

Clause No. 44 in Report No. 13 of the Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 11, 2014.

44
APPROVAL TO EXPROPRIATE
RECONSTRUCTION OF LESLIE STREET PROJECT 97150
TOWN OF RICHMOND HILL

Committee of the Whole recommends adoption of the recommendations contained in the following report dated August 18, 2014 from the Acting Commissioner of Corporate Services:

1. RECOMMENDATIONS

It is recommended that:

1. Council receive for information the Inquiry Officer’s report from the Hearing of Necessity, that found the taking of the land to be fair, sound and reasonably necessary.
2. Council, as approving authority, consider the Inquiry Officer’s report and approve the expropriation of the following land, within the Town of Richmond Hill.

No.	Owner	Municipal Address	Legal Description	Interest Required
1	Mitchell, Keith Mitchell, Elisabeth	13205 Leslie Street	Part 1 on Plan 65R34214	Fee Simple
2	Emery, Heather	13251 Leslie Street	Parts 2, 3 and 4, Plan 65R34214	Fee Simple
3	Carleton, Richard Weston Helmstadter, Carol Foster Savidge	13265 Leslie Street	Part 5 on Plan 65R34214	Fee Simple

3. The Commissioner of Corporate Services be authorized to execute and serve any notices required under the *Expropriations Act* (the “Act”).

4. Council authorize the introduction of the necessary bylaw to give effect to these recommendations.

2. PURPOSE

This report requests that Council consider the Inquiry Officer's report that sets out whether the taking of the land is fair, sound and reasonably necessary for the Leslie Street project (*Attachment 1*).

This report seeks Council approval to expropriate three properties required for the realignment and reconstruction of Leslie Street, in the Town of Richmond Hill (*Attachment 2*).

3. BACKGROUND

In October 2013, Council authorized an application for approval to expropriate land required for the reconstruction of Leslie Street

The realignment and reconstruction of Leslie Street from Bloomington Road to Bethesda Sideroad will improve roadway geometrics and reduce winter maintenance requirements. Pre-construction activities, including detailed design and land acquisition are proceeding. This will ensure a state of construction readiness should opportunities to advance the timing of construction become available. On October 17, 2013, Council authorized an application for approval to expropriate a total of nine properties.

Notices of Application to Expropriate were served to all owners following Council authorization. Three owners, who are the subject of this report, requested Hearings of Necessity.

A Hearing of Necessity was held to determine if the taking of the land is fair, sound and reasonably necessary for the Leslie Street project

In response to the Notice, owners of three properties exercised the right to notify the Region of their desire for a Hearing of Necessity to determine if the taking is fair, sound and reasonably necessary. The Hearing was held on June 11, 2014.

On June 19, 2014, all parties received the Inquiry Officer's report setting out an opinion based on the evidence, arguments by each of the parties and findings of facts from the Hearing, as required by the *Act*. Immediately prior to the Hearing, two of the owners withdrew their requests, however, the Hearing Officer's decision addresses all three properties. The Inquiry Officer found that the taking of the land is fair, sound and reasonably necessary.

Council must give written reasons for its decision to continue with the expropriation, as required by the *Act*. The reasons will be served on all parties of the Hearing including the Inquiry Officer, within 90 days of receipt of the Inquiry Officer's report. The deadline for service is September 17, 2014.

4. ANALYSIS AND OPTIONS

Approval to Expropriate is recommended based on the report of the Inquiry Officer

The Inquiry Officer accepted The Regional Municipality of York's submissions in their entirety. The Inquiry Officer concluded that the taking of land at 13205 Leslie Street, 13251 Leslie Street and 13265 Leslie Street, in the Town of Richmond Hill, was fair, sound and reasonably necessary on the basis that the Region had considered environmental, safety and operational concerns during the Environmental Assessment process, had satisfied the Ministry of the Environment, and had made every effort to minimize the amount of land taken.

A report from the Inquiry Officer, dated June 18, 2014, which included the finding and recommendations, was submitted to legal counsel for both the Region and the owner. Upon review of the report by the Region, it is recommended that the expropriation of the subject lands proceed in accordance with the original Application for Approval to Expropriate that was served on the property owners.

Registration of an expropriation plan will secure access to the subject land and ensure that construction can proceed

Under the *Act*, registration of an expropriation plan vests land in the expropriating authority. Subject to the Region taking certain procedural steps, the Region will obtain possession of the subject land approximately three months after the registration of the plan of expropriation.

A draft expropriation plan has been prepared for the subject property. It is anticipated the plan will be registered no later than December 10, 2014. Accordingly, the Region will have access to the property no later than February 15, 2015, enabling construction to continue as scheduled.

The environmental due diligence reports for these properties have been reviewed by staff in consultation with Legal Services.

Link to Key Council-approved Plans

From Vision to Results: 2011 to 2015 Strategic Plan

Priority Area – Continue to Deliver and Sustain Critical Infrastructure
Improve mobility for users on Regional transportation corridors

The acquisition of these lands will assist the Region in meeting its key strategic transportation needs.

5. FINANCIAL IMPLICATIONS

The funds required to complete the property acquisition for this project have been included in the approved 2014 Capital Budget for the Transportation and Community Planning Department, Capital Delivery- Roads.

Under section 25 of the *Act*, the Region is obligated to serve offers of compensation on owners within three months of registration of the expropriation plan. The appraisals required to support these offers are currently being prepared and the proposed offers will be the subject of a further report to Council.

6. LOCAL MUNICIPAL IMPACT

The realignment and reconstruction of Leslie Street together with a jog elimination at Bethesda Sideroad, in the community of Richmond Hill, will provide upgraded capacity to improve traffic operations for the travelling public and will meet the expected growth in this area.

7. CONCLUSION

The reconstruction of Leslie Street and the jog elimination at Bethesda Sideroad and Leslie Street will require the acquisition of nine property interests. Staff have successfully concluded negotiations on one property. Council approved the expropriation of five properties. Three owners requested a Hearing of Necessity. The Hearing Officer's report is attached for consideration by Council. In order to ensure timely possession of the lands to commence construction, it is recommended that Council approve the expropriation of the remaining three properties. Staff will negotiate for the acquisition of the required properties and expropriation proceedings will be abandoned in cases where negotiations are successful.

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.

- INQUIRY HEARING -

IN THE MATTER OF an application by The Regional Municipality of York for approval to expropriate land, being more particularly identified as Parts 1, 2, 3, 4 and 5 on Registered Plan 65R-34214, for the purpose of the reconstruction of Leslie Street from Bethesda Sideroad to Bloomington Road, which includes a jog elimination at the Bethesda Sideroad and Leslie Street intersection, and a realignment of Leslie Street around Haynes Lake , to address traffic operations and safety improvements in the Town of Richmond Hill.

Transportation & Community Planning

Roads Branch Office

90 Bales Drive East

East Gwillimbury, Ontario

Wednesday, June 11, 2014 at 9:00a.m.

IN THE MATTER OF THE EXPROPRIATIONS ACT

AND IN THE MATTER OF a hearing of necessity requested by Keith and Elisabeth Mitchell, Carol Helmstadter and Richard Carleton and Heather Emery for the proposed expropriation of lands in the Town of Richmond Hill, by the Regional Municipality of York, for the purpose of the reconstruction of Leslie Street (YR 12) from Bethesda Sideroad to Bloomington Road (YR 40), which includes a jog elimination at the Bethesda Sideroad and Leslie Street (YR 12) intersection, and a realignment of Leslie Street (YR 12), around Haynes Lake, to address traffic operations and safety improvements

WEDNESDAY, JUNE 11, 2014 AT THE HOUR OF 09:00 O’CLOCK IN THE FORENOON AT THE REGIONAL MUNICIPALITY OF YORK, TRANSPORTATION & COMMUNITY PLANNING, ROADS BRANCH OFFICE, 90 BALES DRIVE EAST, EAST GWILLIMBURY, ONTARIO

INQUIRY HEARING

INQUIRY OFFICER:

DAVID R. VINE, Q.C.

638-121 Richmond St. W

Toronto ON M5H 2K1

Tel: 416-863-9341

Fax: 416-863-9342

REPRESENTING THE REGIONAL MUNICIPALITY OF YORK:

RUETER SCARGALL BENNETT LLP

250 Yonge Street, Suite 2200

P.O. Box 4, Toronto, ON

M5B2L7

Paul B. Scargall

Tel: 416-869-3417

Fax: 416-869-3411

Vanessa Bacher

Tel: 416-869-2205

Fax: 416-869-3411

REPRESENTING PROPERTY OWNERS:

Keith Mitchell & Elizabeth Mitchell

3500 Orser Rd.

RR1 Elginsburg, ON, K0H 1M0

Property Owner (no counsel)

Email: kemitchell@xplornet.com

Harold Elston

Elstons Barrister & Solicitors

The Admiral Building

One First Street, Suite 224

Collingwood, ON, L9Y 1A1

Counsel to Carol Helmstadter and

Richard Carleton and Heather Emery

Fax: 1-705-445-1209

FINDING & RECOMMENDATIONS

It is recommended and I find that the taking of the land herein is Fair, Sound and Reasonably Necessary being identified as:

Parts 1, 2, 3, 4 and 5 on Registered Plan 65R-34214, for the purpose of the reconstruction of Leslie Street from Bethesda Sideroad to Bloomington Road, which includes a jog elimination at the Bethesda Sideroad and Leslie Street intersection, and a realignment of Leslie Street around Haynes Lake , to address traffic operations and safety improvements in the Town of Richmond Hill.

It is clear from the evidence produced and the testimony given that the Regional Municipality of York made every effort to consider the environmental impact the taking of these lands would have on the sensitive wetlands of the Oak Ridges Moraine.

The property owners argued that too much land was being taken, which sacrificed too much wetland. The owners asked that the Region consider taking less land.

The Regional Municipality of York presented documents and witnesses that confirmed that the Municipality had conducted an environmental study and had satisfied all the concerns raised by the Minister of the Environment.

Two witnesses, both engineers, testified that other options were considered, to minimize the taking of lands, but that the decisions were based on environmental impact, road safety and maintenance. The witnesses stated that the road along Lake Haynes in its current configuration was difficult to maintain in the winter and that it often flooded with water from the lake.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED AT TORONTO THIS 18 DAY OF JUNE, 2014



David R. Vine, Q.C.
Inquiry Officer

PURPOSE OF THE EXPROPRIATION

The purpose of the expropriation is to acquire the necessary land to move an existing roadway at the eastern end of Haynes Lake. The realignment is to address traffic operations and to make safety improvements.

In the area under contention, the existing roadway is too near the lake and it is prone to poor winter conditions which require extra work to keep it passable. It is also prone to flooding.

Hearing of Necessity

Wednesday, June 11, 2014

Paul Scargall - Counsel to the Regional Municipality of York

Mr. Scargall said that Carol Helmstadter and Richard Carleton and Heather Emery had withdrawn their objections and that landowners Keith and Elisabeth Mitchell were the only objectors remaining.

He described jurisdictional issues, said they were outlined in Vol 1. Volume 1 marked as Exhibit 2. He then outlined the remaining tabs as follows:

- Tab 1 is Regional Council's approval of the expropriation
- Tab 2 is Application for Approval to Expropriate Land
- Tab 3 is the required publications
- Tab 4 is Affidavit of Service of Notice of Application
- Tab 5 is a copy of a letter to Mitchells
- Tab 6 & 7 relate to the parties who withdrew
- Tab 8 is an Affidavit of Service
- Tab 9 is a letter from the Mitchells requesting the Hearing of Necessity
- Tab 12 is the Notice of Grounds

Mr. Scargall referred to the bottom of the first page which says purpose of the expropriation is the reconstruction of Leslie Ave from Bethesda Sideroad to Bloomington Rd – specifically the area around Haynes Lake. The Mitchells property is near Haynes Lake

- Tab 13 is an aerial of area
- Tab 14 is marked as Exhibit 1 – the Expropriation Plan
- Tab 15 is an image relating to the works and specific taking from the Mitchells

- Tab 16 shows a cross-section in more detail

Keith Mitchell – Property Owner

Mr. Mitchell said his property sits on a protected area of the Oak Ridges Moraine and that there are requirements under the Oak Ridges Moraine plan that detail roads and work in the area. He said that York region has not minimized the area of expropriation and hence is taking too much of their property

Paul Scargall - Counsel to the Regional Municipality of York

Mr. Scargall said, as the Inquiry Officer knows, the purpose of the inquiry is to decide whether the expropriation is fair and reasonable. It is not a forum to revisit the environmental study report and it's not this forum's jurisdiction to review that report. He also outlined the following tabs:

- Tab 20 shows that Mr. Mitchell first raised his concerns in July of 2006. They were answered at Tab 21.
- Tab 22 is Mr. Mitchell's request for a Part 2 Order or "Bump Up"
- Tab 23 is the Ministry's response
- Tab 24 is the Region's detailed response, addressing each of Mr. Mitchell's concerns
- Tab 25 is Ministry of Environment's response
- Page 2 of Tab 25, Volume 4, the Minister of Environment says he's satisfied that impact criteria has been met. The Minister of Environment says he's satisfied that alternatives were considered.
- On page 5 the Minister makes recommendations about storm sewers
- Tab 27 addresses those concerns
- Tab 28 is Region accepting all of Tab 27's recommendations addressing all issues raised by Minister
- Tab 29 Ministry of Environment says it has "no further concerns with the project"
- Tab 30 are 2011 & 2012 letters to and from the Mitchell's

Mr. Scargall said the issue of narrowing of the taking is not before this inquiry.

The objective is to abide by the ESR (Environmental Study Report). It is not about a “bump up” request.

Keith Mitchell – Property Owner

Mr. Mitchell quoted from a letter that stated “there is a solution ... that preserves the wetland”. He feels they should have chosen another option that puts the road further east. He said his issue is with the amount of land that’s being taken. It’s larger than what should be taken

Paul Macleod – Witness – Civil Engineer

Volume 4 – Exhibit 2 – Tab 40 has the resume of Paul McCloud

Mr. Macleod said he was involved in environmental assessment. He said the taking is necessary for the reconstruction of Leslie Street. He also said that other options were considered to minimize the taking of the Mitchell’s land.

He said the main issue for reconstruction is road safety and maintenance and that the road currently requires special treatment in winter. It has more accidents reported than other similar regional roads. He said the water level of Haynes Lake often goes over the road. He said road improvement will correct issues.

He said the speed limit had already been reduced on road

Keith Mitchell – Property Owner

Mr. Mitchell said his primary concern is with the amount of land that’s being taken. He said he knew some land would be taken, but that he requested this inquiry so that the Region would consider taking less of our land leaving more of the wetlands undisturbed

David Vine – Inquiry Officer

Mr. Vine advised Mr. Mitchell to confine his questions and comments to testimony of witness and that the inquiry is not prepared to address acts concerning the moraine

Keith Mitchell – Property Owner

Mr. Mitchell asked about fill-slopes, saying that 2-1 fill slope is preferred, rather than 3-1 being used.

Paul Macleod – Witness – Civil Engineer

Mr. Macleod explained why a 3-1 slope was selected for this road. He said the reasons included plantage, drainage, and maintenance

Keith Mitchell – Property Owner

Mr. Mitchell said it seems the choice was made that is not in agreement with the Oak Ridges Moraine Act

Gord Murray – Witness – Transportation Engineer

- Volume 4 Tab 41 has a copy of CV

Mr. Murray said he was retained as consultant and project manager for road design. He said he considered environmental constraints and that the taking of Mitchell land necessary for completion of road design. He said taking less would not allow for completion of design.

Keith Mitchell – Property Owner

Mr. Mitchell asked about rationale of 3-1 slope and whether 2-1 slope was a viable option

Gord Murray – Witness – Transportation Engineer

Mr. Mitchell said the 3-1 slope was structurally necessary

Paul Scargall - Counsel to the Regional Municipality of York

Mr. Scargall said the issue of the 3-1 slope is not the subject of review here.

Keith Mitchell – Property Owner

Mr. Mitchell said he had no witnesses. He summarizes by saying that he hoped the inquiry would result in less land being taken so more wetlands remain. Wetlands are an important part of the Oak Ridges Moraine. This is an opportunity to minimize the destruction of areas of the Oak Ridges Moraine.

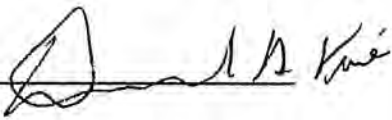
Paul Scargall - Counsel to the Regional Municipality of York

Mr. Scargall said the taking has abided by the requirements of the Ministry of Environment to reduce the impact on the wetlands.

This ended the submissions and the inquiry closed.

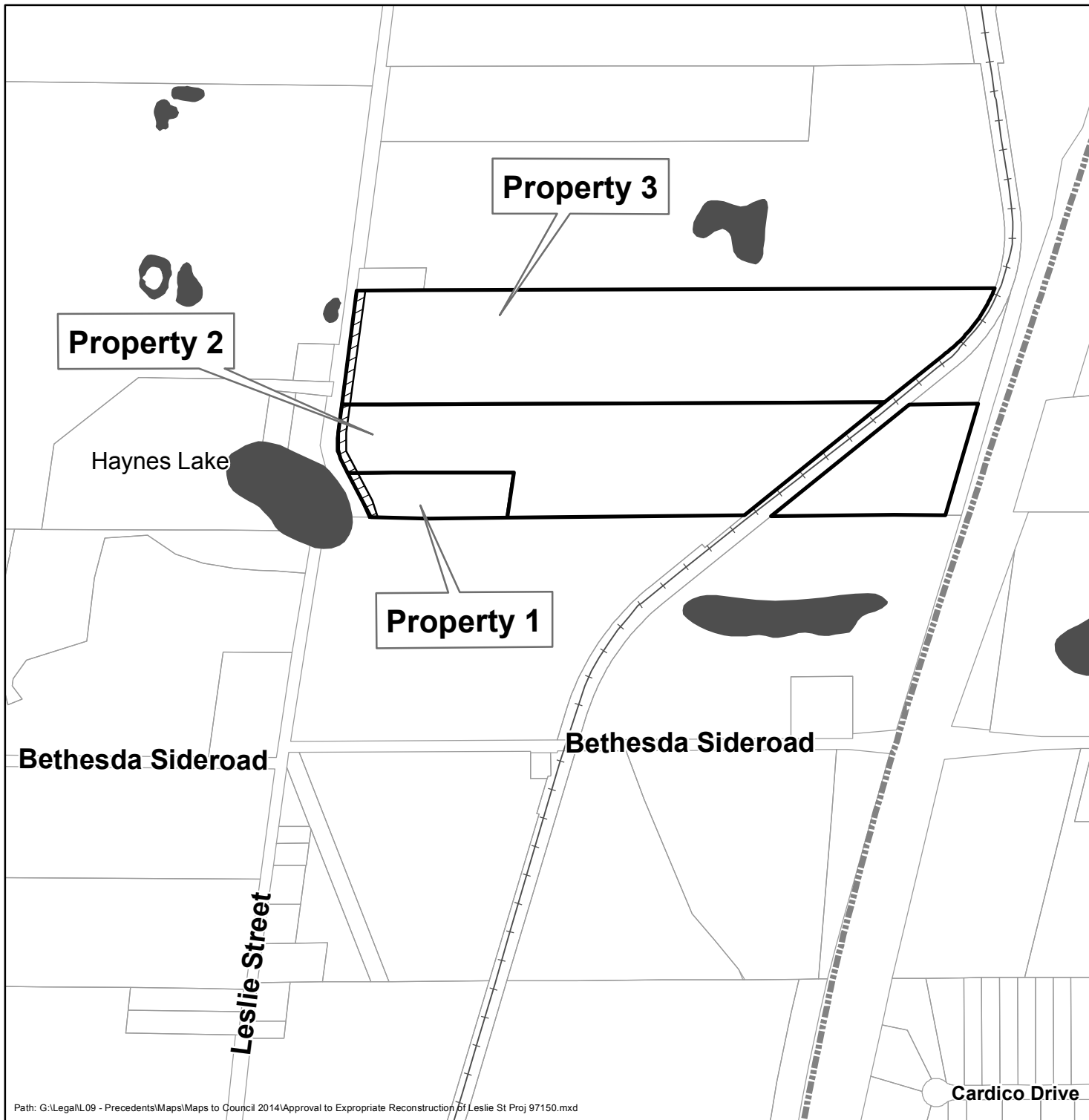
ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED AT TORONTO THIS 18 DAY OF JUNE, 2014



A handwritten signature in black ink, appearing to read "David R. Vine", is written over a horizontal line.

David R. Vine, Q.C.
Inquiry Officer



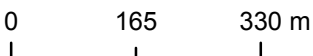
Path: G:\Legal\I09 - Precedents\Maps\Maps to Council 2014\Approval to Expropriate Reconstruction of Leslie St Proj 97150.mxd

LOCATION PLAN






Approval to Expropriate
 Reconstruction of Leslie Street Project 97150
 Town of Richmond Hill



Produced by:
 Property Services Branch
 Corporate Services Department
 © Copyright, The Regional Municipality of York, July 2014
 © Copyright, First Base Solutions Inc., 2011 Orthophotography
 * Includes © Queen's Printer for Ontario 2003-2013



Legend

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