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EXPROPRIATION OF LANDS FOR VIVANEXT

The Transportation Services Committee recommends the adoption of the recommendations contained in the following report dated September 16, 2009, from the Commissioner of Corporate Services.

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.

(The three attachments referred to in this clause were included in the agenda for the October 7, 2009 Committee meeting).

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 34

BY-LAW NO. 2009-33

To acquire certain lands for or in connection with
road and intersection improvements on Davis Drive, Town of Newmarket

WHEREAS the Council of The Regional Municipality of York on January 22, 2009, by its adoption of Clause 1 of Report 3 of the Rapid Transit Public/Private Partnership Steering Committee approved of the expropriation of the lands and interests in lands therein referred to for or in connection with road and intersection improvements along Davis Drive between Yonge Street and Southlake Regional Health Centre, in the Town of Newmarket; and

WHEREAS Notice of Application for Approval to Expropriate Land has been served upon the registered owners of the lands and interests in lands and has been published pursuant to the provisions of the *Expropriations Act*, R.S.O. 1990, Chapter E.26 (the "Act"); and

WHEREAS certain registered owners have given notification in writing of a desire for a hearing and such hearing has been held by an Inquiry Officer, pursuant to the provisions of the Act; and

WHEREAS the Council on June 25, 2009, considered the report of the Inquiry Officer and by its adoption of Clause 1 of Report 2 of the Regional Solicitor approved the expropriation of the hereinafter described lands and interests in lands.

Now, therefore, the Council of The Regional Municipality of York HEREBY ENACTS as follows:

1. The expropriation of the lands and interests in lands referred to in section 2 is hereby approved and the Regional Chair and Regional Clerk are authorized to execute any required documents in accordance with the Act.

2. The lands and interests in lands, more particularly described in Schedule “A” attached, are hereby expropriated and taken for or in connection with implementing road and intersection improvements along Davis Drive between Yonge Street and Southlake Regional Health Centre and to provide designated lanes for the Viva transit system and works ancillary thereto, and for the reasons set out in Schedule “B” attached.

3. Where approval is granted pursuant to this by-law to expropriate a temporary easement in lands described in Schedule “A”, the interest in lands to be expropriated shall be as follows:

A three year temporary easement and/or right in the nature of a three year temporary easement in, over, along and upon the lands described herein for the municipal purpose of entering on the lands with all vehicles, machinery, workmen and other material to provide for hard and soft landscaping, grading and re-shaping the lands to the limit of the reconstruction of Davis Drive and works ancillary thereto.

4. Where approval is granted pursuant to this by-law to expropriate a permanent easement in lands described in Schedule “A”, save and except with respect to those lands referenced as Nos. 85, 85A, 85B and 85C, the interest in lands to be expropriated shall be as follows:

A permanent easement and/or right in the nature of a permanent easement in, over, along and upon the lands described herein for the municipal purpose of entering on the lands with all vehicles, machinery, workmen and other material to construct and maintain retaining walls and works ancillary thereto.

5. Where approval is granted pursuant to this by-law to expropriate a permanent easement in those lands referenced as Nos. 85, 85A, 85B and 85C and described in Schedule “A”, the interest in lands to be expropriated shall be as follows:

A permanent easement and/or right in the nature of a permanent easement in, over, along and upon the lands described herein for the municipal purpose of entering on the lands with all vehicles, machinery, workmen and other material to construct and maintain retaining walls, stormwater management facilities including drainage ditching, concrete culverts and other drainage systems and works ancillary thereto.

6. (1) The Regional Chair and Regional Clerk are hereby authorized and directed to sign a plan or plans showing the lands and interests in lands expropriated.

(2) When so signed, the Regional Commissioner of Corporate Services is directed to cause the said plan or plans to be registered in the proper Land Registry Office and to pay all expenses incidental to the registration.

7. Schedules “A” and “B” attached shall form part of this by-law.

ENACTED AND PASSED this 25th day of June, 2009.

Denis Kelly
Regional Clerk

Bill Fisch
Regional Chair

Authorized by Clause 1 of Report 3 of the Rapid Transit Public/Private Partnership Steering Committee, adopted by Regional Council at its meeting on January 22, 2009.

Authorized by Clause 1 of Report 2 of the Regional Solicitor, adopted by Regional Council at its meeting on June 25, 2009.

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THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 35

BY-LAW NO. 2009-34

To acquire certain lands for or in connection with
road and intersection improvements on Highway 7,
Towns of Richmond Hill and Markham

WHEREAS the Council of The Regional Municipality of York on January 22, 2009, by its adoption of Clause 1 of Report 2 of the Rapid Transit Public/Private Partnership Steering Committee approved of the expropriation of the lands and interests in lands therein referred to for or in connection with road and intersection improvements along Highway 7 between Yonge Street and through Markham Centre to Kennedy Road, in the Towns of Richmond Hill and Markham; and

WHEREAS Notice of Application for Approval to Expropriate Land has been served upon the registered owners of the lands and interests in lands and has been published pursuant to the provisions of the *Expropriations Act*, R.S.O. 1990, Chapter E.26 (the "Act"); and

WHEREAS certain registered owners have given notification in writing of a desire for a hearing and such hearing has been held by an Inquiry Officer, pursuant to the provisions of the Act; and

WHEREAS the Council on June 25, 2009, considered the report of the Inquiry Officer and by its adoption of Clause 1 of Report 1 of the Regional Solicitor approved the expropriation of the hereinafter described lands and interests in lands.

Now, therefore, the Council of The Regional Municipality of York HEREBY ENACTS as follows:

1. The expropriation of the lands and interests in lands referred to in section 2 is hereby approved and the Regional Chair and Regional Clerk are authorized to execute any required documents in accordance with the Act.

2. The lands and interests in lands, more particularly described in Schedule “A” attached, are hereby expropriated and taken for or in connection with implementing road and intersection improvements along Highway 7 between Yonge Street and through Markham Centre to Kennedy Road and to provide designated lanes for the Viva transit system and works ancillary thereto, and for the reasons set out in Schedule “B” attached.

3. Where approval is granted pursuant to this by-law to expropriate a temporary easement in lands described in Schedule “A”, the interest in lands to be expropriated shall be as follows:

A three year temporary easement and/or right in the nature of a three year temporary easement in, over, along and upon the lands described herein for the municipal purpose of entering on the lands with all vehicles, machinery, workmen and other material to provide for hard and soft landscaping, grading and re-shaping the lands to the limit of the reconstruction of Highway 7 and works ancillary thereto.

4. Where approval is granted pursuant to this by-law to expropriate a permanent easement in lands described in Schedule “A”, the interest in lands to be expropriated shall be as follows:

A permanent easement and/or right in the nature of a permanent easement in, over, along and upon the lands described herein for the municipal purpose of entering on the lands with all vehicles, machinery, workmen and other material to construct and maintain retaining walls and works ancillary thereto.

5. (1) The Regional Chair and Regional Clerk are hereby authorized and directed to sign a plan or plans showing the lands and interests in lands expropriated.

(2) When so signed, the Regional Commissioner of Corporate Services is directed to cause the said plan or plans to be registered in the proper Land Registry Office and to pay all expenses incidental to the registration.

6. Schedules “A” and “B” attached shall form part of this by-law.

ENACTED AND PASSED this 25th day of June, 2009.

Denis Kelly
Regional Clerk

Bill Fisch
Regional Chair

Authorized by Clause 1 of Report 2 of the Rapid Transit Public/Private Partnership Steering Committee, adopted by Regional Council at its meeting on January 22, 2009.

Authorized by Clause 1 of Report 1 of the Regional Solicitor, adopted by Regional Council at its meeting on June 25, 2009.

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DRAFT

Meeting of the Board of Directors
on October 8, 2009



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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