

IN THE MATTER OF THE EXPROPRIATIONS ACT

IN THE MATTER OF an application by the Regional Municipality Of York to expropriate the lands and interest in the lands following for the West Vaughan Sewage Servicing Project. An estate in Fee Simple in the lands described as follows: Lands in the City of Vaughan in the Regional Municipality of York, being composed of those lands designates as Parts on a Plan deposited in the Land Registry Office for the Land Titles Division of York Region more particularly described as follows: 1. Part of West ½ of Lot 16, Concession 9, designated as Part 1 on Plan 65R37455. 2. Part of West ½ of Lot 16, Concession 9, as stopped up and closed by Bylaw No. R-1425-2005 083 as in Instrument No. YR732996, designated as Part 2 on Plan 65R-37455.

Hearing:

October 30th, 2019

Appearances:

David Berney

Region of York

Shane Rayman

Badali Brothers Inc.

REPORT

This hearing was held pursuant to Section 7 of the Expropriations Act, to determine whether the taking by the Region of the interest in the lands set out above for the purposes of the West Vaughan Sewage Servicing Project is fair, sound and reasonably necessary in the achievements of the objectives of the Region.

THE LANDS

The lands are located at the north east corner of Huntington and Rutherford Roads. They are presently vacant. Parts 1 & 2 on Plan 65R-36155 are required in fee simple. Plans in Tab 13 – Exhibit 3 set out the interim site plan (during construction) and the site restoration plan.

THE PROJECT

Paul Savard Project Manager gave evidence on the overall project. It is the West Vaughan Sewage System (sanitary) (WVSS) which is to service this area of Vaughan which is rapidly developing. The population projection between 2010 and 2050 goes from 8K to 83K. The WVSS Class EA environmental Study Report dated June 2013, (Tab 14 – Exhibit 3), documents the proposed two phases of nearly 14.3 kilometres of sewer tunnel (four segments) running from the Kleinburg Water Resource Recovery Facility ending at the Humber Sewage Pumping Station, located south of Highway 407 close to

Islington Ave., depicted on the General Plan (Tab 13 - Exhibit 3).

Tunnel segments are created by using a three-metre diameter Tunnel Boring Machine (TBM). Most of the tunnel is located within the road rights of way. Shafts for maintenance and micro-tunneling required during and after construction are located outside the right of way, and one of them (Compound 3 -E) is located on the subject property. The location and details of the shaft are shown in the drawings located in Tab 13 – Exhibit 3).

The Addendum to the ESR dated January 2016 addressed beneficial changes to the route alignment and construction methodology and set out the changes made to the project subsequent to the ESR, which amongst other matters reduced the number of shafts as a result of the larger boring machine. The properties required are in accordance with the Class EA and the Class EA Addendum.

Council authorized an application for approval to expropriate privately owned properties required for the Sewage Servicing Project. According to the Executive Summary of the Report, this work is identified in the Region’s approved 10 year Capital Plan. Funding for property acquisitions is included in the 2018 Environmental Services Capital Budget.

Mr. Paylor’s evidence related not to the taking, but rather the question of funding for the project and its timing, expressing some concern therefore for the commencement date of the project. “Certainty is fluid” – you have to have flexibility, and the construction schedule is up to the contractor.

FINDINGS AND CONCLUSIONS

No issue was taken with necessity of the overall project, obviously, since it will contribute to the development of this very large area of Vaughan.

The shaft cannot be within the road right of way. In this case it is the west end of the Rutherford Road arm of the tunnel and it connects the tunnel to the existing north/south Huntington Road sewer.

Placing the shaft on the North West corner would require the tunnel cross under Huntington Road and then return back to connect with the Huntington sewer. The south west corner is fully developed to the limits of the lands. The tunnel in the road right of way is to the north side of the right of way to the east of Huntington Road.

As to funding for the project, despite Mr. Paylor's concern, I am satisfied with the costs being in the 10-year capital budget, together with the property acquisitions being contained in the Environmental Services Budget.

On the issue of construction timing, Mr. Savard has given his understanding as Project Manager. He also indicated that the final timing in any event would remain with the contractor. The design requires this facility at this location. There is certainly no benefit to the Region in delaying the taking until the final project commencement date, given the potential for changed property circumstances.

A question was raised with respect to type of taking. The Region has chosen acquisition by expropriation. I am aware that this is

not the only private taking in this project. Although the question of a lease was raised no support was given it in the evidence or argument in order to consider it further.

After considering all of the evidence and arguments, I conclude that the proposal meets the test in the Expropriations Act and the summation of it as set out by the courts. The test in subsection 7 (5) of the Act is whether the proposed taking, is “fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.” Court decisions such as in Re: Parkins and the Queen (1877), 13L.C.R. 327 (O.CX.A.), conclude that the test that the inquiry officer must apply can be expressed as whether the proposal is “reasonably defensible in the achievement of the authority’s objective”.

For all of the reasons given above, I find that the proposed taking by the Region of the property described is reasonably defensible in the achievement of the Region’s objective of the West Vaughan Sewage System.

Dated at Toronto December 9, 2019

original signed

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D. S. Colbourne

Inquiry Officer

Schedule A

Witnesses:

Paul Savard (A)	-Project Manager
M. Paylor (A)	-Senior Real Estate Appraiser/Negotiator

Exhibits

1. C.V. Savard
2. Experts Duty
3. Region's Document Book