

Clause No. 15 in Report No. 10 of the Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on May 15, 2014.

15
APPROVAL TO EXPROPRIATE
WIDENING AND CONSTRUCTION OF BUS RAPID TRANSIT CORRIDOR
2781 HIGHWAY 7 WEST (H2-VMC) VIVANEXT PROJECT 90991
CITY OF VAUGHAN

Committee of the Whole recommends adoption of the recommendation contained in the following report dated April 22, 2014 from the Commissioner of Corporate Services:

1. RECOMMENDATIONS

It is recommended that:

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

No.	Owner	Municipal Address (YRRTC Reference)	Legal Description	Interest Required
1	La Torinese Drapery Ltd.	2781 Highway 7 West (Ref No. 119)	Parts 1 and 2 on Plan 65R34483	Fee Simple
			Parts 3 and 4 on Plan 65R34483	Temporary Easement
<p>The temporary easement will run from August 12, 2014, and expire on August 11, 2018, 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</p>				

	to the limit of the reconstruction of Highway 7, (7) the installation and removal of temporary (i) pedestrian access and walkways, (ii) parking measures including re-striping of aisles, lanes, and parking stalls, (iii) shoring and formwork, (iv) drainage and erosion/sediment control measures, (v) traffic signals, (vi) fencing, (vii) handrails, (8) works ancillary to any of the foregoing.
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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 vivaNext project (*Attachment 1*).

This report seeks Council approval to expropriate a property interest required for the widening and reconstruction of road and intersection improvements, in order to provide designated lanes for the Viva transit system, along the Highway 7 West corridor, at Creditstone Road (*Attachment 2*).

3. BACKGROUND

In October 2013, Council authorized an application for approval to expropriate land required for the Highway 7 West project

The widening and reconstruction of Highway 7 West is scheduled to commence in May, 2014. On October 17, 2013, Council authorized an application for approval to expropriate the subject land, including one fee simple interest and one temporary easement. The Notice of Application for Approval to Expropriate was served on the owner following Council authorization.

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

In response to the Notice, the owner exercised its right to notify the Region of its desire for a Hearing of Necessity to determine if the taking is fair, sound and reasonably necessary, with respect to the vivaNext project. The Hearing was held on March 18, 2014.

In April, 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*. As per the report, it is the opinion of the Inquiry Officer 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.

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 2781 Highway 7 West for the vivaNext project was fair, sound and reasonably necessary on the basis that the Region's decision to shift the rapid transit corridor, at the intersection of Highway 7 West and Creditstone Road, in order to avoid placing a station on top of an existing 750 mm watermain, was the only logical course of action in the circumstances.

A report from the Inquiry Officer dated April 3, 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 land proceed in accordance with the original Application for Approval to Expropriate that was served on the property owner.

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 May 2014. Accordingly, the Region will have access to the property no later than August 2014, enabling construction to continue as scheduled.

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 funds required to complete the property acquisitions have been included in the 2014 YRRTC Capital Budget. The project is funded by the Province, via the Metrolinx Master Agreement.

Under section 25 of the *Act*, the Region is obligated to serve an offer of compensation on the owner within three months of registration of the expropriation plan. The appraisal required to support this offer is currently being prepared and the proposed offer will be the subject of a further report to Council.

6. LOCAL MUNICIPAL IMPACT

The construction of dedicated bus lanes and related facilities, as well as road and intersection improvements, along Highway 7 West, is critical to the achievement of the vision for the corridor for both the Region and City of Vaughan. Additionally, this project will improve public transit facilities and enrich the streetscapes to support the Region's goal for higher density mixed use transit-oriented development.

7. CONCLUSION

The widening and construction of Highway 7 West at Creditstone Road, requires the acquisition of two property interests from 2781 Highway 7 West. In order to ensure timely possession of the lands to commence construction, it is recommended that Council approve the expropriation of the interests required.

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 (2)

-INQUIRY HEARING-

APPLICATION by the Regional Municipality of York for approval to expropriate lands in the City of Vaughan, Regional Municipality of York, partial taking of PIN 03229-0026(LT), being Part of Lot 9, Plan 7977, City of Vaughan more particularly identified as Parts 1, 2, 3 and 4 on Plan 65R34483 for the purpose of implementing road and intersection improvements along Highway 7, including associated local roads and to provide designated lanes for the Viva Transit System and works ancillary thereto

**Committee Room B
The Offices of the Regional Municipality of York
17250 Yonge Street
Newmarket, ON, L3Y 4W5**

Tuesday, March 18th, 2014 at 09:30a.m.

IN THE MATTER OF THE EXPROPRIATIONS ACT

AND IN THE MATTER OF a hearing of necessity requested by the Regional Municipality of York to expropriate lands in the City of Vaughan, Regional Municipality of York, partial taking of PIN 03229-0026(LT), being Part of Lot 9, Plan 7977, City of Vaughan more particularly identified as Parts 1, 2, 3 and 4 on Plan 65R34483 for the purpose of implementing road and intersection improvements along Highway 7, including associated local roads and to provide designated lanes for the Viva Transit System and works ancillary thereto.

TUESDAY, MARCH 18TH, 2014 AT THE HOUR OF 09:30 O’CLOCK IN THE FORENOON AT COMMITTEE ROOM B, THE OFFICES OF THE REGIONAL MUNICIPALITY OF YORK, 17250 YONGE STREET, NEWMARKET, ON, L3Y 4W5

INQUIRY HEARING

INQUIRY OFFICER:

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La Torinese Drapery

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FINDING & RECOMMENDATIONS

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

Part of Lot 9, Plan 7977, City of Vaughan more particularly identified as Parts 1, 2, 3 and 4 on Plan 65R34483 for the purpose of implementing road and intersection improvements along Highway 7 including associated local roads and to provide designated lanes for the Viva Transit System and works ancillary thereto

It is important to the completion of the works already started that the approval herein be obtained as soon as possible so that the work will proceed in an orderly manner and hopefully be completed in the coming year.

It is clear from the evidence called that the necessity to acquire additional lands was not evident until after a thorough examination of the area was made.

The intention of moving the existing traffic pattern to the south being the only logical thing to do with regards to the discovery of the exact plan of the water main passing through the area which posed a dangerous obstacle and if ignored could cause extreme damage at great cost if not provided for by actually moving the road way so that the water main is not disturbed by the new roadway location and improvements to the right of ways as contemplated by the present plans.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATE AT TORONTO THIS 3RD DAY OF APRIL 2014



David R. Vine, Q.C.
Inquiry Officer

PURPOSE

The purpose of this expropriation is to acquire the necessary lands for implementing road and interception improvement along Highway 7 and associated local roads and provide designated lanes for the Viva Transit System.

The Regional Municipality of York has applied for approval to expropriate a fee simple interest in Parts 1 and 2 on Plan 65R34483 and approval to expropriate a four year temporary easement over parts 3 and 4 of the same Plan.

After the opening by Sean Foran, solicitor for the Regional Municipality of York, Nidhi Punyarthi, representing the property owners, La Torinese Drapery was asked to advise the Inquiry as to the concern of her clients regarding the expropriation without prejudice to the evidence to be called etc., Ms. Punyarthi advised the Inquiry that her client wished to hear the Region of York's presentation to determine whether the taking of lands was Fair, Sound and Reasonably Necessary and that her client also had some queries on the timeline of work already done and to be done in the future as there was already a taking of land in 2011.

EVIDENCE CALLED BY THE REGIONAL MUNICIPALITY OF YORK

Sean Foran, on behalf of the Regional Municipality of York, submitted as Exhibit 1, an Affidavit of Service of the Notice of Application by the Regional Municipality of York for approval to expropriate lands on La Torinese Drapery.

Annexed to the Affidavit of Service was the Notice of Application for Approval to Expropriate Land which clearly describes the lands that the Region is applying to expropriate

Mr. Foran submitted as Exhibit 2 the Notice of Grounds which in detail describes the objectives and purpose of the expropriation of lands.

Mr. Foran submitted as Exhibit 3, A Document Brief which included relevant documents pertaining to the proposed expropriation.

Mr. Foran submitted as Exhibit 4, a blown up version of Plan 65R34483

Evidence of Mr. David Clark, Design Chief of Infrastructure and Development at the York Region Rapid Transit Corporation

Sean Foran, on behalf of the Regional Municipality of York, began to take the witness through his evidence after qualifying him as being an expert on rapid transit in the York Region and in particular the design elements of the Highway 7 Rapid Transit System.

Mr. Clark reviewed Exhibit 5, a Transit Network Map in the York Region projected to 2031 indicating that the first stage was to build the Rapid Transit from Pine Valley to east of Jane Street to McMillan Train Yard and it is here we come across the land owner's property halfway between McMillan Bridge and Jane Street, this being the land at issue.

Mr. Clark explained how the first phase of the Rapid Transit System is in place since 2005. The buses are currently running through mixed traffic and the next phase is to provide separate rapid ways for the buses.

Mr. Clark discussed the different areas on the Transit Network Map, explaining the different shadings for urbanised areas and less intensively used areas. In this way it was clear to understand the phase of networks planned to join up communities along Highway 7 and ultimately link these areas to the City of Toronto, Peel and Durham.

The Region's plan is have a grid of rapid transit corridors to provide services to areas in the York Region where growth is most concentrated and for this some additional rapid transit is required.

Mr. Clark then drew our attention to Exhibit 6 "The Growth Plan for the Greater Golden Horseshoe 2006". The specific areas in the Transit Network Map marked as urbanised areas are also identified in the Places to Grow Plan as urban growth centres and as areas of concentrated population and density.

With the aid of Exhibit 7, The York Region Base Map, Mr. Clark described the location of the subject property and the land requirements in order to implement the Rapid Transit System, these being that Part 1 and 2 of Plan 65R34483 make up part of the east boundary of the subject property and it is this fee portion that is needed for permanent facilities to accommodate the Rapid Transit System in this location and a couple of metres from the base of the building, Parts 3 and 4, is a temporary limited interest for four years during the course of construction.

Mr. Clark indicated that the Environmental Assessment, which was approved by the Minister, found at tab 6 of the Document Brief, substantiated that Highway 7 was the preferred alignment for the Rapid Transit System. Once approval was received the design and engineering of this Rapid Transit Corridor began.

Mr. Clark also indicated that the Highway 7 Rapid Transit Corridor found support in the Growth Plan for the Greater Golden Horseshoe and backed up this statement with references from the Growth Plan.

Mr. Clark confirmed that Highway 7 Rapid Transit Corridor also found support in the Region's Transportation Master Plan, found at Tab 8 of the Document Brief and the York Region 2010 Official Plan. The York Region 2010 Official Plan outlines the regional structure and provides development direction on city building in regional centres and corridors linked by rapid transit.

Mr. Clark then went on to describe in great detail what actually is intended to be built at the corner of 97 Creditstone with the aid of Exhibit 8 a picture of the planned structure of the intended platform and Exhibit 9, a plan and profile for construction of Exhibit 8, which is basically a widened street with three lanes of traffic going east bound, three lanes going west bound, a west turn lane going south and an east turn lane going north and a station platform on either side of the intersection. The platform will be 155m long; will have a protected waiting area for passengers and a planting zone. There is also a dedicated bicycle lane.

Mr. Clark then went on to discuss and explain the lands that were expropriated in 2011 on Plan YR1694848, Exhibit 10. The Regional Municipality of York expropriated a permanent easement and temporary easement in August of 2011. He then explained why the construction did not start immediately in 2011. The reason being, Metrolinks, who provide the funding for this project, requested a reconfiguration of the plan so the project became much bigger than initially intended.

Another factor that bears on the timing on this project, as Mr. Clark explained, was that this project had to be aligned with the Spadina Subway project from a timing standpoint. As the Spadina subway is to come up through York Region and meet with Highway 7.

Mr. Clark then moved on to explain exactly why this extra taking of land is necessary. With the revised configuration of the plan requested by Metrolinks, the station was sitting right on top of 750mm 2.5ft diameter pressured water main. Exhibit 11 is a map showing the 750mm water main.

Three solutions to this problem were discussed. One was to relocate the water main, this would be extremely expensive and difficult as the water service would have to be turned off and this

would create many challenges. The second was to build over the water main, but this was not feasible as if any damage was to happen to the water main, how would it be repaired?

The only viable solution was that the project would have to be shifted about 3m southwards, the consequence of this being an impact on the subject property.

So what resulted as Mr. Clark explained, the alignment was shifted to get away from the risks associated with building over the water main. Everything remained the same as the original design only that the whole thing has shifted and an additional expropriation was requested.

In summation Mr. Foran told the Inquiry the proposed expropriation is clearly in the public interest and is amply supported by the Region's Planning, Environmental and Transportation Policies and the Province of Ontario, Places to Grow which all demonstrate the region needs to achieve a balanced transportation system by implementing a Rapid Transit System.

Mr. Foran confirmed that the fee simple lands allow for construction of the Highway 7 Right of Way and the temporary easement allows for the region to match grade of the owner's parking lot to the grade of the right of way for construction purposes.

Mr. Foran confirmed Mr. Clark's evidence with respect to the design requirements at Highway 7 and Creditstone and the difficulties that arose with respect to the location of the 750mm water main at Highway 7 at Creditstone.

Mr. Foran submitted that there is no issue as to whether the proposed expropriation is Fair Sound and Reasonably Necessary.

Nidhi Punyarthi, on behalf of the land owner, did not call any evidence but raised a number of questions with Mr. Clark regarding the taking of the land and if it was Fair, Sound and Reasonably Necessary.

Ms. Punyarthi asked Mr. Clark if it was the norm at the construction of other stations on Highway 7 to take additional land.

Mr. Clark advised that it was not the norm but that due to the location of the water main, the plan had to be shifted and the water main was the one and only reason for the proposed taking of additional land. This was the first instance where it was found that adjustments were needed.

Ms. Punyarthi inquired if there was any documentation to support the geotech analysis of the location of the water main, but I agreed with Mr. Foran that this was not an Examination for Discovery and the region had produced the documents that it intended to rely upon.

Ms. Punyarthi then questioned Mr. Clark on the delay in construction since 2011 and Mr. Clark described in detail how the Region had to comply with Metrolink's request to increase the size of the project as they were the sole and only source of funding, which meant reconfiguring the entire plan.

Ms. Punyarthi asked was there is someone in the Region in charge of setting construction schedules for these stations.

Mr. Clark advised that the contractor has the flexibility with the schedules along as he meets the money requirements and the final end date. He can plan what work he does first. The Region does not dictate to the contractor how he does his job.

Mr. Clark also advise Mr. Punyarthi that the Region anticipated this project to finish in October 2016 and explained that the Transit Rapid System had to coincide with the TTC expansion and this in an important factor of the Rapid Transit System- that there is no discontinuation of the passenger's journey.

In response to Ms. Punyarthi's indication that the Highway 7 access to the subject property would be blocked, Mr. Clark confirmed that no entrance to the property would be blocked but that some parking spots on the north side of the property would have minor impact for the period of the temporary easement.

Ms. Punyarthi suggested that the proposed expropriation was not a first option but it had to be done due to the location of the water main. Mr. Clark agreed.

Ms. Punyarthi asked the reason for taking the property at the south west side. Mr. Clark advised that this was the contractor's decision and as said before, the Region does not dictate to the contractor how to do his job.

In summary Ms. Punyarthi stated that the Document Brief lacked documents to support the decision to move the project south to avoid the water main and there was only verbal testimony to support this decision and that a comparable was not given as to how work was done at similar locations along Highway 7.

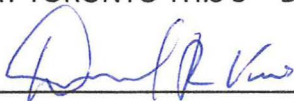
Ms. Punyarthi also suggested that the contractor who made the decision in regards to the taking of the property at the southwest side as opposed to the north west side or the north east side should have given evidence as this decision impacts her client and for these reasons she submitted that the Region did not meet the test that the taking of lands is Fair Sound and Reasonably Necessary.

Alternatively Ms. Punyarthi submitted that there was a deficiency in evidence and it could be remedied by the region and that they have the opportunity to revisit whether the region met the test.

I am satisfied by the evidence provided by the Regional Municipality of York that the intention of moving the existing traffic pattern to the south is the only logical thing to do with regards to the discovery of the exact location of the water main passing through the area which posed a dangerous obstacle and as this project is in the interest of the public, the taking herein is Fair, Sound and Reasonably Necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED AT TORONTO THIS 3RD DAY OF APRIL, 2014

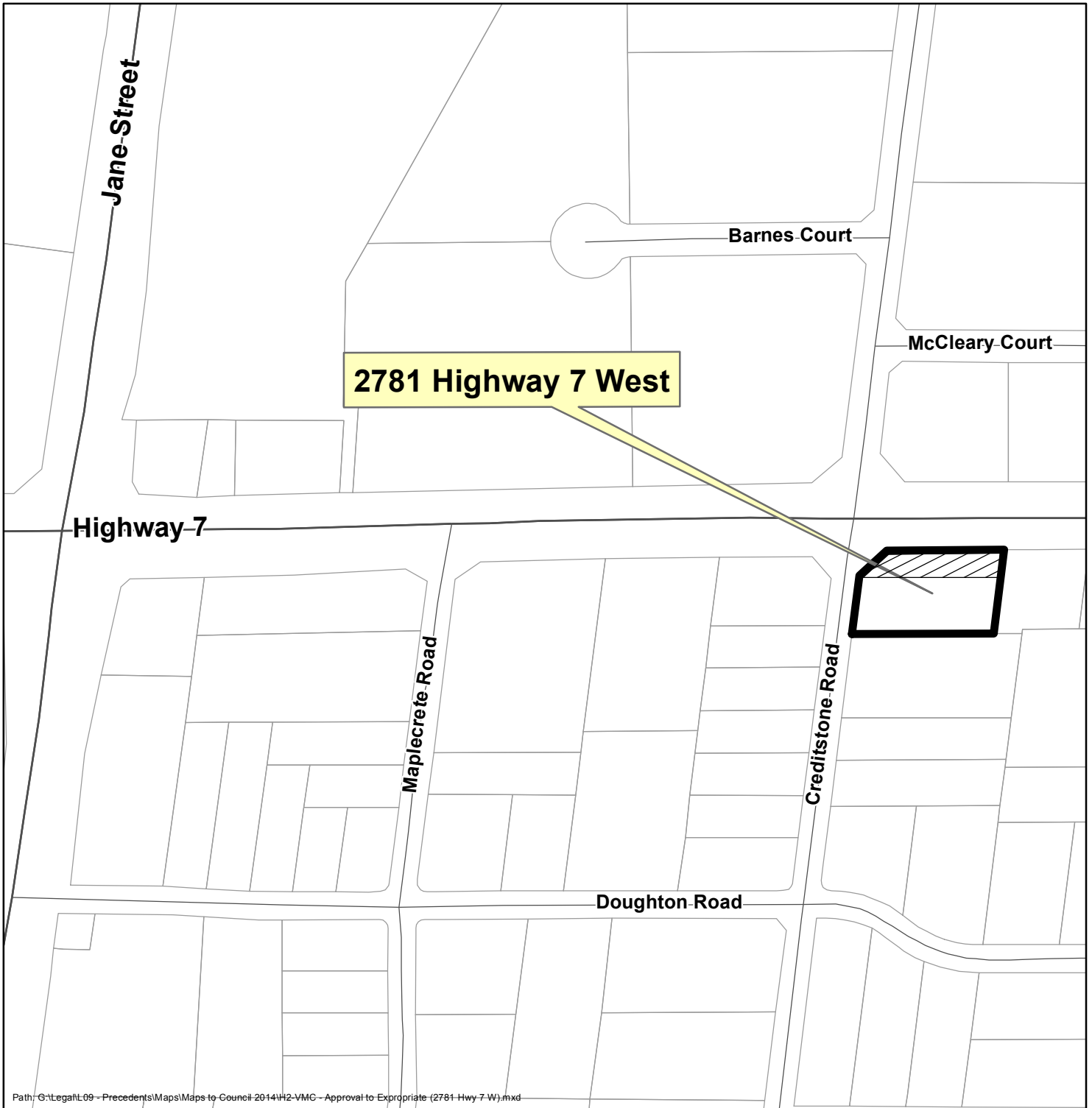


David R. Vine Q.C.

Inquiry Officer

LIST OF EXHIBITS

- Exhibit 1: Affidavit of Service of Notice of Application for Approval to Expropriate Lands
- Exhibit 2: Notice of Grounds
- Exhibit 3: Document Brief
- Exhibit 4: Plan 65R-34483 (Plan of Survey of Part of Lot 9 Registered Plan 7977 blown up)
- Exhibit 5: York Region Transit Network Plan, projected to 2031
- Exhibit 6: Ontario Places to Grow –Growth Plan for the Greater Golden Horseshoe 2006
- Exhibit 7: Arial Photo-York Region Base Map (Larger scale top map)
- Exhibit 8: Picture of planned structure of platform with covered waiting area for passengers
- Exhibit 9: Plan and profile for construction of Exhibit 8 at Creditstone and Highway 7 intersection
- Exhibit 10: Plan YR1694842 (Plan identical to the subject location)
- Exhibit 11: Map showing location of 750mm water main



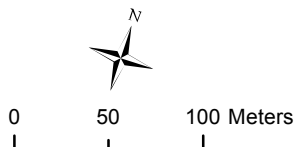
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LOCATION PLAN






Approval to Expropriate
 Widening and Construction of Bus Rapid Transit Corridor
 Highway 7 West (H2-VMC) vivaNext Project 90991
 City of Vaughan



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 Corporate Services Department
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Legend

-  Interest Required
-  Subject Property
-  Parcel
-  Road
-  Railway