

**Expropriations Act, R.S.O. 1990. C. E.26 (as am.)**

**IN THE MATTER OF** an application by The Regional Municipality of York for approval to expropriate the following lands:

1. Fee simple interest in the lands, Part of the East ½ of Lot 11, Concession 9, in the City of Vaughan in The Regional Municipal Municipality of York, designated as Parts 1 and 2 on a Plan deposited in the Land Registry Office for the Land Titles Division of York Region as No. 65R-36154, required for the West Vaughan Sewage Servicing Project. and;
2. A Permanent Easement interest being a permanent easement or rights in the nature of a permanent easement in, under, over and along and upon Part of the East ½ of Lot 11, Concession 9, in the City of Vaughan in the Regional Municipality of York, designated as Part 3 on a Plan deposited in the Land Registry Office for the Land Titles Division of York Region as No. 65R-36154, for municipal purposes to be performed in association with the purpose of implementing the sanitary sewer known as the West Vaughan Sewage Servicing Project.

**PROCEEDINGS:**

Hearing

June 4<sup>th</sup>, 2019

**APPEARANCES:**

David Berney

for Region of York

Matthew Gray &

Robert J. Gray

for Hunter-Fifty Investments 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 land is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

## **ADJOURNMENT REQUEST**

On June 3<sup>rd</sup> Counsel for the landowners requested an adjournment to afford the owners the opportunity to engage an engineer and/ or planner.

“Following the review of the Region’s materials for tomorrow’s Hearing of Necessity, our client determined that they would like to engage an engineer and/or planner to conduct a detailed analysis of the Region’s documents and potentially prepare a report in response to the position of the Region regarding whether the proposed taking is fair, sound and reasonably necessary.

We had advised David Berney of our client’s intention -----Mr. Berney advised that the Region is not agreeable to our request. “

The adjournment request was continued at the hearing. After submissions by both parties, I refused the request for adjournment. It became clear that the current owners had or should have had sufficient information to enable them to make such a determination earlier in the process. Nothing in the Notice of Grounds should have been a last minute surprise. In addition to meetings with the previous owner, the current owners had 2 meetings with the Project Manager Paul Savard and some 6 with M. Paylor the Region’s property negotiator.

## **THE LANDS**

The total property is 19 acres, currently farmed. is located at the northwest corner of Highway 27 and Langstaff Road in the City of Vaughan. The takings (1 acre) are at the northeast corner of the property, adjoining Highway 27.

Part 1, a fee simple taking of 3299 M2, is needed during construction for staging, storage and access for the tunneling.

Part 2, another fee simple taking of 486 M<sup>2</sup>, is a sliver of land adjacent to the Highway, lying between the highway and Part 1. It will eventually contain the shaft access to the sewer tunnel

Part 3, a permanent easement of 591 M<sup>2</sup>, is a taper running south from part 2 adjacent to the highway, and it will be the future access to the shaft located on Part2.

## **THE PROJECT**

The Project evidence was given by Paul Savard the Project Manager. The project is the West Vaughan Sewage System (sanitary) 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, documents the proposed series of nearly 14- kilometre sewer tunnels (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 Exhibit 5). That pumping station requires significant upgrading.

The alternatives reviewed were all centred on Highway 27 as depicted on Exhibit 4. The tunnel segments are created by using a three-metre diameter Tunnel Boring Machine (TBM). Part 3 will contain one of the maintenance and microtunneling shafts required during and after construction.

The Addendum to the ESR (Exhibit 6), dated January 2016, sets 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 (3M). Tab 12 of the document book shows the location of the shaft and its details on the subject property described as Compound 4MS. The 50 M. deep shaft at Compound 4 is at the centre of the Central Segment in line with the distance required for the maintenance robotics (2 ½ km) and for connections to local sewers. Construction is expected to take 4- 4 ½ years.

Pages 13-17 sets out the Comparison of Property Requirements between the ESR and the Preliminary Design Proposed Alignment. The shaft location on the subject property was moved to the north east corner from the corner of Highway27 and Langstaff Road at the request of the owner, which has the effect of reducing the impact on the developable area of the property and eliminates an additional

subterranean easement. Overall the change placing the tunnel within the Highway right of way has significantly reduced private takings.

Cross examination centred on the suggestion of other properties and the condition of the area of the takings and the balance of the property after construction.

Questions with respect to the fee simple takings and permanent and or temporary takings were raised.

Mr. Paylor Senior Real Estate Appraiser/Negotiator for the Region responded to the specific question of the fee simple taking of Part 1. There is no question that it is required during construction for staging, storage and access. The shaft is on Part 2, a fee simple taking, and access to it is a permanent easement Part 3.

Mr. Paylor outlined the following factors to support the fee simple taking of Part 1. Slippage which he describes as now being a normal feature of construction time has become critical in many projects making it difficult to determine construction completion. The fee simple taking of Part 1 will also provides permanent control of that property adjacent to the other takings.

A further factor which I believe is more a matter of compensation and not my area, is that for the Region the business case to acquire permanently makes economic sense. The issue of “business case” was also raised by the property owner in that without any knowledge of the future use of Part 1 is unfair and thereby perhaps detrimental to future development of the balance of the property for the Region to acquire it in fee simple now. I believe that this issue will or could be resolved in another forum. The owner may have other remedies as well, other than monetary, under the Act.

## **FINDINGS AND CONCLUSIONS**

Overall no issue was taken with the necessity of the project, obviously, since it will contribute to the development of this large area. Based on the project evidence, I am satisfied that the shaft is appropriately located in the central segment for the construction period purposes as well as for the continuing maintenance of the tunnel. It cannot be in the road right of way nor can its access. I therefore have no concerns over the takings proposed for Parts 2 (fee simple) and 3 (permanent easement). I am also satisfied that the taking of Part 1 is needed for the construction period for those purposes outlined.

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 (1977), 13L.C.R. 327 (O.C.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 objectives.”

For all of the reason 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 June 14, 2019

original signed

D.S. Colbourne

Inquiry Officer

## **SCHEDULE A**

### **WITNESSES:**

**Paul Savard - (A)**

**Project Manager**

**M. Paylor – (A)  
for the Region**

**Senior Real Estate Appraiser/Negotiator**

### **EXHIBITS:**

- 1. C.V. Paul Savard**
- 2. Acknowledgment of Expert's Duty – Savard**
- 3. A & B Air Photos of Subject Property**
- 4. Map of List of Alternative Sewer Routes**
- 5. Map comparison Addendum ESR & 2015Design.**
- 6. Addendum**  
**Document Book**