

Clause 17 in Report No. 9 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on May 19, 2016

17

Application for Approval to Expropriate
York Durham Sewage System Improvements
Town of Aurora and Town of Newmarket

Committee of the Whole recommends adoption of the following recommendations contained in the report dated March 30, 2016 from the Commissioner of Corporate Services:

1. Council authorize an application for approval to expropriate the lands set out in Attachment 1, for the York Durham Sewage System Modifications component of the Upper York Sewage Solutions, in the Towns of Aurora and Newmarket.
 2. The Commissioner of Corporate Services be authorized to execute the Application for Approval to Expropriate Land and the Notice of Application for Approval to Expropriate Land (the "Notice") and to serve and publish the Notice, as required under the Expropriations Act (the "Act").
 3. The Commissioner of Corporate Services be authorized to forward to the Chief Inquiry Officer any requests for an inquiry that are received and to represent the Region, as necessary, under the Act.
 4. Council authorize the introduction of the necessary bylaws to give effect to these recommendations.
-

Report dated March 30, 2016 from the Commissioner of Corporate Services now follows:

1. Recommendations

It is recommended that:

1. Council authorize an application for approval to expropriate the lands set out in Attachment 1, for the York Durham Sewage System Modifications component of the Upper York Sewage Solutions, in the Towns of Aurora and Newmarket.

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2. The Commissioner of Corporate Services be authorized to execute the Application for Approval to Expropriate Land and the Notice of Application for Approval to Expropriate Land (the “Notice”) and to serve and publish the Notice, as required under the *Expropriations Act* (the “Act”).
 3. The Commissioner of Corporate Services be authorized to forward to the Chief Inquiry Officer any requests for an inquiry that are received and to represent the Region, as necessary, under the *Act*.
 4. Council authorize the introduction of the necessary bylaws to give effect to these recommendations.
2. Purpose

This report seeks Council approval for an application for approval to expropriate property interests required for the York Durham Sewage System Modifications component of the Upper York Sewage Solutions in the Town of Aurora and the Town of Newmarket. The location of the properties is shown in Attachments 2, 3 and 4.

Under the *Act*, Council, as approving authority, must approve any application prior to the initiation of any proceedings.

3. Background

The Upper York Sewage Solutions project will provide servicing for planned growth in the Towns of Newmarket, East Gwillimbury and Aurora

The purpose of the Upper York Sewage Solutions project is to develop a sustainable sewage servicing solution to accommodate planned growth for employment and communities in the Towns of Newmarket, East Gwillimbury and Aurora. All of these municipalities are located within the Lake Simcoe watershed. The York Durham Sewage System Modifications is one of three major components of the Upper York Sewage Solutions project. The other two components which will be the subject of future Council Reports are the proposed Water Reclamation Centre and the Total Phosphorus Offsets.

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The project is moving through the Individual Environmental Assessment process

The Upper York Sewage Solutions project followed the planning process established under the *Environmental Assessment Act* for Individual Environmental Assessments. The Environmental Assessment (EA) was conducted in two parts – a Terms of Reference (essentially a road map as to how the EA would be undertaken) and the EA itself. Approval of the Terms of Reference was received from the Minister of the Environment (the Minister or Ministry) on March 11, 2010.

Upper York Sewage Solutions project Environmental Assessment approval is anticipated for the summer of 2016

The final EA report for this project was submitted to the Minister for approval on July 25, 2014. With submission of the final report, the Ministry conducted its own internal review and public consultation process in accordance with regulatory guidelines. The Notice of Completion of Ministry Review was published on Thursday, January 21, 2016 and ended on Friday, February 26, 2016 to invite public comments on the environmental assessment and the ministry review. All comments received were documented and the next step is for the Minister to render a decision on approval of the EA. Based on the current stage of the Minister's review, formal approval subject to conditions is now anticipated to be secured by the summer of 2016.

Before final approval is received, the proponent is permitted under the *Environmental Assessment Act* to obtain land and rights in land for a proposed project at the proponent's risk. This risk is borne by the Region if the project does not receive approval or the Minister's approval requires changes to the project that alter land requirements.

Negotiations continue in order to acquire the necessary properties with a view to construction commencing in spring of 2017

This project requires interests in land from properties in the Town of Aurora and Town of Newmarket. Possession of the land is required by early 2017 in order to allow construction to commence in spring of 2017 subject to individual environmental assessment approval. The two processes of a negotiated transaction and expropriation can occur concurrently. Securing the property through the expropriation process will provide certainty that construction can proceed as scheduled.

4. Analysis and Options

Initiating the expropriation process will secure access to the lands to accommodate timely delivery of infrastructure

The preferred approach to obtaining land is to negotiate a transaction with the property owner. Staff is negotiating to acquire the lands. However, various events, such as the parties not agreeing on the terms of the agreement, or issues with clearing title to the property, can impede the ability to complete the transaction or complete the transaction in a timely manner. In this regard, expropriation is deemed a necessary approach to ensure possession of lands in order to facilitate the needs of the project, as it provides certainty of possession within a specific timeframe.

This is the first step in the Council approval process for property expropriation as indicated in the graphic below.



Owners have the right to request a Hearing of Necessity upon receipt of a Notice of Application for Approval to Expropriate

Expropriation is a statutory process which defines the rights of the property owner and the obligations of the expropriating authority.

The first step in the expropriation process is to obtain Council's approval and serve owners with notice of intent to expropriate. Upon receipt of the Notice of Application for Approval to Expropriate, each owner has the right within 30 days of receipt to request an inquiry (Hearing of Necessity) as to whether the taking of the lands by the Region is fair, sound and reasonable.

If an owner requests an inquiry and the Hearing of Necessity proceeds, then subsequent to the inquiry, an inquiry officer will provide a report with an opinion as to whether the taking is fair, sound and reasonable, including an explanation for the officer's findings.

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Future reports will be presented to Council as the expropriation process proceeds

In the event of a Hearing of Necessity, staff will report to Council about the findings and reasoning of the inquiry officer, along with further recommendations regarding whether or not expropriation of the land should proceed. If there is no Hearing of Necessity, the future report to Council will address only the expropriation.

After the expropriation, the Region is required under section 25 of the *Act* to serve an offer of compensation within three months of registration of the expropriation plan. The offer will be based on an appraisal of market value and other damages, and possession cannot be secured until the offer of compensation has been served.

The amount of the offer will be reported to Council once the appraisal reports have been completed, before the offers are served upon the owners and possession of the lands is secured.

Environmental due diligence will be completed prior to the Region taking ownership of the lands

Environmental due diligence is currently underway and remains to be completed. Prior to registration of the expropriation plans, the results of the environmental due diligence will be reviewed by staff, including consultation with Legal Services. In the event environmental impacts are identified, staff will take the necessary steps to minimize the risk to the Region.

Link to key Council-approved plans

The proposed acquisition of lands required for the York Durham Sewage System Modifications component of the Upper York Sewage Solutions project supports the objectives of Vision 2051, the Regional Official Plan, the 2015 to 2019 Strategic Plan, the Water and Wastewater Master Plan, and the 10-year Capital Wastewater Program.

One of the goal areas of Vision 2051 is Living Sustainably, which the project addresses through the application of best-in-class technology and practices for wastewater treatment. As well, the project supports one of the objectives of the Regional Official Plan which is to provide long term water and wastewater services. Lastly, an objective identified in the Strategic Plan is Manage Environmentally Sustainable Growth.

5. Financial Implications

The funding required to complete this property acquisition is included in the approved 2016 Capital Budget for Environmental Services.

6. Local Municipal Impact

The Upper York Sewage Solutions project is a key piece of infrastructure required to accommodate forecasted growth in the Towns of Newmarket, East Gwillimbury and Aurora. The acquisition of the subject properties supports the construction of the York Durham Sewage System Modifications component of the Upper York Sewage Solutions.

7. Conclusion

The purpose of the Upper York Sewage Solutions project is to develop a sustainable sewage servicing solution to accommodate planned growth in the Towns of Newmarket, East Gwillimbury and Aurora.

This report seeks Council approval to expropriate property interests required for the construction of the York Durham Sewage System Modifications component of the Upper York Sewage Solutions. It is necessary to initiate the expropriation process to facilitate the project schedule. Staff continues to negotiate for the acquisition of the required properties and expropriation proceedings will be discontinued in the event that negotiations are successful.

For more information on this report, please contact Michael Shatil, Director, Property Services Branch at ext. 71684.

The Senior Management Group has reviewed this report.

March 30, 2016

Attachments (4)

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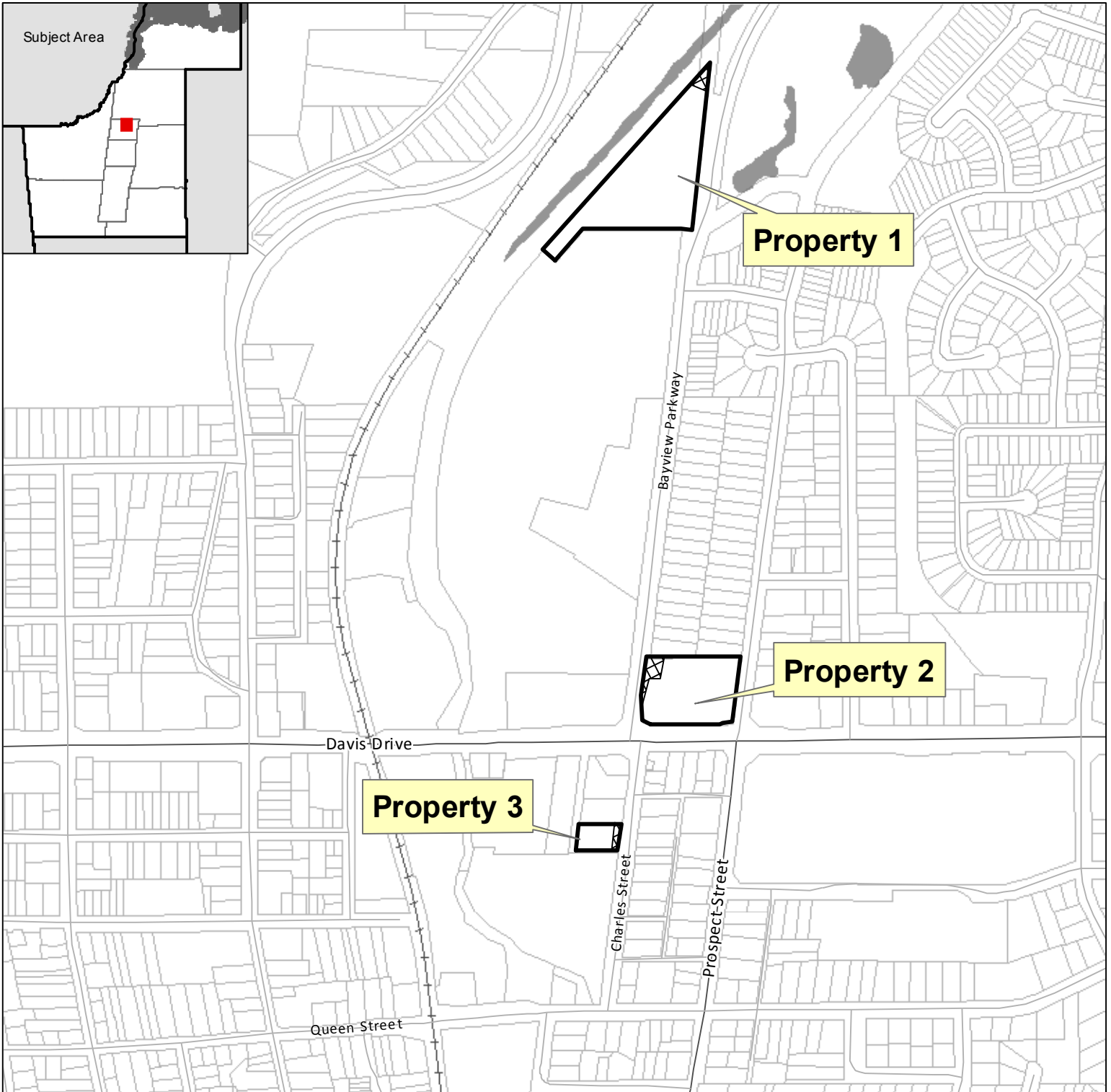
Accessible formats or communication supports are available upon request

Property Schedule
Application for Approval to Expropriate
York Durham Sewage System Improvements
Town of Aurora and Town of Newmarket

No.	Owner	Municipal Address	Legal Description	Interest Required
1.	Lisbeth Hagen Madsen	160 Bayview Parkway Newmarket	Part 1, Plan 65R36338	Temporary Easement
2.	Hong's International	567 Davis Drive Newmarket	Parts 4, 5 & 6, Plan 65R36340	Permanent Easement
			Parts 1, 2 & 3, Plan 65R36340	Temporary Easement
3.	2330673 Ontario Limited	30 Charles Street Newmarket	Part 1, Plan 65R36341	Permanent Easement
4.	York Region Standard Condominium Corporation No. 1047	543 Timothy Street Newmarket	Part 1, Plan 65R36342	Permanent Easement
5.	Shawn Troyer	330 Second Street Newmarket	Part 1, Plan 65R36339	Temporary Easement
6.	2278899 Ontario Inc.	402 Mulock Drive Newmarket	Parts 5, 6 & 7, Plan 65R36343	Permanent Easement
			Parts 1, 2, 3, 4, & 8, Plan 65R36343	Temporary Easement
7.	J.F.C. Developments Ltd.	w/s Silken Laumen Drive Newmarket	Part 1, Plan 65R36346	Permanent Easement
			Part 2, Plan 65R36346	Temporary Easement
8.	St Andrews Valley Golf Club Ltd.	N/A Newmarket	Parts 4 & 7 Plan 65R36344	Permanent Easement
			Parts 5, 6 & 8, Plan 65R36344	Temporary Easement
9.	St Andrews Valley Golf Club Ltd.	4 Pinnacle Trail Aurora	Part 1, Plan 65R36344	Permanent Easement
			Part 2, Plan 65R36344	Temporary Easement

The temporary easements required are described as a temporary limited interest commencing on registration of the plan of expropriation and expiring on December 31,

No.	Owner	Municipal Address	Legal Description	Interest Required
<p>2021 in, under, over, along and upon the lands for municipal purposes including, but not limited to, entering on the lands with all vehicles, machinery, workmen and other material for construction purposes, which may include (1) relocation of existing services and utilities, (2) work that supports the construction of municipal infrastructure within the Region’s permanent takings, (3) staging and storage of materials and equipment, (4) geotech testing, borehole testing, and other investigative works, (5) removal, relocation and/or installation of signage, (6) hard and soft landscaping, paving, grading and reshaping the lands to the limit of the reconstruction of the lands herein described, (7) the installation and removal of temporary (i) pedestrian access and walkways, (ii) parking measures including re-stripping of aisles, lanes, and parking stalls, (iii) shoring and formwork, (iv) drainage and erosion/sediment control measures, (v) fencing, and (vi) handrails, and (8) works ancillary to any of the foregoing and necessary to the works to be performed in association with the York Durham Sewage System Improvements.</p> <p>The permanent easements required are described as a limited interest in perpetuity in, under, over, along and upon the land for municipal purposes including, but not limited to, entering on the lands with all vehicles, machinery, workmen and other material (i) to construct and maintain permanent municipal infrastructure which may include installation, maintenance, relocation and/or removal of retaining walls, shoring and formwork and/or drainage, erosion or sediment control measures such as watermains and storm sewers, and (ii) for construction purposes which include, but are not limited to, (1) relocation of existing services and utilities, (2) staging and storage of materials and equipment, (3) geotech testing, borehole testing, and other investigative works, (4) removal, relocation and/or installation of signage, (5) hard and soft landscaping, paving, grading and reshaping the lands to the limit of the reconstruction, (6) the installation and removal of temporary (i) pedestrian access and walkways, (ii) parking measures including re-stripping of aisles, lanes, and parking stalls, (iii) shoring and formwork, (iv) drainage and erosion/sediment control measures, (v) fencing, and (vi) handrails, and (7) works ancillary to any of the foregoing and necessary to the works to be performed in association with the York Durham Sewage System Improvements.</p>				



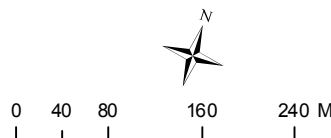
Location Plan

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
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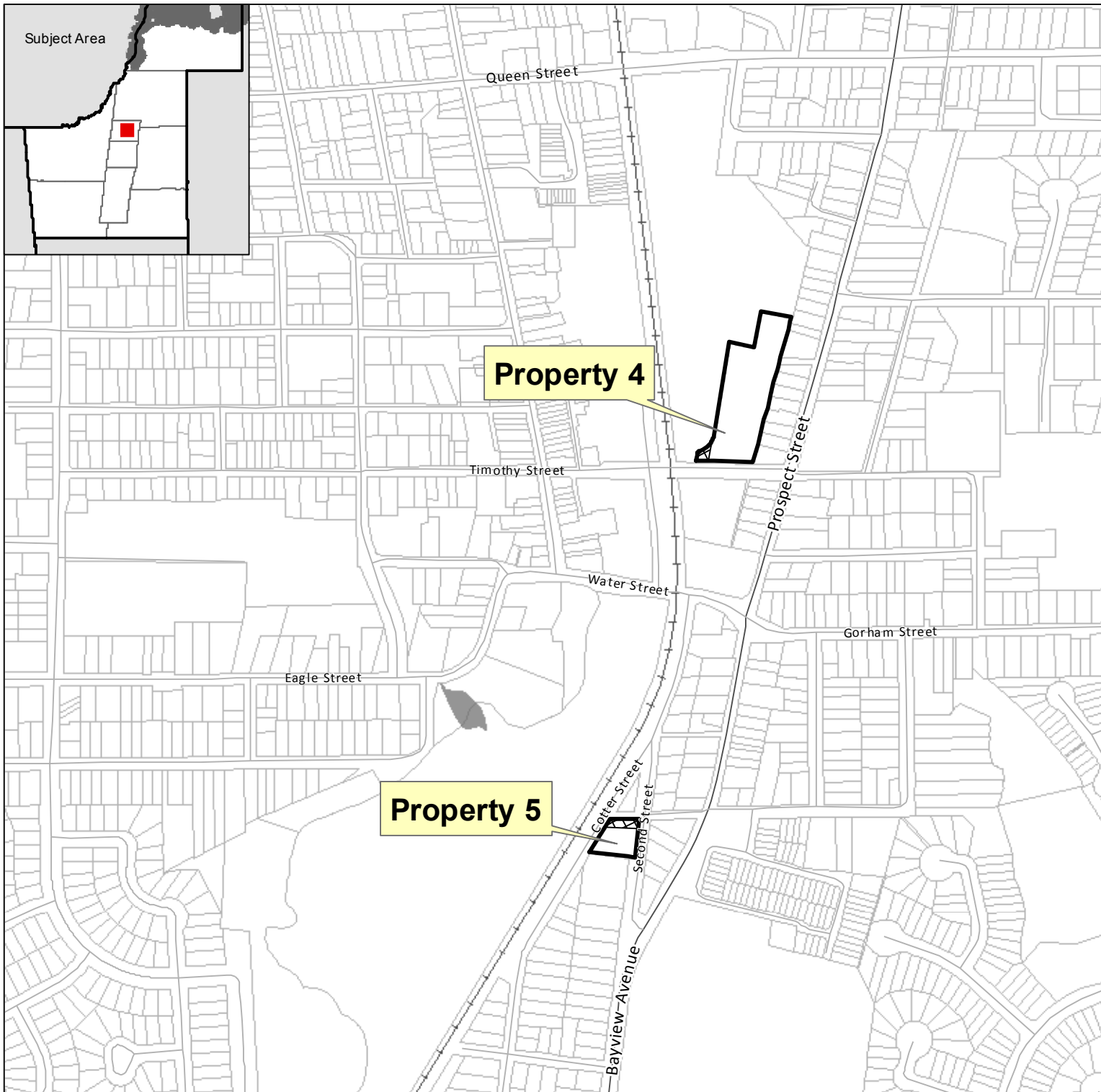
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Legend

-  Subject Properties
-  Interest Required
-  Parcel
-  Road
-  Railway



Location Plan

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
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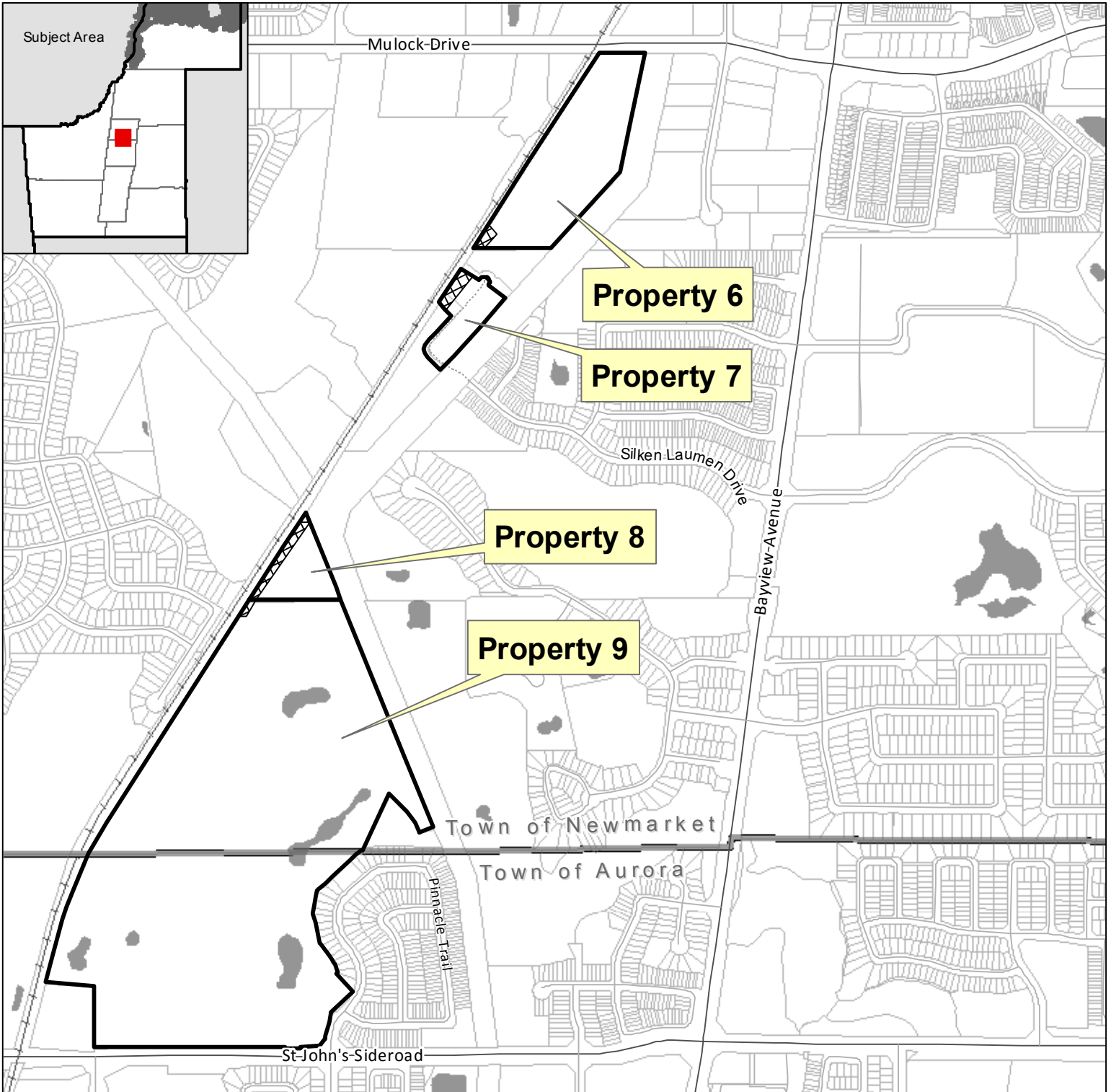
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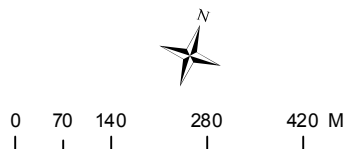
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
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