

The Regional Municipality of York

Committee of the Whole
Finance and Administration
November 14, 2019
Report of the Commissioner of Corporate Services

Expropriation Settlement and Disposition of Land Viva Bus Rapid Transit Corridor 330, 338 and 350 Davis Drive Town of Newmarket

1. Recommendations

1. Council authorize the settlement of all claims pursuant to the *Expropriations Act* related to Property No. 1, identified in Attachment 1, known as 350 Davis Drive, related to the construction of the bus rapid transit corridor on Davis Drive, in the Town of Newmarket (the “Settlement”).
2. Council authorize as part of the Settlement, the disposition of Property No. 2, identified in Attachment 1, known as 338 Davis Drive, to the owner of Property No. 1, in the Town of Newmarket.
3. Council authorize as part of the Settlement, an option to purchase and right of first refusal for the owner of Property No. 1 to acquire Property No. 3, identified in Attachment 1, known as 330 Davis Drive, in the Town of Newmarket.
4. Council authorize the disposition of Property 3 to the owner of 350 Davis Drive, in the event the owner exercises its option to purchase.
5. Upon securing Metrolinx approval the Commissioner of Corporate Services be authorized to execute the agreements, and all necessary documentation to complete the transaction in accordance with the Minutes of Settlement.

2. Summary

This report seeks Council approval to accept the full and final Minutes of Settlement with respect to the expropriations at 350 Davis Drive in Newmarket (Property No. 1) for the vivaNext project.

Private Attachment 1 to this report will be considered in private session pursuant to section 239(2)(c) of the Municipal Act, 2001, because it relates to disposition of land by the Region and the settlement of a claim for compensation.

Key Points:

- Between 2009 and 2014, the Davis Drive frontage of 350 Davis Drive, which is a retail plaza, was expropriated multiple times for the vivaNext project
- The expropriations impacted the driveway location and parking
- The Settlement includes:
 - the disposition of 338 Davis Drive (Property No. 2) to the owner of Property No. 1,
 - an option to purchase and right of first refusal for the owner of Property No. 1 to acquire 330 Davis Drive (Property No. 3)
- Metrolinx approval is required to complete the transaction

The property locations are shown on the map in Attachment 2.

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 commencing 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 or expropriation.

The subject lands were obtained by expropriation

In [October 2009](#), Council approved expropriation of the original land requirements for Property No. 1, 2 and 3. In [June 2013](#) and [May 2014](#), Council approved expropriation of additional temporary easement requirements from Property No. 1. Appraisals were prepared and used to make offers of compensation under Section 25 of the *Expropriations Act* (the “Act”) for all of the requirements.

Settlements have been completed for the lands at 330 and 338 Davis Drive

Property No. 2 and 3 were obtained by expropriation in their entirety due to significant impacts by the project to the functionality of the existing buildings. The buildings were demolished after the expropriation, portions of the lands were incorporated into the project, and the balance is surplus to the project.

In June 2016 and September 2017, the Region completed expropriation settlements of Property No. 2 and 3 with the former owners.

The owner of Property No. 1 submitted a claim to the Region resulting from the effects of construction on and surrounding the property

The owner of Property No. 1 is entitled to make a claim for compensation pursuant to the *Act*. The owner made a claim for project-related impacts, most notably lost parking for the existing commercial building. Upon receipt of the claim, the Region obtained an independent claim review, which formed the basis of the Region's position during negotiations.

4. Analysis

A full and final settlement has been negotiated

The Region and the owner of Property No. 1 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*.

Property No. 2 will be conveyed to the owner as part of the settlement

The Region owns Property No. 2, located at 338 Davis Drive which is adjacent to Property No. 1 at 350 Davis Drive. The Region's parcel is surplus to the project. As part of the settlement, the Region will convey Property No. 2 to the owner which is currently developed with a parking lot. This conveyance offsets part of the financial obligation to the owner. Total compensation payable to the owner is composed of a cash component and the Region's land at 338 Davis Drive.

The owner will be granted the right to purchase 330 Davis Drive

The Region also owns Property No. 3, located at 330 Davis Drive and is adjacent to the west of Property No. 2. The site is currently vacant and is surplus to the project. As part of the settlement, the Region agreed to grant the owner a 12 month option to purchase the property. The right to purchase commences upon execution of the settlement agreement and

the owner will have the right to purchase the land at any time during the 12 month period at market value based on an external appraisal obtained by the Region.

The owner will also be granted a right of first refusal to purchase after the 12 month term. In the event the Region proceeds to dispose of the property on the open market, the owner will have the option to match the purchase price of a competing bid within a specified period of time. If the owner does not exercise this right, the property will be sold in accordance with the Region's Sale and Other Disposition of Regional Lands policy.

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 on the fee simple and permanent easement interests acquired for all of the properties. The results have been reviewed by staff in consultation with Legal Services. No significant issues were identified and no additional environmental work is required.

5. Financial

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.

The disposition of Property No. 1 and Property No. 2 is being completed in accordance with the Real Estate Protocol of the Master Agreement between the Region, Metrolinx and YRRTC. In accordance with the Protocol, the sale proceeds will be held in trust by the Region for Metrolinx.

6. Local Impact

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

7. Conclusion

The Region expropriated lands from 350 Davis Drive, identified as 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.

The compensation payable to the owner includes a cash component, the transfer of lands containing a parking lot at 338 Davis Drive, identified as Property 2 in Attachment 1 (in-lieu of cash), a right to purchase vacant lands at 330 Davis Drive for 12 months and the right of first refusal to purchase Property 3 in Attachment 1.

It is recommended that Council authorize the expropriation settlement and land disposition described in this report to settle all claims with the owner of 350 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

November 1, 2019
Attachments (2)
Private Attachments (1)
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