

Clause No. 6 in Report No. 2 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on January 15, 2015.

Process Overview for Land Acquisition

Committee of the Whole recommends adoption of the following recommendation contained in the report dated January 8, 2015 from the Commissioner of Corporate Services:

1. Recommendation

It is recommended that this report be received for information.

2. Purpose

This report is intended to provide Council with information about the Region's property acquisition process, related Provincial legislation and Regional policies, and a summary of the real estate transactions facilitated by the Property Services Branch in the Corporate Services Department.

3. Background

In 2001, Council authorized the mandate of the Property Services Branch which includes responsibility for Region-wide land acquisitions

At its meeting of June 28, 2001, Council approved a report of the Finance and Administration Committee, which led to the establishment of the Property Services Branch. Four functional areas were amalgamated from other departments and at this point, real estate transactions became the sole responsibility of the Property Services Branch.

Property Services is a key partner in the successful delivery of capital projects and critical infrastructure

The need for land and property is often one of the first requirements identified when determining the overall needs for infrastructure projects or service locations. Land requirements for capital infrastructure projects are usually identified during the planning stages of a project, often in the Environmental Assessment process, and verified during the design of the project. These stages are led by the client department with Property Services negotiating the purchase of land requirements on behalf of the Region.

Land purchases are commonly undertaken by Property Services for capital projects which include water, wastewater, and road widenings for transit or vehicle capacity. In addition, lands for administrative needs and facilities are also required. Examples include office space for staff, facilities such as pumping stations and water towers, as well as sites for emergency services including Police and EMS stations.

The Property Services Branch endeavours to acquire land in as timely, cost-effective and efficient manner as possible. Forecasting, long-term planning, and market assessments are examples of value added functions provided by Property Services. The timelines of securing property can have a significant impact on the timing of a project.

Property Services acquired approximately 250 parcels of land worth \$75 million in 2014

The acquisition of land represents a sizeable portion of the Region's annual budget. In 2014, the Property Services Branch acquired 250 parcels of land worth approximately \$75 million.

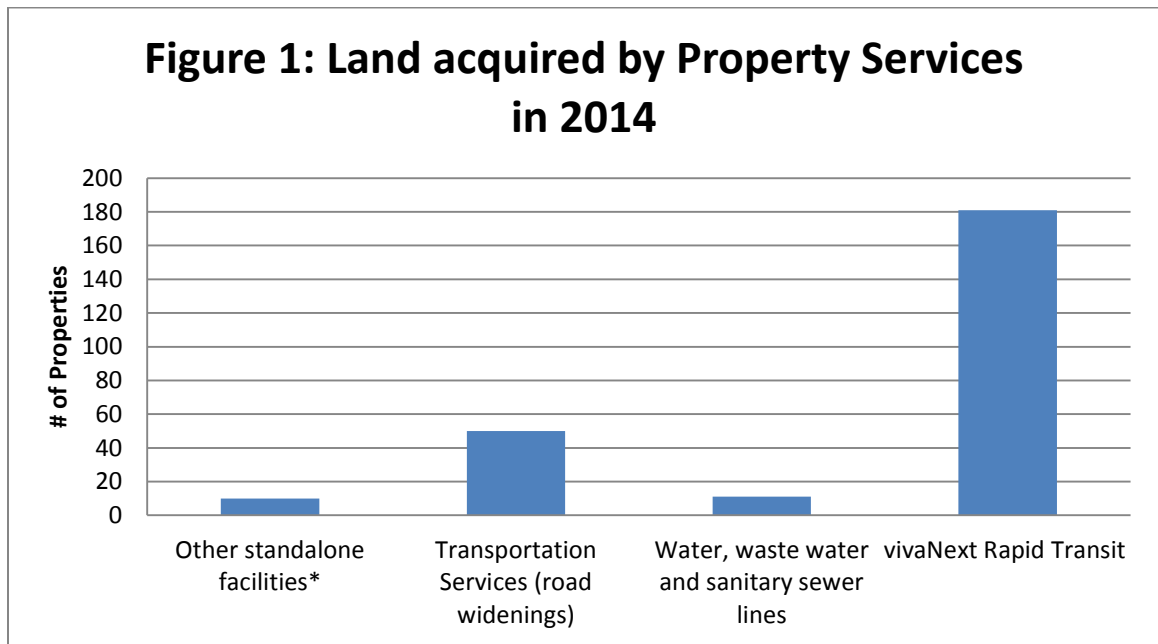
There were 181 properties worth in excess of \$7.3 million acquired for road widenings to accommodate the vivaNext Rapid Transit dedicated bus lanes. In total, from 2009 to 2015, approximately 600 properties will have been acquired for the vivaNext project.

Approximately 50 parcels, worth over \$12.5 million were acquired for other road widening projects. Additional lands were acquired for water, wastewater and sanitary sewer lines, as well as the Toronto York Spadina Subway Extension (TYSSE).

More than \$53.5 million was spent on the purchase of large sites, including land for three Transportation Services works facilities, two EMS stations, two transit terminals for York Region Transit, a Household Hazardous waste depot, a York

Regional Police (YRP) use and an elevated water tank. Some properties were for multiple uses.

Figure 1 summarizes the number of transactions completed for various client departments in 2014.



* Includes Transportation Services works facilities, EMS stations, TYSSE, transit terminals for York Region Transit, a Household Hazardous waste depot and York Regional Police uses

4. Analysis and Options

Provincial legislation and Regionally approved policies and procedures regulate land transactions completed by Property Services

Key Regional policies that guide Property Services for land transactions include:

- *Corporate Land Acquisition* (last updated November 17, 2011)
- *Sale and Disposition of Land* (last updated November 17, 2011)

Other Regional policies, for example *Leasing of Real Property*, are employed by Property Services, however, they are not covered in depth in this report.

Additionally, two Provincial statutes primarily impact land transactions managed by Property Services, including:

- *Expropriations Act*
- *Municipal Act 2001*

The Region's *Corporate Land Acquisition* policy details the responsibilities of the Property Services Branch and identifies procedures for acquisitions of land for capital works projects, as well as facilities for departmental accommodation, and includes direction regarding environmental due diligence, delegated authority, and strategic land acquisition.

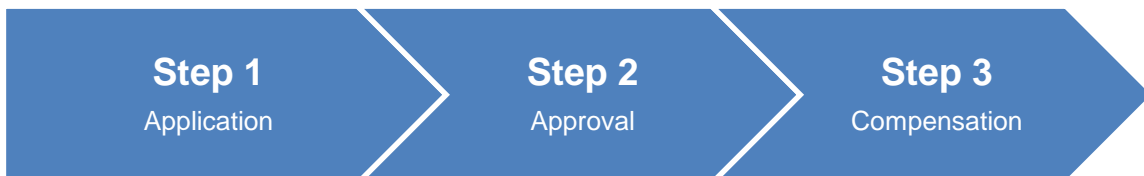
The *Expropriations Act* is a Provincial statute setting out the process to obtain lands via expropriation, as well as the obligations of the Region as the expropriating authority and the owner's right to be compensated for the value of the lands and any damages the owner incurs as a result of the expropriation.

With respect to sale of land, the *Municipal Act, 2001* requires the Region adopt and maintain a policy with respect to the sale and other disposition of land. The resulting *Sale and Disposition of Land* policy was originally approved by Council on April 24, 1997 and updated in 2011.

The expropriation process is one of the primary tools used by the Region to acquire land

There are three stages, where Council approval is requested during the expropriation process. The first is the approval of the notice of intention to expropriate, in which Council is requested to authorize the Commissioner of Corporate Services to serve notice to owners their land has been identified for expropriation. The second is the expropriation itself. The third stage seeks approval to serve offers of compensation on the owners whose land has been expropriated.

The following flowchart provides an overview of these three steps.



Expropriation represents a significant authority provided to the Region in that decisions made can affect privately owned properties in the vicinity of a given

project. Staff are cognizant of the responsibility associated with the authority, and endeavour to obtain lands from owners fairly through negotiations of transactions, rather than expropriation.

Once Council approves the expropriation (the second step in the process), an expropriation plan is registered at the Land Registry Office. This is important because it denotes the transfer of title for the land from the owner to the Region.

The *Expropriations Act* provides rights to owners whose properties are affected by expropriation

Upon receipt of the approval by Council (the first stage of the process), a Notice of Application for Approval to Expropriate is delivered to all owners that are affected by an expropriation. This includes tenants, lenders, easement holders and any other party that has registered an interest in the property at the Land Registry Office. An owner receiving a Notice of Application for Approval to Expropriate may request an inquiry (referred to as a "Hearing of Necessity") as to whether the expropriation is fair, sound and reasonably necessary.

If an owner requests a Hearing of Necessity, an inquiry officer is appointed by the Attorney General and the Hearing of Necessity is held. The *Expropriations Act* requires that Council consider the findings and opinions of the Inquiry Officer. Council, after considering the report of the Inquiry Officer, can decide to approve or not approve the proposed expropriation, or approve it with modifications. Council must serve written reasons for its decision on all the parties to the Hearing of Necessity.

The right to fair compensation is one of the key rights that a property owner has when any portion of their land is subject to expropriation. At the time of the expropriation, an owner is entitled to accept a compensation offer for the market value of the land expropriation, while retaining the ability to apply to the Ontario Municipal Board for additional claims in the future. These claims may include damages related to loss of use of the remaining land, business loss, or lost improvements such as landscaping. Offers of compensation are based on independently commissioned appraisals of market value, as well as any other applicable damages.

The expropriation process is strongly regulated with respect to time requirements for specific actions. However, the right for an owner to claim most types of compensation has no time limitation, which can pose long term financial liabilities for the Region.

It is necessary to negotiate settlements with owners who do not agree to final offers of compensation made in accordance with the *Expropriations Act*

An owner is not obliged to accept the offers of compensation. Furthermore, owners have the option to accept only the compensation associated with the market value of the land, allowing the owner to make a further claim for additional compensation in accordance with the *Expropriations Act*.

The Region or an owner may request the Board of Negotiation assist the Region and the owner to negotiate a settlement. If after attending at the Board of Negotiation no settlement is reached, or if the Region and the owner agree to dispense with negotiations, the matter can proceed to the Ontario Municipal Board. The Ontario Municipal Board will conduct a hearing and determine the amount that the Region is to pay to the owner.

Any settlements of claims over \$500,000 require approval by Council. The Regional Solicitor has been delegated the authority to approve settlements below \$500,000, with annual reporting to Council.

Negotiated agreements and expropriation are the two processes Property Services applies in acquiring land

There are two distinct processes which set the direction for how the Property Services Branch acquires property on behalf of the Region:

- Negotiated agreement, and
- Expropriation

Negotiated agreements are typical for transactions involving a willing seller and buyer, provided the owner is agreeable to the project and the related compensation, which may include other items in addition to the market value of the land. The acquisition process is governed by the *Corporate Land Acquisition* policy.

Expropriation is primarily legislated via the *Expropriations Act*, which provides the statutory framework by which the Region can acquire property rights, while protecting a property owner's ability to seek compensation for the value of the land and damages incurred by the owner as a result of the expropriation.

The expropriation process runs concurrently with ongoing negotiations to ensure that the acquisition of land is timely and aligned with project schedules

For land requirements, the preferred approach to acquiring lands is to negotiate an agreement of purchase and sale with the property owner. Expropriation is a statutory process that provides an alternate means of obtaining the same rights in the lands without the property owner's agreement. The *Expropriations Act* sets out the process to expropriate the lands, the owner's rights and the obligations of the expropriating authority.

Although the preference is to not commence the expropriation process until all options for friendly negotiations have been exhausted or constrained by timelines, it is typically necessary for the Region proceed with expropriation concurrently with negotiations. The Region has undertaken a large number of initiatives leading to a high volume of property requirements. When projects involve land requirements in established areas, property owners are often hesitant to agree to the terms of a purchase by the Region prior to the commencement of a project. Owners generally prefer to wait until construction has been completed and damages can more effectively be measured.

In light of the foregoing, it is often determined early in the acquisition process that commencing expropriation proceedings is a necessary approach to obtaining property with a relatively limited timeframe to address negotiations with owners.

Independent appraisals are used to support the value of land acquisitions and dispositions

The *Corporate Land Acquisition* policy requires that, for all acquisitions over \$100,000 in compensation, an appraisal of the property by an independent accredited appraiser is to be completed to ensure maximum transparency in the negotiation process. For transactions over \$1 million, two independently commissioned appraisals are required. Given that the appraiser independence is often a key element in negotiating with a property owner, staff will frequently engage an independent appraiser to provide estimates for properties involving compensation less than \$100,000.

With respect to expropriated properties, all appraisals are completed by independent accredited appraisers, and the compensation offers made in accordance with the *Expropriations Act* are based on the value estimates in the appraisal reports.

In some instances, owners will obtain their own appraisal and negotiations may be based on a reconciliation between two or more appraisals. It is important to

acknowledge that an appraisal is an estimate of value, or an opinion, based on the analysis of factual data and the interpretation of market activities. This results in a property value range, as opposed to a single amount.

Compensation for property may be affected by a number of factors, some of which expose the Region to long-term liabilities

Several factors affect the compensation the Region would be willing to offer to an owner. Some key points to consider are as follows:

- Unequal motivation - for capital projects, the seller, or property owner, is typically not motivated to sell, while the Region is highly motivated.
- Lack of flexibility - in most instances, the Region has little, if any flexibility to forego the need for a specific property, once the project parameters have been determined.
- Time constraints - staff have limited time to negotiate transactions, due to the need to deliver lands for a given project by a specified date to keep the overall project on schedule.

On a more frequent basis, expropriation is necessitated to ensure certainty of delivery of lands to the client department. Although expropriation is not the preferred approach to obtaining lands, it is necessary and warranted to deliver projects that are in the broader public interest.

Although expropriation provides greater certainty in obtaining lands, there is potential for increasing long term liabilities and costs that are the responsibility of the Region. While the *Expropriations Act* sets out time limitations for several of the elements of the process, there is no time limit for owners to make claims for some items of compensation. It is possible several years could pass before a settlement can be reached. In accordance with the *Expropriations Act* and subject to certain exceptions, the owner may be entitled to interest of six per cent (6%) per annum on unpaid compensation, calculated from the date the owner gave up possession of the lands to the date the payment is made to the owner.

In light of the potential for additional financial obligations associated with expropriation, obtaining land via negotiated agreement with owners is the preferred approach to meeting the needs of a project.

Due diligence and environmental audits are undertaken for all properties acquired by the Region

The *Corporate Land Acquisition* policy includes a section stating that environmental audits are to be undertaken as part of the Region's due diligence when acquiring property, whether via negotiated agreement or expropriation. The intent is to minimize any risks to the Region of obtaining lands which may contain contaminants or environmental hazards, except as circumstances warrant or by Council direction.

There are several terms that have unique meanings in the real estate and appraisal industries

The following is an overview of commonly used terms that may be used in reports to Council for proposed acquisitions of property:

Fee simple: A fee simple interest in land is the greatest interest in land. An owner in fee simple has the right to physical use of the land, as well as the right to sell, lease and mortgage the land. As an example, a typical homeowner owns their land in fee simple.

Easement (permanent and temporary): This is the right to cross or otherwise use someone else's land for a specified purpose and duration. A permanent easement would be used for things like access to maintain a retaining wall or buried utility lines. A temporary easement might be just for the duration of a construction project for grading or moving equipment around and will typically expire on a specific date.

Ownership (title): The Region becomes the owner of lands when it acquires title to the lands. An owner will transfer title to the lands to the Region pursuant to an agreement of purchase and sale. With respect to expropriation, title to lands will vest in the Region when an expropriation plan is registered. Having ownership of land does not necessarily mean the owner has possession of the land. An example of this is a landlord who owns land, but has given possession of it to one or more tenants.

Possession: Possession permits the Region to enter onto the lands. The Region cannot obtain possession of lands that have been expropriated until the Region serves the owner of the lands with a notice specifying the date the Region requires possession of the lands.

Market Value: There are many definitions of market value, but the *Expropriations Act* specifically defines the market value of land expropriated as the amount that

the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

Damages (disturbance, injurious affection, business loss): The *Expropriations Act* sets out how a property owner must be compensated for land taken. In addition to the market value of the land, the expropriated owner is entitled to damages for:

- the reasonable costs incurred by the owner as a consequence of the expropriation;
- injurious affection, which refers to the loss in value to the owner's remaining lands, and personal and business damages;
- any special difficulties in relocation.

Partial taking vs. full buyout: In most cases, the Region only expropriates as much land as it needs to complete a project (e.g. a strip of along the frontage of a property), leaving the balance to the owner. This is a partial taking. Occasionally the impact is so severe that the damages to the remaining property warrant the acquisition of the entire property. This is commonly referred to as a full buy-out regardless of whether there was a willing sale or an expropriation.

[Link to key Council-approved plans](#)

From Vision to Results: 2011 to 2015 Strategic Plan

Priority Areas – Focus Growth along Regional Centres and Corridors, and Continue to Deliver and Sustain Critical Infrastructure

Optimize the transportation capacity and services in Regional Centres and Corridors and improve mobility for users on Regional transportation corridors

Acquisitions of lands will assist the Region in meeting its key transportation needs.

5. Financial Implications

There are no financial implications associated with this report

This is a report for information only. Although there are no financial implications directly associated with this report, the processes of the Property Services Branch are aligned with the project needs of its client departments, and have

been developed to ensure delivery of land with the most effective use of funds, within the established timeframes.

Each project in the 10 year program has financial implications identified specifically for property acquisitions, in terms of compensation and related costs, which are tracked accordingly.

6. Local Municipal Impact

Delivering lands to client departments in a timely, cost effective manner benefits local municipalities by ensuring that scheduled projects can commence on time, and that delays associated with property matters are minimized. Effective land purchase policies and procedures reduce costs associated with delay claims from contractors, and limit potential claims for business loss or other disturbance from property owners.

7. Conclusion

The Property Services Branch supports projects undertaken by Regional departments by securing all project land requirements, and is responsible for obtaining property needed for capital projects, as well as Regional facilities. In 2014, 250 properties were acquired through negotiation or expropriation, including 181 of the approximately 600 required for the vivaNext bus rapid transit project.

Processes involved in completing transactions with property owners are regulated by Provincial legislation such as the *Municipal Act, 2001* and the *Expropriations Act*, as well as Regional policy for land acquisition. The Region's *Corporate Land Acquisition* policy is the primary document which guides staff with respect to acquiring any lands.

In addition to existing regulations and policies, the acquisitions process is affected by project timelines and the needs of property owners. Customer service, timely delivery of lands, and good value to the client departments are key to the success of the Property Services Branch. It is necessary to effectively and respectfully address concerns of members of the public affected by property takings, by showing transparency and fairness in determining compensation amounts to be offered to owners.

All acquisitions by the Region are reported to Council. For expropriations, Council authorization is requested or required for three steps in the process, including the initiation of the expropriation, the expropriation itself, and the related

offers of compensation. For negotiated agreements including settlements, individual reports are presented to Council for approval. For transactions where Council has delegated its authority to senior staff, a report for information summarizing the transactions is presented to Council on an annual basis.

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

Accessible formats or communication supports are available upon request