inquiry Officer had no hesitation in concluding that the proposed acquisition was not appropriate. He concluded as follows:

> "In determining whether the issues of public versus private interest, **it is apparent that the land needs to be expropriated from the current owner.** However, **in the present circumstances, it would not be fair and reasonably necessary to expropriate only the portion so identified**. It would be fair and reasonably necessary to expropriate all of Holding No. 1. **It would be patently unfair to approve a course of action that would be effectively destroy an existing and long term business.**" (Pg 77)

The Inquiry Officer therefore recommended that the entire property (Holding #1) be expropriated.

Recommendations by the City Public Service

The City Public Service recommended to the Standing Policy Committee on Property and Development that the Inquiry Officer's recommendations *not* be followed. These recommendations were made public on Friday, March 7, 2015, two business days before they were to be considered by the Standing Committee on Property and Development.

Canada Auto made submissions to the Standing Policy Committee on Property and Development on March 10, 2015.

After discussing this matter "in camera" on March 10, 2015, the Standing Policy Committee on Property and Development concurred with the recommendation of the Winnipeg Public Service.

This submission is provided in response to the recommendations of the Standing Policy Committee on Property and Development.

Recommendations from Public Service (Endorsed by the Standing Policy Committee on Property and Development):

> *"The Public Service does not endorse the Inquiry Officer's recommendation for Holding #1:*
>
> 1. ***"There was no evidence (i.e. financial data) provided at the hearing to prove the affected property was no longer commercially viable as a result of the taking"***

Response:

With respect, there was considerable evidence adduced before the Inquiry Officer as to the impact on the business without adequate parking.

The Inquiry Officer, after considering this evidence, had no difficulty concluding that the business would not be viable as a result of the proposed taking. He concluded that it would be "patently unfair".

Canada Auto led detailed evidence as to the land requirements of comparable auto service centres in the City of Winnipeg. All such comparable businesses have *at least 20 stalls* and most had some street parking to complement those on-site parking stalls.

It was also demonstrated that the proposed partial expropriation will result in the property owner having less than 25% of the required parking spaces under the current City Bylaw. City Bylaw 200/2006 requires approximately 40 stalls for a building of this size. The City is proposing to leave this business with 9 stalls, and no street parking.

As the Inquiry Officer concluded in his report:

> "It is apparent that the taking whilst being relatively minimal of approximately 1,522 square feet, the impact on the owner and business is substantial. The evidence by the Objector was concise, well documented and supportive of the position that the business would become inoperable with reduction of the parking stalls and other impacts on the property. The evidence of the impact on the

> business and the comparables to other business of a similar nature was compelling. ... the Objector testified that in other expropriations, the owner's properties were expropriated in whole even when the whole property was not required for the expropriation, this occurred due to the economic impact upon the businesses. This evidence was unchallenged. ... (Pg 76)

As noted above, the City did not present *any evidence* at the inquiry hearing to suggest that Canada Auto could continue to operate at this location after losing half of its parking lot.

It remains unclear where the City Public Service expects this owner to situate the vehicles it in the business of repairing and/or selling. That is not addressed in its report, nor was it addressed at the inquiry.

2. ***"The Affected owner has the ability to forward their position at the Land Value Appraisal Commission (LVAC) for the purpose of compensation.***

Response:

This should not be a relevant consideration. All expropriated owners have the right to file a claim with the LVAC pursuant to *The Expropriation Act*. Quite apart from the legislated right to seek compensation, landowners have the right to expect that the City exercise its expropriation power in a "fair and reasonable" manner. That is the very purpose of the public inquiry.

Notwithstanding the inquiry officer's finding that the proposed taking is "patently unfair", the City Public Service has, in a three point summary explanation, simply concluded that the initial expropriation plan move ahead – unaltered. The concept of "fairness" is not even discussed.

Realistically, a claim to the LVAC could not and would not be advanced for a considerable amount of time. In the interim, the owner would receive no more than the land value attributable to the 1522 square feet being acquired. The owner would be required to close its business, terminate employees, and incur all of the losses associated with such a closure including all holding costs associated with the property, until such time as it was in a position to present a case to the LVAC, and attend to any appeals that may result from that process.

This is neither fair, nor reasonable.

3. ***"A full taking would increase land acquisition costs and create a liability for the City due to the maintenance of an existing building."***

Response:

If the partial taking destroys Canada Auto's business, as the Inquiry Officer has concluded it would, the City will inevitably be required to compensate the Owner as if this were a complete taking in any event.

No evidence has been put forth to suggest that a complete taking would materially "increase land acquisition costs" at the end of the day. Shortly after the Inquiry Officer's report was issued, the City indicated it wanted to conduct an appraisal of the building prior to making its recommendations. For reasons which have not been explained, no such appraisal has been performed, nor has the owner been contacted by City representatives to discuss the matter.

With respect to the liability concerns of maintaining an existing building, the City adduced no evidence at the Inquiry that this should or would be a concern. The existing building would be an asset that the City would of course be at liberty to dispose of or utilize as it sees fit. To thrust the obligation of maintaining the remnant property onto the expropriated landowner (who will no longer have a use for it) is, respectfully, not appropriate.

CONCLUSION

Canada Auto is in the business of servicing and selling vehicles. If it has nowhere to put those vehicles, it will be out of business. This was recognized by the Inquiry Officer, and not seriously challenged by the City during the course of the hearing.

In summary, this committee is asked to recommend acceptance of the Inquiry Officer's recommendations pertaining to Holding #1 (1688 St. Matthews Avenue), namely, that the entire property be expropriated.



Google earth

feet 100
meters 30