

Clause No. 16 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.

16
APPLICATION FOR APPROVAL TO EXPROPRIATE
WIDENING AND CONSTRUCTION OF BUS RAPID TRANSIT CORRIDOR
161 DAVIS DRIVE (D1) VIVANEXT PROJECT 90991
TOWN OF NEWMARKET

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 authorize an application for approval to expropriate the leasehold interests of the following land within the Town of Newmarket:

No.	Owner/Lessee	Municipal Address (YRRTC Reference)	Legal Description	Interest Required
1	1377041 Ont. Inc O/A Hot Spot Auto Parts	161 Davis Drive (R015) Unit #1	Part of Lot 96, Concession 1, East Side of Yonge Street, East Gwillimbury, Parts 1 & 4 on Plan 65R-14304	Lease
2	Mr. Van Lone Mai	161 Davis Drive (R015) Unit #2	Part of Lot 96, Concession 1, East Side of Yonge Street, East Gwillimbury, Parts 1 & 4 on Plan 65R-14304	Lease

No.	Owner/Lessee	Municipal Address (YRRTC Reference)	Legal Description	Interest Required
3	2153611 Ontario Ltd. O/A Cash Shop 29	161 Davis Drive (R015) Unit #5	Part of Lot 96, Concession 1, East Side of Yonge Street, East Gwillimbury, Parts 1 & 4 on Plan 65R-14304	Lease
4	2232672 Ontario Inc.	161 Davis Drive (R015) Unit #6	Part of Lot 96, Concession 1, East Side of Yonge Street, East Gwillimbury, Parts 1 & 4 on Plan 65R-14304	Lease
5	2092811 Ontario Ltd.	161 Davis Drive (R015) Unit #7	Part of Lot 96, Concession 1, East Side of Yonge Street, East Gwillimbury, Parts 1 & 4 on Plan 65R-14304	Lease
6	AAA All Star Driving School Ltd.	161 Davis Drive (R015) Unit #10	Part of Lot 96, Concession 1, East Side of Yonge Street, East Gwillimbury, Parts 1 & 4 on Plan 65R-14304	Lease

2. The Commissioner of Corporate Services be authorized to execute the Application for Approval to Expropriate the Leasehold Interests, and the Notice of Application for Approval to Expropriate the Leasehold Interests (the “Notice”), and to serve and publish the Notice, as required under the *Expropriations Act* (the “Act”).
3. The Commissioner of Corporate Services be authorized to forward to the Chief Inquiry Officer any requests for an inquiry that are received, and to represent the Region, as necessary, at an inquiry held under the *Act*.
4. Council authorize the introduction of the necessary bylaws to give effect to these recommendations.

2. PURPOSE

This report seeks Council approval for an application to expropriate property interests required for road and intersection improvements, in order to provide designated lanes for the vivaNext transit system, along the Davis Drive corridor, located at 161 Davis Drive, Newmarket (*Attachment 1*).

Under the *Act*, Council, as approving authority must approve an application prior to the initiation of any proceedings.

3. BACKGROUND

The Region is undertaking improvements to the road infrastructure and the construction of dedicated lanes for vivaNext buses

To facilitate bus rapid transit along critical portions of the Highway 7, Yonge Street and Davis Drive corridors, the Region, via York Region Rapid Transit Corporation (YRRTC), is undertaking improvements to the road infrastructure and the construction of dedicated lanes for Viva buses, along with enhanced streetscaping and boulevards. The project as a whole is referred to as vivaNext.

Construction associated with vivaNext is ongoing on Davis Drive in Newmarket, and Highway 7 east of Yonge Street in Markham. The property in question for this report is located in the Davis Drive corridor at 161 Davis Drive. In order to implement the Rapidway on this corridor, road widenings will be required that will result in a significant property impact to 161 Davis Drive.

The Region amicably purchased 161 Davis Drive tenant occupied

On February 20, 2014, Council approved the amicable purchase of 161 Davis Drive. The property was purchased by the Region, and the closing date was March 12, 2014. A business case was prepared for the purchase of 161 Davis Drive, which concluded the most cost effective method to completing the vivaNext road widening was to demolish the building.

The tenants currently use their leasehold interests for various purposes

The subject property is an improved two level, ten unit retail plaza, comprising a gross leasable area of approximately 6,900 square feet on the main level and 3,800 square feet on the lower level, plus an enclosed parking garage. Currently, six of the ten units are individually occupied by commercial tenants, with the remaining units vacant. The tenants currently have the following businesses located at the subject property: Hot Spot Auto Parts, Al Forno Pizza, Cash Shop, Top Choice Flooring, Happy Dayz, and All Star Driving School.

The term of the leasehold interests and right to renew vary by lessee

The original terms of all the leases for the subject property included the right to renew. Some tenants have already exercised their right, one tenant missed the deadline and three lessees still have the right to renew for an additional two to five years. The current leases

expire between July 31, 2014 and May 31, 2018. If the right to renew the leases is exercised the term of the lease could expire as late as May 31, 2023.

4. ANALYSIS AND OPTIONS

Negotiations are currently underway to amicably relocate the lessee(s)

Negotiations to amicably relocate the six current lessees at 161 Davis Drive commenced January 28, 2014. Copies of the lease agreements have been provided to the Region, with all the lessees being identified as having rights under the Expropriations Act. Based on the project timelines the property would need to be vacated by September 2014, to avoid delays to corridor construction and additional construction costs. Five of the six leasehold interests extend well past the YRRTC schedule for vacant possession. To meet the construction schedule staff will continue to negotiate with the current lessees for the required interests.

Negotiations with the lessees may exceed the YRRTC construction schedule

Staff are currently in negotiations with five of the six lessees, who in most instances prefer to be relocated and are receptive to amicable relocation and compensation settlements. The owner of the sixth leasehold interest, All Star Driving School has been out of the country since negotiations began with the other tenants and staff will follow up once they return in June. The lessees all have valid commercial leases, with tenant eviction not being an option to the Region, and possible time delays exceeding the construction schedule may be encountered due to the on-going negotiations.

Two amicable agreements are pending

Negotiations with the tenants are currently on going with two amicable agreements pending. Al Forno Pizza, Unit #2, has signed an agreement to vacate the dwelling by July 1, 2014, and the Cash Shop, Unit #5, has agreed to a settlement, without prejudice, and to vacate by June 1, 2014.

Initiating expropriation proceedings will ensure the construction schedule will not be compromised

It is anticipated that negotiations will be successfully concluded on the majority of the interests required. However, given the time requirements to obtain possession via expropriation, it is recommended the expropriation process proceed, concurrently, with ongoing negotiations. This will ensure that YRRTC can effectively obtain access to the lands to accommodate the construction schedule. Timely possession of the required lands will reduce the risk of significant escalation costs associated with development along these corridors.

The first step in the expropriation process requires Council, as approving authority, to authorize an application for approval to expropriate. Subsequently, notice may be served on the lessees of the subject lands. Receipt of this notice will trigger a lessee's right to request a Hearing of Necessity. There is also a statutory obligation to publish the notice.

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 approved 2014 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 both the Region and the Town of Newmarket. 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

This report seeks Council approval to expropriate the leasehold interests, from the lessees located at 161 Davis Drive, in order to facilitate the construction of dedicated bus lanes, related facilities, road and intersection improvements. To ensure the project is not delayed, it is necessary to initiate the expropriation process to secure access to the lands in time for construction to commence. Staff will continue to negotiate for the acquisition of the leasehold interests and expropriation proceedings will be abandoned in cases where negotiations are successful.

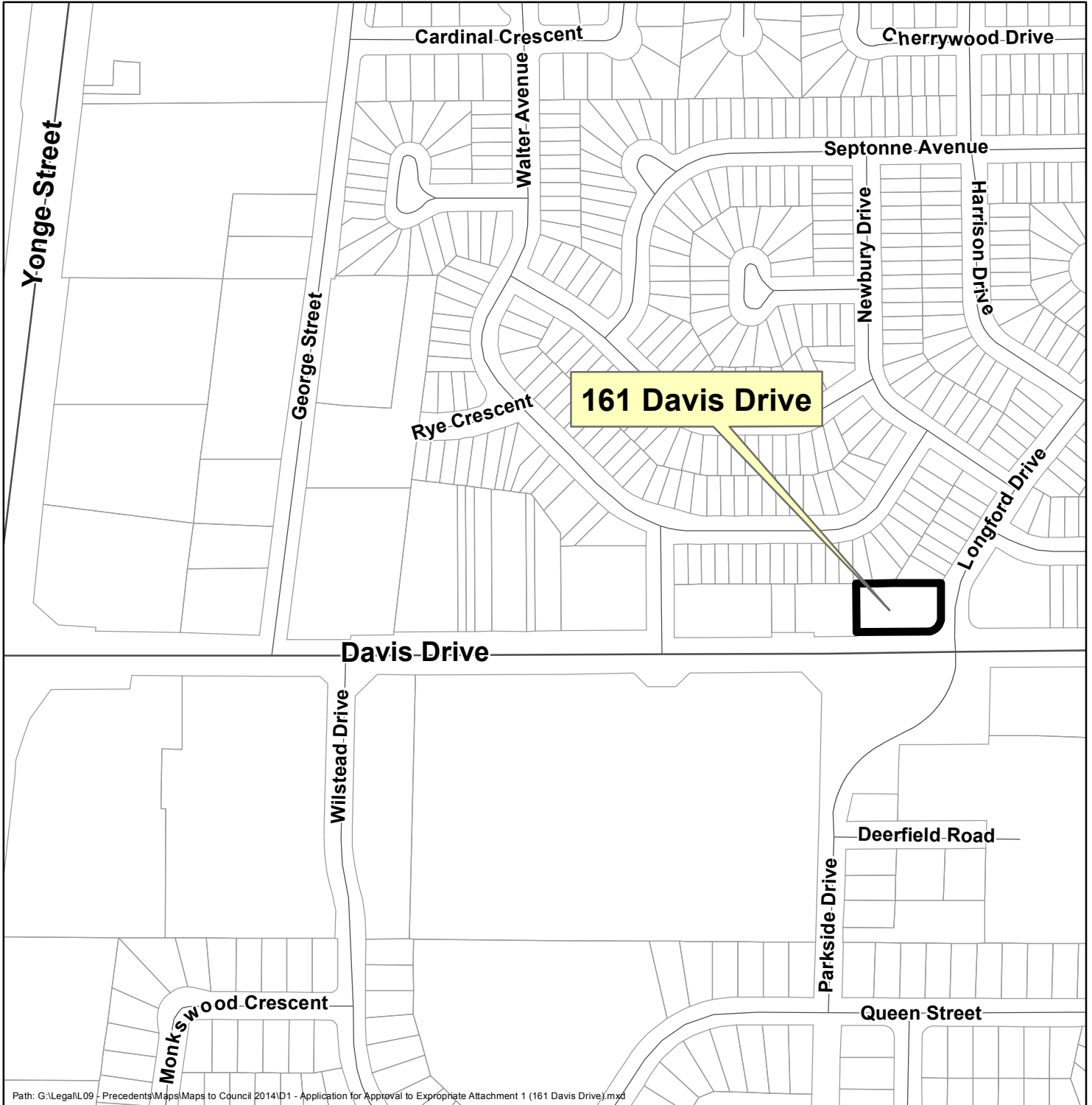
For more information on this report, please contact René Masad, Director, Property Services Branch at Ext. 71684.

Clause No. 16, Report No. 10
Committee of the Whole
May 8, 2014

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The Senior Management Group has reviewed this report.

Attachment (1)



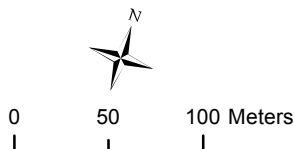
Path: G:\Legal\L09 - Precedents\Maps\Maps to Council 2014\D1 - Application for Approval to Expropriate Attachment 1 (161 Davis Drive).mxd

LOCATION PLAN





Application for Approval to Expropriate
 Widening and Construction of Bus Rapid Transit Corridor
 161 Davis Drive (D1) vivaNext Project 90991
 Town of Newmarket



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Legend

-  Subject Property
-  Road
-  Parcel
-  Railway