

ITEM SUPPLEMENTARY 5  
MANAGER'S REPORT NO. 3  
COUNCIL MEETING 1983 01 10

RE: PROPOSED NEW EXPROPRIATION ACT

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Municipal Solicitor be adopted.

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TO: MUNICIPAL MANAGER

January 7, 1983

FROM: MUNICIPAL SOLICITOR

RE: Proposed New Expropriation Act

RECOMMENDATION:


1. That the Cabinet Committee on Legislation be advised that the Municipal Council of the District of Burnaby strongly insists that the approving authority in the case of municipal expropriations should be the municipal council.

REPORT

The members of council now have a copy of the proposed new Expropriation Act. The copy contains a commentary explaining the purposes of the Act and the changes in expropriation law which it will effect. The proposed Act is based in large part on the Law Reform Commission report and in many respects is a copy of the Ontario statute. The Act provides that no expropriation may take place until approved by the approving authority who does not act until he has received the report of the inquiry officer made after the inquiry officer has held a public hearing. If the approving authority may approve or disallow the expropriation. If the expropriation is allowed, the Municipality must pay its estimated compensation to the owner before expropriation proceedings are concluded. The Municipality must also provide the owner with copies of its appraisal reports and pay the owner his legal and appraisal costs. If the proposed compensation is not accepted by the owner, a hearing will be held by the Expropriation Compensation Board appointed by the Lieutenant-Governor in Council and it will determine compensation. In general, the basic formula for determining compensation is market value plus reasonable damage for disturbance. Interest on the award is no longer 6% but shall be equal to the prime bank rate charged to the government. The Act fixes the date of expropriation as the date notice of expropriation is filed in the Land Title Office. There is an appeal to the Court of Appeal from the Board decision on questions of law or mixed fact and law.

Council will note that the approving authority in the case of the Municipality is the person designated by the Lieutenant-Governor in Council or if no person is designated, the Minister of Municipal Affairs. In the case of other expropriating authorities, the approving authority is the Minister charged with the administration of the Act under which the expropriating authority acts or the Attorney General. In other words, a proposed expropriation by the Crown or by a Crown Corporation or agency is approved or rejected by a Minister of the Crown. It seems to me that this amounts to special treatment for the Crown and Crown agencies. In Ontario, although there is an inquiry procedure, and a report by an inquiry officer, the municipal council in the case of a municipal expropriation is the approving authority. The municipal council, an elected body, and more knowledgeable about local matters than any minister or functionary of the provincial government, should determine whether an expropriation within the municipality is necessary or not. This authority should not be taken from it.

The Law Reform Commission addressed this question in its report. The Commission stated that "where the expropriating authority is a politically responsible person or body such as a Minister of the Crown or a municipal council, there is no need, of course, for a different person or body to be the approving authority. There is already somebody who has assumed political responsibility." The report goes on and asks the question "is it wrong that the expropriating and approving authority should be one and the same?" The McRuer report, on which the Ontario Act is based, answered this question in the negative. However, the Commission report goes on and states that "the Commission feels there is something to be said for making the Minister of Municipal Affairs the approving authority for municipal expropriations and the Minister of Education for school district expropriations. Having a central approving authority may bring some desirable uniformity in the approach to expropriation of the 144 municipalities (excluding 28 regional districts) and 77 school districts that are scattered throughout the Province." This is surely an argument deserving of little weight. The Commission concedes "there is a conflict in political responsibility here. Are the wishes of the local electorate on a subject which is within the local jurisdiction to be overborne by a Minister of the Crown, representing the provincial electorate?" I recommend that this municipality strongly insist that the approving authority in the case of municipal expropriations should be the municipal council.



W. L. Stirling  
MUNICIPAL SOLICITOR