

Clause 20 in Report No. 6 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on March 26, 2015.

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

Committee of the Whole recommends adoption of the recommendations contained in the following report dated January 28, 2015 from the Commissioner of Corporate Services:

1. Recommendations

It is recommended that:

1. Council authorize the settlement of the expropriation of the following land, required for the construction of the bus rapid transit corridor on Davis Drive, in the Town of Newmarket, on the terms set out in this report.

No.	Owner	Municipal Address	Legal Description	Interest Required
1.	Shant Ghazarian and Aline Ghazarian	135 Davis Drive Newmarket	Part 1, Plan YR1369305	Fee Simple
			Part 2, Plan YR1369305	Permanent Easement
			Part 3, Plan YR2094670	Temporary Easement

A permanent easement and/or right in the nature of a permanent easement in, over, along and upon the lands described herein for the municipal purpose of entering on the lands with all vehicles, machinery, workmen and other material to construct and maintain retaining walls and works ancillary thereto.

The temporary easement commenced on May 31, 2014 and will expire on October 31, 2015, and is required for the purpose of 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 Davis Drive, (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 of formwork, (iv) drainage and erosion/settlement control measures, (v) traffic signals, (vi) fencing, and (vii) handrails, and (8) works ancillary to any of the foregoing.

2. Purpose

This report seeks Council approval to accept a Minutes of Settlement agreement for lands that have been expropriated for the vivaNext Davis Drive project, as shown in Attachment 1.

3. Background

The Region is constructing dedicated bus rapid transit lanes for vivaNext along Davis Drive in Newmarket

To facilitate public transit along Davis Drive in Newmarket, the Region, via York Region Rapid Transit Corporation (YRRTC), is undertaking improvements to the road infrastructure and the construction of dedicated centre lanes for Viva buses, along with enhanced street features and boulevards. The project received approval from the Ministry of the Environment in 2005.

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

The new viva rapidway along Davis Drive is approximately 70 per cent completed and is expected to be completed in December 2015

Construction of the new viva rapidway along Davis Drive began in May 2012 and runs for 2.6 kilometres from Yonge Street to just past the Southlake Regional Health Centre. The Davis Drive rapidway is approximately 70 per cent completed and the rapidway is expected to open in December 2015.

A subsequent construction phase will have all Viva buses running in the curbside lanes from the Southlake Regional Health Centre eastward to Highway 404, a distance of an additional 2.3 kilometres.

Possession of lands was obtained for 133 property requirements via expropriation in 2009 on Davis Drive

On January 22, 2009, Council approved the expropriation of the initial interests required for the construction of the Davis Drive corridor, which involved various property takings from 133 property owners. Possession of the lands was obtained in late 2009.

To date, full and final settlements have been reached with 57 property owners, and partial settlements have been reached with 42 owners. The partial settlements are subject to future potential claims from former owners, for matters not agreed to when the settlement was negotiated. The remaining 34 properties, for which no full or partial settlements have been obtained, are subject to claims from owners.

The Region expropriated 135 Davis Drive in Newmarket (subject property)

The subject property is currently leased to an automotive service garage under the name of Goodyear Mars Tire. The tenant is the same party as the owner of the property, although each party is considered a separate legal entity.

As part of the expropriation in 2009, the Region obtained partial interests in the property by way of a fee simple taking, a permanent easement taking, and a temporary easement.

Ongoing revisions to construction scheduling on this project required the Region to extend the rights over the temporary easement areas via two separate expropriations in 2012 and 2014. The current temporary easement is set to expire October 31, 2015.

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

Negotiations between the Region and property owner have been ongoing and have involved the Ontario Municipal Board

The Region and the owner have had ongoing negotiations with the aim to reach a settlement as well as address a number of construction related temporary access requirements. These negotiation efforts included involvement with the Board of Negotiations and mediation through the Ontario Municipal Board.

The tenant indicated during negotiations that its interests in the property were to be considered separately from the owner's interest, even though the owner of the property and of the tenant's business are the same party.

4. Analysis and Options

A full and final settlement has been negotiated

The Region has negotiated a full and final settlement with the owner, as well the tenant, of all the expropriation claims, including market value, business loss and other damages, interest and other costs, as provided under the *Expropriations Act* (the "Act").

Negotiations originally were based on independent appraisals of a partially completed design

The Region's original offer made to the owner in 2009 did not result in a settlement. The Region's appraisal at that time was based on a very preliminary road design and as such did not reflect the true extent of the impacts to the property. The Region's design for this property was completed and modified substantially in 2014 and both the Region and the owner updated the relevant appraisal and compensation information. As a result, compensation for damages is considerably greater than the amount offered to the owner when the property was originally expropriated in 2009.

Both the Region's and owner's appraisers made comments to the effect that the project's design resulted in the significant permanent loss of parking, combined with the loss of vehicular access from the east to the west sides of the lot. These factors are considered to have made the existing use as an automotive service garage virtually impracticable.

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

Ontario Municipal Board Mediation made a settlement recommendation to the Region and the owner

The Region and the owner agreed to utilize the Ontario Municipal Board to negotiate a settlement. However, while a settlement was not reached, it provided third party review of what may be appropriate compensation that could form the basis for ongoing discussions.

Tenant claims for disturbance and business loss were incorporated into settlement negotiations

Although the tenant and property owner are one in the same, the tenant reserved its right to make a separate claim from the owner, under the *Act*.

Consequently, the tenant's claims under the *Act* had not been addressed in terms of a specific settlement until this recent offer and Minutes of Settlement negotiation. The property owner reconsidered its position, and subsequently agreed to combine both the owner and tenant interests in a single settlement agreement.

The negotiated settlement with the owner and the tenant represents the best financial outcome for all parties

The negotiated settlement is considered to be in the best interest of the Region as it provides a reasonable agreement that is based both on the market value estimates provided by the two independent appraisals as well as the recommendation of the Ontario Municipal Board Mediator and projected legal and consultant costs.

The agreement provides a full and final settlement of all the expropriation actions and associated claims including market value, disturbance damages and business loss for both the owner and the tenant. It also releases the Region from any future claims by the owner and the tenant.

The settlement eliminates the need for a hearing at the Ontario Municipal Board

The Region and the owner were to appear at a Ontario Municipal Board hearing on March 23, 2015. This hearing was to allow both the Region and the owner to present arguments in support of the compensation estimates. Any decision reached by the Ontario Municipal Board is binding on the parties.

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

The property owner has agreed to postpone the hearing

The negotiated settlement provided for the postponement of the hearing on the condition the agreement was executed by the Region subject to Council approval. The Region agreed to authorize external legal counsel to execute the agreement on behalf of the Region. A postponement of this hearing will result in significant cost savings in legal fees to the Region. The executed agreement will only be binding on Regional Council and Metrolinx approvals of the negotiated Minutes of Settlement.

An environmental assessment report identified no contaminated material on the expropriated property

An independent engineering firm hired by the Region conducted environmental testing on the subject property. Testing was completed in the Region's expropriated fee simple area. A Phase II Environmental Site Assessment was completed and no sources of contamination were identified.

Link to key Council-approved plans

Priority Area – Focus Growth along Regional Centres and Corridors

Optimize the transportation capacity and services in Regional Centres and Corridors

The acquisition of this land will assist the Region in meeting its transportation needs.

5. Financial Implications

The budget required to complete this settlement has been included in the 2015 YRRTC Capital Budget. The project is funded by the Province, via the Metrolinx Master Agreement. In order to advance the settlement process, the Minutes of Settlement have been conditionally executed by the owner, the tenant and the Region's external counsel, subject to the approval of Regional Council and Metrolinx.

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

6. Local Municipal Impact

The construction of dedicated bus lanes and related facilities, as well as road and intersection improvements along Davis Drive is critical to the achievement of the vision for this corridor for the Region. Additionally, upon completion this project, public transit facilities will be improved and the streetscapes enriched in Newmarket to support the Region's goal for higher density mixed use transit-oriented development.

7. Conclusion

The Region expropriated a fee simple interest, a permanent easement and a temporary easement at 135 Davis Drive for the vivaNext project, in 2009, as well as extensions of the temporary easement in 2012 and 2014.

The Region has negotiated a full and final settlement with the owner and the tenant. This proposed settlement will include a release from the owner and tenant from making any further claims.

It is recommended that Council authorize the expropriation settlement described in this report to allow completion of the transaction and minimize the cost of settling all claims for this property. Approval of the settlement will also eliminate the need to attend a hearing at the Ontario Municipal Board.

For more information on this report, please contact Eric Bjornson, Acting Manager, Realty Services, Property Services Branch at ext. 71706.

The Senior Management Group has reviewed this report.

January 28, 2015

Attachments (1)

Accessible formats or communication supports are available upon request









Path: G:\Legal\I09 - Precedents\Maps\Maps to Council 2015\Expropriation Settlement 135 Davis Drive Town of Newmarket.mxd

LOCATION PLAN
 Expropriation Settlement
 Viva Bus Rapid Transit Corridor
 135 Davis Drive
 Town of Newmarket



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 Corporate Services Department
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Legend	
	Fee Simple
	Permanent Easement
	Temporary Easement
	Subject Property
	Parcel
	Road