

**IN THE MATTER OF THE EXPROPRIATIONS ACT**

**IN THE MATTER OF** an application by the Regional Municipality of York for approval to expropriate a fee simple interest in Part of the West  $\frac{3}{4}$  of Lot 16, Concession 4, Geographic Township of Vaughan, County of York, City of Vaughan, Regional Municipality of York designated as Parts 1,2,3,4 & 5 on Plan 65R-37087.

This is all for the municipal purposes of the widening and reconstruction of Rutherford Road (YR 73), from Jane Street (YR55) to Westburne Drive, in the City of Vaughan.

**PROCEEDINGS:**

Hearing March 1, 2019

**APPEARANCES:**

Matthew Owen-King &

Micah Goldstein for The Region of York

Gerald Borean for 1688643 Ontario Limited  
& 2382279 Ontario Limited

**REPORT**

This hearing was held pursuant to Section 7 of the Expropriations Act to determine whether the taking by the Region of York of the interests in the lands previously set out all for the municipal purpose of the widening and reconstruction of Rutherford Road (YR73) from Jane Street (YR55 to Westburne Drive in the City of Vaughan is “fair, sound and reasonably necessary” in the achievement of the objectives of the expropriating authority.

## THE LANDS

The fee simple interest taking of the lands subject of the hearing are located at the north east corner of the intersection of Rutherford Road and Melville Avenue. They extend in a strip easterly along Rutherford Road. Its depth is 5.95 m. close to the intersection, to a depth of 3.50 m., past the easterly boundary of the property, all as set out on the "Property Request Map Tab 12 of Exhibit 1. The property is developed with a drive through automobile gas bar, an accessory car wash and a convenience retail store, all as shown on the Air photos. To the west and to the north surrounding the site is Vibrant Square.

## THE OBJECTIVE

As set out in the evidence of Brian Wolf, Project Manager for the Region and the documents, the objective of the Region is the widening and reconstruction of Rutherford Road from Jane Street to Westburne Drive in the City of Vaughan. This is necessary to improve capacity, network connectivity, quality of service and mobility for pedestrians, cyclists, transit users and motorists along the Rutherford Road corridor. Travel demands to address future population growth, employment and development are projected to exceed existing capacity.

Rutherford Road will become a multimodal corridor and "a complete street" accessible to all users. The increased capacity will improve the level of service for motorists, provide a continuous sidewalk and cycling facilities, improve transit service and streetscaping.

When originally developed Rutherford Road was a 36 m. corridor, but that requirement was changed to 43 m. in the Official Plan. The Design for this area is set out in Exhibit 5, which is the profile JKC-3, a 43 m Right of Way. It sets out 6 travel lanes, including HOV/Transit lanes, cycle tracks, sidewalks separated from vehicle lanes by landscaping, and 5 m. landscaped median. **At this location the centre line of the road is to be shifted by up to 4m. to the north.**

This creates the issue raised by the owner's witness Claudio Brutto a professional planner. Mr. Brutto takes no issue with the objective and in fact supports that the improvements to Rutherford Road are long overdue.

He reviewed the development on each of the corners. Reference to the Environmental Assessment Plan Tab 11 Exhibit 1 assists. At the north east is the

subject gas bar development and further east along Rutherford Road, Vibrant Square developed in connection with and at the same time as the gas bar. The details of the proposed traffic lanes are measured on that plan. North of the lanes a curb and then a landscaped area and decorative fence and pillars. Close to the intersection is the west bound bus stop area (in the correct position at the intersection) which appears to be roughly twice the size of the existing stop area. Then there are the cycle track and sidewalk.

These dimensions put the sidewalk closer to the existing tank nest. The proximity of the sidewalk to the tank nest located at the south limit of the property Mr. Butto suggests is or should be a safety concern. He also suggests that moving the proposed facilities closer to the tank nest will make the tank filling more difficult for the trucks, and inhibit or compromise vehicle movement on the site.

The proposed taking at the south east corner is to be 2.0 m. The facilities proposed at the south east corner show a shallower depth of landscaped area, then the cycle track and sidewalk. The taking of the 2.0 m is an area apparently to be graded then the property of the Wegz Stadium Bar. This facility faces inward to its parking area, not facing to Rutherford Rd.

At the north west corner, the taking is from the York Regional Police premises. It appears to be greater than that proposed from the subject property. At the south west corner the taking is from another gas bar. Its taking appears to be less depth than the other corner, about the width of the proposed sidewalk only.

Mr. Butto does not question the 43m. right of way, but suggests there would be less impact on the Wegz Bar given its location and orientation. He proposes to lessen the shift of the centre line to the north, which would shift the burden to make it a "sharing of the burden".

## **FINDINGS**

I am not convinced about the suggestion that the taking will impact the movement of the tanker trucks and vehicle circulation, simply because the taking is between the existing ROW and the tanker nest, and not internal to the balance of the site.

Exhibit 7, the Development and Evaluation of Alternatives, specifically the second and third pages, deals with the Jane to CN Bridge area alternative selections,

which area involves the subject lands. In accepting the 43m. ROW which shifts the centre line to the north for that area **it is consistent for that entire area and not just an individual property**. The differential in takings obviously varies depending upon existing conditions. Alteration of the taking of an individual or opposite properties would affect the alignment

Option JC-3 in the evaluation meets 3 (social and economic environment and transportation service criteria), while meeting some of the criteria for the other 3 (natural environment, infrastructure design and cost effectiveness).

Overall the JC-3option is recommended because:

The 43 M ROW allows for wider boulevards that provide additional separation between the sidewalk, cycle tracks and the roadway

Widening to the north reduces impact to the properties and utilities on the south side of Rutherford Road, while allowing widening to take place on the north side where overall there are less sensitive uses. I accept that rationale.

### **CONCLUSION**

After considering all of the evidence and arguments, I conclude that the proposal meets the test in the Expropriations Act and the summation 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 (1977), 13 L.C.R., 327 (O.C.A.) concluded 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 objectives”.

For the reasons give above, I find that the proposed taking by the Region of the property described is reasonably defensible in the achievement of the authority’s objective of the Rutherford Rd. widening and reconstruction.

March 13, 2019

original signed

D. S. Colbourne

Inquiry Officer

## **SCHEDULE A**

### **WITNESSES:**

1. Bryan Wolf – (A) - P.Eng. Sr. Project Manager – York Region  
Transportation Services Department
2. Claudio P Brutto - (A) - MCIP, RPP, PLE

### **EXHIBITS :**

1. Region's Document Book
2. Notice of Hearing
3. Notice of Grounds
4. C.V. Brian D. Wolf
5. Summary of Recommended Design
6. A - C.V. Claudio Brutto  
B – Acknowledgement of Expert's Duty
- 7 Development and Evaluation of Alternatives – Excerpts
8. Air Photo – Intersection
9. Air Photo – Intersection & West to Rail Tracks.