

To: York Region Rapid Transit Corporation Board of Directors
From: Mary-Frances Turner, President
Subject: Expropriation of Lands for VivaNext

Recommendation

It is recommended that:

1. The Board receive this report for information.

Purpose

The purpose of this report is to:

- Inform the Board that offers will be made to property owners along Davis Drive under Section 25 of the *Expropriations Act* subject to confirmation of available funding.

Background

The expropriation is well underway

- On January 22, 2009 Regional Council authorized staff to commence the process of expropriating lands for the rapid transit project along Davis Drive and Highway 7.
- Plans of Expropriation for subject lands have been deposited with the Registry Office over 2009 summer months into September.

- A report of the Commissioner of Corporate Services to Transportation Services Committee on October 7, 2009 will seek authority for the Commissioner to make Section 25 Offers.

Analysis

Authority to allow the Commissioner of Corporate Services to enter into Section 25 Offers under the Expropriations Act is being sought

- *Expropriations Act* requires the Region, as expropriating authority, to serve a Section 25 Offer within 3 months of registration of the Plan of Expropriation.
- Region must serve (a) an offer of an amount in full compensation of the registered owner's interest and (b) offer the registered owner immediate payment of 100% of the amount of the market value of the owner's land as estimated by the Region and the payment and receipt of that sum is without prejudice to the rights conferred by the Act in respect of the determination of compensation. In the case of subparagraph (b) the Region must base its offer of compensation on a report appraising the market value of the lands being taken and damages for injurious affection.
- Once accepted by the owner, the Region is legally obligated to make immediate payment of 100% of the Section 25 Offer.

YRRTC will be able to access Metrolinx Memorandum of Agreement funding upon the Commissioner serving Offers

- Metrolinx has agreed to advance funding for these land transactions provided that such advances received by YRRTC are segregated in a special account of YRRTC and only used by YRRTC for the purposes of these acquisitions.
- Therefore, YRRTC will seek funding from Metrolinx as soon as the Commissioner of Corporate Services serves the Section 25 Offers.

Finance

Funding for the property has been secured in the Metrolinx Memorandum of Agreement

- The MOA with Metrolinx will provide funding for land takings, aggregating approximately 193 properties and \$80,000,000 in cost.

Conclusion

- Authorizing the Commissioner of Corporate Services to serve Section 25 Offers will expedite the expropriation process and enable YRRTC to access Provincial funding for these property transactions under the MOA with Metrolinx.

For more information on this report, please contact, Janis Vanderburgh, Senior Counsel, York Region Rapid Transit Corporation at 905-886-6767, Ext. 1045.

Mary-Frances Turner
President

Date signed

Attachment(s) 1

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THE REGIONAL MUNICIPALITY OF YORK

Transportation Services Committee
October 7, 2009
Report of the
Commissioner of Corporate Services

EXPROPRIATION OF LANDS FOR VIVANEXT

1. RECOMMENDATIONS

It is recommended that:

1. The Commissioner of Corporate Services be authorized to serve Section 25 offers under the *Expropriations Act*, R.S.O. 1990, Chapter E.26, in respect of the lands for or in connection with road and intersection improvements along certain corridors in respect of the VivaNext rapid transit project, and as more particularly described herein, subject to confirmation from the Chief Finance and Strategy Officer/Treasurer, York Region Rapid Transit Corporation, of available funding.
2. The Commissioner of Corporate Services be authorized to disburse funds to the owners upon their acceptance of Section 25 offer whether in respect of market value or in respect of full compensation, upon receipt of documentation satisfactory to Legal Services.
3. The Commissioner of Corporate Services be authorized to execute, on behalf of the Regional Corporation, the aforesaid offers, and any ancillary and supporting documents to give effect thereto, subject to the prior review of Legal Services.
4. The Commissioner of Corporate Services report back to Regional Council after finalizing these offers and in any event no later than April 2010.

2. PURPOSE

The purpose of this report is to seek Regional Council's approval for the Commissioner of Corporate Services to serve Section 25 offers under the *Expropriations Act* subject to confirmation of available funding.

3. BACKGROUND

On January 22, 2009 Regional Council authorized staff to commence the process of expropriating lands for the VivaNext rapid transit project

On January 22, 2009, Regional Council authorized the commencement of the process to expropriate certain land and interests in lands (Clause 1 of Report 3 of the Rapid Transit Public/Private Partnership Steering Committee and Clause 1 of Report 2 of the Rapid Transit Public/Private Partnership Steering Committee, respectively), in connection with road and intersection improvements along Davis Drive between Yonge Street and Southlake Regional Health Centre, in the Town of Newmarket (collectively, the “Davis Drive Lands”), and along Highway 7 between Yonge Street and through Markham Centre to Kennedy Road, in the Towns of Richmond Hill and Markham (collectively, the “Highway 7 Lands”). Such lands pertain to the construction of bus rapid transitways under the Region’s VivaNext rapid transit project. In aggregate the subject lands to be acquired represent approximately 193 properties.

Upon serving the Notices of Application for Approval to Expropriate Land on the registered owners, hearings were held before an Inquiry Officer

Upon serving the Notices of Application for Approval to Expropriate Land, some of the registered owners requested a hearing of necessity pursuant to the *Expropriations Act* before an Inquiry Officer. On June 25, 2009, Regional Council, having considered the reports of the Inquiry Officer, authorized the expropriations of the lands, as more particularly described in By-law Nos. 2009-33 and 2009-34 attached, dated June 25, 2009. (*Attachments 1 and 2*)

Plans of Expropriation for subject lands have been deposited with the Registry Office

Upon Regional Council’s authorization to proceed with the expropriations of the Davis Drive Lands and the Highway 7 Lands, the Commissioner of Corporate Services was authorized to, and has proceeded to have registered, the plans of expropriation for the subject Lands.

The Region and YRRTC entered into a Memorandum of Agreement with Metrolinx to access a portion of \$1.4 billion funding commitment from the Province for VivaNext

The Region and YRRTC have entered into a Memorandum of Agreement (the “MOA”) with Metrolinx to fund certain interim projects for VivaNext. The majority of the \$82 million funding being flowed under the MOA pertains to the acquisition and/or expropriation of the Davis Drive Lands and the Highway 7 Lands. Such monies represent only a portion of the \$1.4 billion funding commitment from the Province of Ontario for VivaNext, the balance of which monies will be the subject matter of a Performance Agreement currently being negotiated by the parties.

4. ANALYSIS AND OPTIONS

Expropriations Act requires the Region to serve a Section 25 Offer within 3 months of the registration of the Plan of Expropriation

The *Expropriations Act* requires that within 3 months of the registration of the plan of expropriation, the expropriating authority, namely the Region, serve upon the registered owner of the land which is being expropriated: (a) an offer of an amount in full compensation of the registered owner's interest and (b) offer the registered owner immediate payment of 100% of the amount of the market value of the owner's land as estimated by the Region and the payment and receipt of that sum is without prejudice to the rights conferred by the Act in respect of the determination of compensation. In the case of subparagraph (a) the Region must base its offer of compensation upon a report appraising the market value of the lands being taken and damages for injurious affection.

Region is obligated to offer immediate payment of 100% of market value

YRRTC has advised Metrolinx that the Region is legally obliged to offer immediate payment of 100% of the amount of the market value of the owner's land upon serving the owner with the Section 25 offer.

YRRTC must access the Provincial funding under the MOA for land acquisitions upon the Commissioner serving Offers

Under the terms of the MOA, Metrolinx has agreed to advance funding for these land transactions prior to the closing of the transaction provided that such advances received by YRRTC are segregated in a special account of YRRTC and only used by YRRTC for the purposes of such acquisition. Accordingly, YRRTC will seek funding from Metrolinx as soon as the Commissioner of Corporate Services serves offers pursuant to Section 25 of the *Expropriations Act*. Since these land transactions are specifically contemplated as interim projects under the MOA, they must occur expeditiously in order to immediately access this funding. The term of the MOA expires on December 31, 2009 or upon the execution of the Performance Agreement, if executed prior to December 31st.

This report is on the Rapid Transit Board agenda

This report will be tabled at the York Region Rapid Transit Corporation Board meeting on October 8, 2009 as an information item (see *Attachment 3*).

5. FINANCIAL IMPLICATIONS

The recommendations set out in this report will provide the vehicle to permit YRRTC to access the funding for the land acquisitions for VivaNext upon the serving of Section 25 offers to the land owners of the subject properties.

6. LOCAL MUNICIPAL IMPACT

These land acquisitions are necessary to construct segments of VivaNext on Davis Drive and Highway 7.

7. CONCLUSION

If empowered, the Commissioner of Corporate Services will be able to move expeditiously in securing the lands needed for the VivaNext rapidways.

The President of York Region Rapid Transit Corporation concurs with the recommendations set forth in this Report.

For more information on this report, please contact Janis Vanderburgh, Senior Counsel, York Region Rapid Transit Corporation, at Ext.1045.

The Senior Management Group has reviewed this report.

Recommended by:

Approved for Submission:

Jim Davidson
Commissioner of Corporate Services

Bruce Macgregor
Chief Administrative Officer

September 16, 2009

Attachment(s) 3

Report Wizard v.9 July 21, 2009
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