

The Regional Municipality of York

Committee of the Whole
Finance and Administration
March 12, 2019

Report of the Commissioner of Corporate Services

Expropriation Settlement and Abandonment of Land Viva Bus Rapid Transit Corridor 3601 Highway 7 City of Markham

1. Recommendations

1. Council authorize the settlement of all claims pursuant to the *Expropriations Act* related to the properties identified in Attachment 1, collectively known as 3601 Highway 7, related to the construction of the vivaNext bus rapid transit corridor on Highway 7, in the City of Markham.
2. Subject to the former owner's consent and in accordance with Section 41 of the *Expropriations Act* (the "Act"), Council authorize the abandonment of land that was expropriated in 2009, identified as Properties 1, 3 and 4 in Attachment 1.
3. The Commissioner of Corporate Services be authorized to execute the Notice of Abandonment, the Declaration of Abandonment pursuant to the *Act*, and a Minutes of Settlement for the expropriation and all necessary documentation to complete the transaction.

2. Summary

This report seeks Council approval to enter into a final settlement agreement which includes the abandonment of land in the City of Markham that was expropriated in 2009, for the Highway 7 vivaNext bus rapid transit project. The subject land is shown on the map in Attachment 2.

Private Attachment 1 to this report will be considered in private session because it relates to a settlement of claims in accordance with the *Act*.

Key Points:

- The subject land was expropriated for a road widening and a daylight triangle for the vivaNext project along Highway 7 in Markham

- A pylon sign is located behind a Region constructed retaining wall in the daylight triangle. The Region intended to remove the sign, however this would produce a significant claim against the Region
- In consultation with the City of Markham and the Region's Roads and Traffic Operations Branch, it was determined that the land behind the retaining wall as well as under and around the pylon sign was redundant and surplus for the daylight triangle and the Region's needs
- A portion of the surplus land will be abandoned back to the owner, and a portion will be reduced from a fee simple to a permanent easement interest to allow the Region to maintain the retaining wall
- Abandonment of the land will avoid a significant claim against the Region
- Council approval is required for abandonment of land

3. Background

The Region constructed dedicated bus rapid transit lanes for the vivaNext project along Highway 7 in Markham

To facilitate public transit along Highway 7 in Markham, YRRTC, on behalf of the Region, managed the construction of dedicated centre bus lanes for Viva buses, with enhanced streetscape from Bayview Avenue to Warden Avenue via South Town Centre Boulevard and Cedarland Drive in Markham. Construction of the new rapid way started with utility relocations in 2010 followed by road construction from March 2011 to September 2015.

The land from the road widening required two expropriations from 3601 Highway 7, resulting in two separate interests

In [January 2009](#), Council authorized the expropriation of fee simple, permanent easement and temporary easement interests from property owners affected by the widening of Highway 7 in Markham to facilitate the vivaNext project. The Region's requirement from the subject property comprised a fee simple interest for a daylight triangle at the southeast corner of Highway 7 and South Town Centre Boulevard.

The expropriated land was subject to condominium ownership

The property is a commercial condominium development. Ownership is represented by York Region Condominium Corporation 1122 and the property operates as a retail and office building occupied by a various tenants and unit owners. The daylight triangle primarily formed part of the common elements of the condominium property. A small portion of the daylight triangle was a dedicated condominium unit owned by 1602978 Ontario Inc.

Liberty Development Corporation (Liberty) is the president of the condominium board and the owner of 1602978 Ontario Inc.

The condominium unit expropriated from 1602978 Ontario Inc. included a pylon sign

The condominium unit expropriated from 1602978 Ontario Inc. exists to accommodate a pylon sign in the vicinity of the common condominium property. The sign cannot be relocated along the Highway 7 frontage due to the road widening. In its current location, and if not for the proposed abandonment, the sign would have to be removed. The sign generates income for 1602978 Ontario Inc. by leasing sign space to businesses located at 3601 Highway 7. The sign loss would bring a significant claim against the Region for injurious affection and lost revenue. As a result, staff determined the most practical and cost efficient solution was for the Region to abandon this portion of the expropriated land.

A retaining wall made the need for a daylight triangle redundant

The high elevation of the road design compared to the owner's property created the need for a retaining wall at the southeast corner of Highway 7 and South Town Centre Boulevard. In consultation with the Region's Roads and Traffic Operations Branch, it was determined that the expropriated land should be abandoned since sight visibility is obstructed and the daylight triangle no longer serves its intended purpose, and retaining the land may result in significant claims against the Region. Attachment 3 is a photograph showing the subject property and the location of the retaining wall and sign.

4. Analysis

The Region will abandon a portion of the expropriated land in compliance with Section 41 of the *Act*

Section 41 of the *Act* provides for the abandonment of the expropriated land where compensation has not yet been paid in full. A portion of the expropriated land was incorporated into the vivaNext project and is being retained by the Region. Once the project was completed, it was determined that a portion of the daylight triangle was unnecessary for the project, and not intended to be used for future development by the Region.

If the expropriating authority determines that it does not require the land or requires a lesser interest in the land, Section 41 of the *Act* requires an expropriating authority to notify the former owner of expropriated land for which the owner has not been compensated. The owner can either consent or require the expropriating authority to retain the land and compensate the owner accordingly. When expropriated land is abandoned by the expropriated authority, and if the owners agree, the land reverts to the owners from whom it was expropriated.

The owners have not accepted any portion of the compensation offered from the expropriation. In this instance, owners have consented and Region staff agrees that abandonment is the best course of action.

The Region and owners have negotiated a settlement that will compensate the owners in accordance with the Act, and will return the abandoned interests to the owners

A portion of the land to be retained by the Region will remain in fee simple ownership by the Region, and a portion will be reduced from a fee simple to a permanent easement taking. The remainder of the land will be abandoned and returned to the condominium's common elements along with Unit 70 Level 1 on Plan YRSCP 1122 in its entirety.

The Region and Liberty have negotiated a full and final settlement that will compensate the parties for the permanent easement and the land retained by the Region in fee simple. The terms of the agreement will return a portion of the expropriated land to the condominium's common elements, and will return the condominium unit containing the pylon sign to 1602978 Ontario Inc., so that the pylon sign may remain intact.

Environmental due diligence was completed

A Contamination Overview Study was completed. The study did not identify any potential environmental issues with the land and no additional environmental work was required. Since the land was acquired, there have not been any significant environmental issues identified.

5. Financial

The abandonment and settlement of the land will result in a cost savings to the Region. It is being completed in accordance with the Real Estate Protocol of the Master Agreement between the Region, Metrolinx and YRRTC.

6. Local Impact

This project has improved public transit and the streetscape along Highway 7 for residents of Markham and York Region.

The retention of a portion of the taking as a permanent easement ensures that Region staff, its contactors, and utilities have access to their infrastructure.

7. Conclusion

The land was acquired to facilitate the widening and reconstruction of Highway 7 for the vivaNext project. The required improvements have been completed, and portions of the expropriated land exceed the Region's needs. The Region and owners have negotiated a settlement of the expropriation that includes the abandonment of a portion of the land in accordance with Section 41 of the *Act*.

Staff recommends Council approve the abandonment of the land and the proposed settlement.

For more information on this report, please contact Michael Shatil, Director, Property Services at 1-877-464-9675 ext.71684. Accessible formats or communication supports are available upon request.

Recommended by: **Dino Basso**
Commissioner of Corporate Services

Approved for Submission: **Bruce Macgregor**
Chief Administrative Officer

February 28, 2020
Attachments (3)
Private Attachments (1)
eDOCS #10332020