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Clause No. 18 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 22, 2015.

Expropriation Settlement  
Viva Bus Rapid Transit Corridor  
23 Parkside Drive  
Town of Newmarket

**Committee of the Whole recommends adoption of the following recommendation contained in the report dated December 19, 2014 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.	Ertl, Gerry and Ertl, Janice Dianne	23 Parkside Drive Newmarket	Parts 1, 2, Plan YR1363563	Fee Simple

The fee simple interest required is described as all right, title and interest for the municipal purpose of implementing road and intersection improvements along Davis Drive, including associated local roads, and to provide designated lanes for the vivaNext transit system and works ancillary thereto.

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2. The Commissioner of Corporate Services be authorized to execute the Minutes of Settlement and all necessary documentation to complete the transaction in accordance with the Minutes of Settlement.

## 2. Purpose

This report seeks Council approval to accept the Minutes of Settlement for lands that have been expropriated for the vivaNext Davis Drive project.

## 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 of the Environmental Assessment Report from the Ministry of the Environment in 2005.

The new viva rapidway along Davis Drive is approximately 70% 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% 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 to Highway 404, a distance of 2.3 kilometres.

Possession of lands was obtained for 133 property requirements via expropriation in 2009 on Davis Drive, from Yonge Street to Alexander Road in Newmarket

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, and construction has proceeded with anticipated completion of the bus rapid transit centre lanes in December 2015. 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 also subject to future claims from former owners.

The Region expropriated 23 Parkside Drive in Newmarket (subject property) in 2009

As part of the expropriation in 2009, the Region obtained the entire property at 23 Parkside Drive via expropriation. Typically, the Region endeavours to obtain only portions of land required for a project, in an effort to allow the owner continued use of the remainder of their property with minimum disruption. A portion of the subject site, as shown in Attachment 1, was required for the realignment of Parkside Drive.

The building and parking area at 23 Parkside Drive were situated within the future road right-of-way

The portion of land required for the realignment of Parkside Drive comprised approximately one-quarter of the total site area. In addition, a portion of the existing building and most of the surface parking area were situated within the land requirement. Therefore, it was necessary to demolish the building and remove the surface parking in order to construct Parkside Drive.

Under the current zoning bylaw, the subject parcel is designated as a Service Commercial First (C8) Zone, which requires a minimum parcel size of 1,393 square metres (15,000 square feet). The subject is considerably smaller than needed under the existing zoning, although the existing use was permitted as a legal non-conforming use. The lands could not have been redeveloped in the future, regardless of the Region's land requirement due to its size not meeting the zoning requirement. In this regard, after the demolition of the building it would not have been possible to redevelop the site based on its existing zoning.

A full buyout of the subject property was necessary for the realignment of Parkside Drive

It was determined that it is more cost effective for the Region to purchase the entire property and remove the building and parking area, than to purchase only the lands needed for the project. A partial acquisition would have involved

compensating the owner for the market value of the land requirement, plus the replacement cost of the improvements to be demolished and other potential damages. It was determined that the uncertainty of the total potential cost of purchasing only the lands needed for the project and compensating for damages could exceed the cost of purchasing the entire property. In addition, it would not have been considered reasonable to partially or fully demolish the building and leave the owner with the balance of the lands, which would have been functionally obsolete, as previously noted.

Based on the foregoing, it was deemed necessary to proceed with the acquisition of the entire parcel. The property owner agreed that the full buyout of the property was the preferred alternative.

An Expropriation Plan was registered in August of 2009 vesting ownership of the lands in the Region. In accordance with the *Act*, the Region served an offer of compensation within three months of registration of the plan.

#### 4. Analysis and Options

A full and final settlement has been negotiated

The Region and owner negotiated a full and final settlement of the expropriation including market value, business loss and other damages, interest and other costs as provided under the *Act*.

Negotiation of the settlement was based on independent appraisals

Although the owner accepted that a full buyout of the property was the preferred alternative, the parties did not agree on the amount of compensation at the time the Region had served its original offer to the owner. The Region's offer was based on an appraisal report that was completed by an independent appraiser. The owner subsequently obtained its own appraisal, and the parties proceeded to negotiate based on the two appraisals.

The negotiated settlement is considered to be in the best interest of the Region as it provides a reasonable agreement that is within the range of value estimates provided by the two independent appraisals of market value.

The agreement also provides a full and final settlement of all the expropriation claims including market value, disturbance damages and business loss. In this regard, the Region will not incur any further claims and associated legal and litigation expenses from the former owner.

There will be surplus land upon completion of the Davis Drive project

The surplus portion of the parcel not required for the Parkside Drive right-of-way comprises 448.7 square metres (4,829.6 square feet). Upon completion of the project, an evaluation of the surplus land, in terms of its future utility and value will be undertaken. In the event disposal of the land is considered, the proposed disposition would be undertaken based upon Regional policies, an agreement between the Region, YRRTC and Metrolinx, and in accordance with provisions of the *Act*.

Proceeds from the future disposition of the surplus lands will go back to the vivaNext project.

The proposed disposition of the lands will be the subject of a future report to Council.

Link to key Council-approved plans

### **From Vision to Results: 2011 to 2015 Strategic Plan**

Priority Area – Focus Growth along Regional Centres and Corridors

Optimize the transportation capacity and services in Regional Centres and Corridors

The acquisition of the lands 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.

## 6. Local Municipal Impact

The construction of dedicated bus lanes and related facilities, as well as road and intersection improvements along Davis Drive from Yonge Street to Alexander Road is critical to the achievement of the vision for the corridor for the Region. Additionally, upon completion this project will improve public transit facilities and

enrich the streetscapes in Newmarket to support the Region's goal for higher density mixed use transit-oriented development.

This property was specifically required as part of the realignment of Parkside Drive.

## 7. Conclusion

The Region acquired the entire site at 23 Parkside Drive in Newmarket for the road realignment. Approximately one-quarter of the site was required for the the realignment, and the balance of the land will be considered surplus to the needs of the vivaNext project on Davis Drive.

The parcel was obtained via expropriation in 2009, and the Region has negotiated a full and final settlement with the former owner. The settlement will include a release from the owner from all future claims.

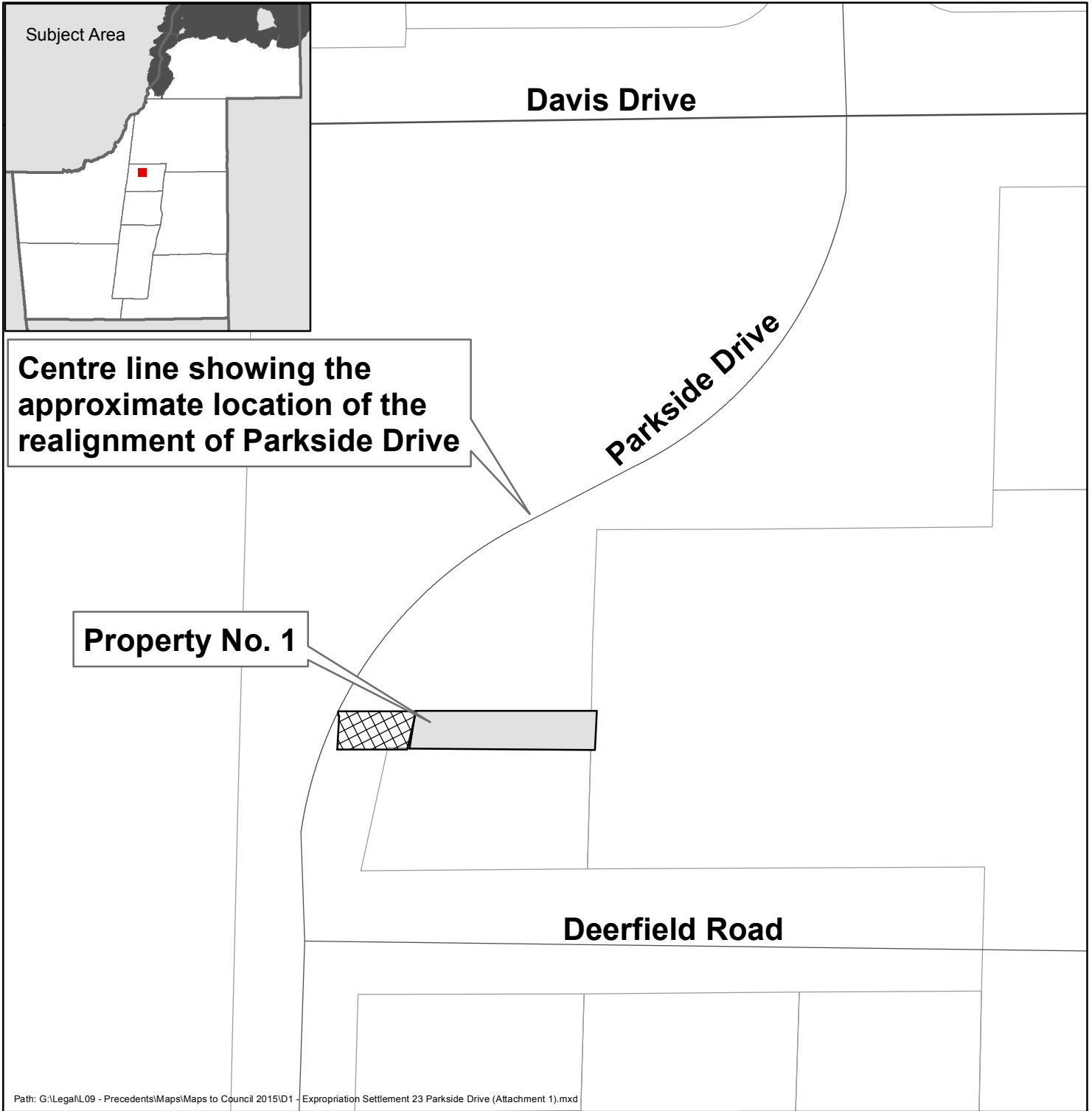
It is recommended that Council authorize the expropriation settlement described in this report to allow completion of the transaction and minimize the cost of settling all claims for this property.

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

The Senior Management Group has reviewed this report.

Attachments (1)

Accessible formats or communication supports are available upon request



Path: G:\Legal\L09 - Precedents\Maps\Maps to Council 2015\D1 - Expropriation Settlement 23 Parkside Drive (Attachment 1).mxd





**LOCATION PLAN**

Expropriation Settlement  
Viva Bus Rapid Transit Corridor  
23 Parkside Drive  
Town of Newmarket



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Corporate Services Department  
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**Legend**

-  Subject Property
-  Road
-  Right of Way
-  Potential Surplus Land

