

The Regional Municipality of York

Committee of the Whole
Finance and Administration
June 13, 2019
Report of the Commissioner of Corporate Services

Expropriation Settlement Viva Bus Rapid Transit Corridor 130 Davis Drive Town of Newmarket

1. Recommendations

It is recommended that:

1. Council authorize the settlement of all claims pursuant to the *Expropriations Act* related to Property 1, identified in Attachment 1, known as 130 Davis Drive related to the construction of the bus rapid transit corridor on Davis Drive, in the Town of Newmarket.
2. Council authorize the disposition of Property 2, identified in Attachment 1, to the owner of 130 Davis Drive, in the Town of Newmarket.
3. The Commissioner of Corporate Services be authorized to execute the Minutes of Settlement and all necessary documentation to complete the transaction in accordance with the Minutes of Settlement.

2. Summary

This report seeks Council approval to accept full and final Minutes of Settlement with respect to the expropriations at 130 Davis Drive in Newmarket for the vivaNext project. The property location is shown as Property 1 in Attachment 2.

This report also seeks Council approval to dispose of lands as part of the full and final Minutes of Settlement. The lands are shown as Property 2 in Attachment 2.

Private Attachment 1 to this report will be considered in private session pursuant to section 239(2)(c) because it relates to a proposed, pending acquisition or disposition of land by the Region and the claim for compensation by the owner of Property 1 in Attachment 1.

Key Points:

- Between 2009 and 2014, the Davis Drive frontage of 130 Davis Drive, which is a retail plaza, was expropriated seven times for the vivaNext project
- The expropriations impacted the driveways, parking and occupancy levels of the plaza
- Adjacent lands owned by the Region and the Town of Newmarket will be transferred to the owner as part of the negotiated settlement in-lieu of an all cash payment
- The fair and reasonable settlement protects the Region from any additional claims by the property owner of 130 Davis Drive
- Metrolinx approval is required to fund the settlement

3. Background

The Region constructed dedicated bus rapid transit lanes for the vivaNext project along Davis Drive in Newmarket

To facilitate public transit along Davis Drive, York Region Rapid Transit Corporation (YRRTC) on behalf of the Region, constructed dedicated centre bus lanes for Viva buses, with enhanced streetscape from Yonge Street to Alexander Road in Newmarket. Following approval from the Ministry of the Environment, construction of the new rapid way included utility relocations in May 2009, road construction in May 2011, and completion in December 2015.

Land requirements were identified to complete the project and steps were taken to obtain the lands

The Region identified land requirements from 138 property owners as part of the vivaNext project on the Davis Drive corridor between Yonge Street and Alexander Road in Newmarket. All lands required to facilitate the project were obtained through negotiated agreements, expropriation, and dedications through Regional site plan approvals.

Negotiations were initiated based on appraisals for the fee simple, permanent and temporary easement interests

The original land requirements were acquired in 2009, based on Council approvals in [October 2009](#). Additional requirements were acquired in 2012 and 2014 based on Council approvals in [June 2013](#), [May 2014](#) and [January 2015](#). Appraisals were prepared and used to make offers of compensation under Section 25 of the *Expropriations Act* (the “Act”).

The owner submitted a claim to the Region resulting from the effects of construction on and surrounding the subject property

The owner of 130 Davis Drive is entitled to make a claim for compensation pursuant to the *Act*. The owner made a claim for construction-related impacts, which was prepared by its appraiser and business loss valuator. Upon receipt of the claim, the Region obtained independent claim reviews, which formed the basis of the Region's position during negotiations.

4. Analysis

A settlement has been negotiated

The Region and the property owner of 130 Davis Drive agreed to a full and final settlement of all expropriated rights including market value, injurious affection, disturbance damages, business loss, interest and other costs that are to be reimbursed in accordance with the *Act*. The settlement excludes any potential tenant claims under the *Act*.

Adjacent vacant lands will be conveyed to the owner as part of the settlement

The project involved the realignment of Parkside Drive and connection with Longford Drive to create a signalized intersection at Davis Drive. The Region and the Town of Newmarket have agreed in principle to exchange the new road alignment owned by the Region for the original road alignment owned by the Town.

A viable development parcel was created adjacent to the east of 130 Davis Drive, composed of Property 3 in Attachment 1 known as the original Parkside Drive alignment and Property 2 in Attachment 1, the remnant lands from the former Parkside Drive daylight triangles and the expropriation of 166 Davis Drive. Appraisals and environmental due diligence were completed to determine the current market value of the lands.

The Town of Newmarket has agreed to transfer a former portion of the original Parkside Drive to the owner as part of the settlement

The Region and owner have agreed that as part of the settlement, the Region will convey Property 2 in Attachment 1 to the owner and request the Town convey Property 3 in Attachment 1 to the owner rather than to the Region. The Commissioner of Corporate Services will sign a letter addressed to the Town requesting that Property 3 in Attachment 1 be transferred directly to the owner. This conveyance will offset potential damages that the owner may be entitled to. The compensation payable to the owner would then be composed of a cash component and the lands identified as Property 2 and Property 3 in Attachment 1 (in-lieu of cash).

The Region will not incur additional expenses once the final settlement is completed

The negotiated full and final settlement is considered to be in the best interest of the Region, and will avoid continued interest accrual in accordance with the *Act*. Upon completion of this agreement, the Region will not incur any further legal and litigation expenses related to the acquisition.

Environmental due diligence has been completed

Environmental due diligence has been completed for 130 Davis Drive, Property 1 in Attachment 1, on the fee simple and permanent easement lands and for 166 Davis Drive. The results have been reviewed by staff in consultation with Legal Services. No significant issues were identified at 130 Davis Drive. A remedial excavation was undertaken at 166 Davis Drive followed by a risk assessment completed by a qualified environmental consultant. The remedial excavation and risk assessment completed for 166 Davis Drive have served to mitigate potential environmental issues. No further investigation is required for either property.

5. Financial

The funding to complete this property settlement is included in the 2019 YRRTC Capital Budget. The project is funded by the Province, via the Metrolinx Master Agreement between the Region, YRRTC and Metrolinx. This settlement is subject to Metrolinx approval under the terms of the Master Agreement. A package has been sent to Metrolinx to secure its approval and complete the transaction.

6. Local Impact

This project has improved public transit and streetscape along Davis Drive for the residents of Newmarket and York Region.

7. Conclusion

The Region expropriated lands from 130 Davis Drive, Property 1 in Attachment 1, in Newmarket for the vivaNext project. A full and final settlement has been negotiated with the owner that represents good value to the Region.

Vacant lands located next to 130 Davis Drive are to be conveyed to the owner as part of the settlement. The compensation payable to the owner will include a cash component and the lands identified as Property 2 and Property 3 on Attachment 1 (in-lieu of cash).

It is recommended that Council authorize the expropriation settlement and land disposition described in this report to settle all claims with the owner of 130 Davis Drive, subject to Metrolinx approval.

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

May 30, 2019
Attachments (2)
Private Attachments (1)
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