

Clause 11 in Report No. 5 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on March 24, 2016.

11
Approval to Expropriate
9770 Highway 27
City of Vaughan

Committee of the Whole recommends adoption of the following recommendations contained in the report dated January 25, 2016 from the Commissioner of Corporate Services:

1. Council receive and consider the Inquiry Officer’s report from the Hearing of Necessity, which found the taking of the land to be fair, sound and reasonably necessary.
2. Council, as approving authority, approve the expropriation of the following lands, for the widening and reconstruction of Major Mackenzie Drive, in the City of Vaughan.

No.	Owner	Municipal Address	Legal Description	Interest Required
1.	1264564 Ontario Ltd.	9770 Highway 27 Vaughan	Part 9, Plan 65R35529	Fee Simple
			Part 10, Plan 65R35529	Temporary Easement
<p>The temporary easement will commence on May 1, 2016 and expire on December 31, 2020, and are 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 right of way, (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) landscaping, paving, grading and reshaping the lands to the limit of the reconstruction, (7) the installation and removal of temporary infrastructure related to the construction, and (8) works ancillary to any of the foregoing.</p>				

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.

Report dated January 25, 2016 from the Commissioner of Corporate Services now follows:

1. Recommendations

It is recommended that:

1. Council receive and consider the Inquiry Officer's report from the Hearing of Necessity, which found the taking of the land to be fair, sound and reasonably necessary.
2. Council, as approving authority, approve the expropriation of the following lands, for the widening and reconstruction of Major Mackenzie Drive, in the City of Vaughan.

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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 as required by the *Act*, consider the Inquiry Officer's report that concludes that the taking of the lands is fair, sound and reasonably necessary for the widening and reconstruction of Major Mackenzie Drive, from approximately five hundred metres west of the Canadian Pacific Railway crossing to Islington Avenue, in the City of Vaughan.

This report also seeks Council approval, in accordance with the *Act*, to expropriate portions of land from the subject property.

3. Background

Major Mackenzie Drive is being widened between the CPR Crossing and Islington Avenue in Vaughan

The Region is undertaking improvements to Major Mackenzie Drive from approximately five hundred metres west of the CPR crossing to Islington Avenue, in the City of Vaughan to widen the road from two to six lanes. This includes the extension of Major Mackenzie Drive westerly from the south intersection on Highway 27 to the existing alignment of Major Mackenzie Drive east of the CPR crossing. The project includes a bridge across the Humber River and a grade separation at the CPR crossing. Major Mackenzie Drive will tie into the planned extension of Highway 427.

Council authorized the initiation of the expropriation process for the Major Mackenzie Drive project in May 2015

In May 2015, Council authorized an Application for Approval to Expropriate interests from eight property owners. Following the Council approval, the Notice of Application for Approval to Expropriate was served on the eight owners. Each owner had 30 days from the date the owner was served the Notice of Application for Approval to Expropriate Land to request an inquiry (Hearing of Necessity) as to whether the taking of the lands by the Region is fair, sound and reasonably necessary. The Region received a request for a Hearing of Necessity from the owner of the property that is the subject of this report.

The subject lands are located at the intersection of Highway 27 and Major Mackenzie Drive, as shown on the map in Attachment 1.

Of the seven remaining properties, staff is negotiating the acquisition of one property. Expropriation plans have been registered for the remaining six properties.

A Hearing of Necessity was held to determine if the taking of the land is fair, sound and reasonably necessary for the 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 project. The Hearing was held on January 8, 2016.

The *Act* requires that Council consider the Inquiry Officer's report, decide how to proceed, and serve its decision within 90 days

The *Act* provides that Council, after considering the report, can decide to approve or not approve the proposed expropriation, or approve it with modifications. Council must serve written reasons for its decision on all parties to the Hearing of Necessity, including the Inquiry Officer, within 90 days of receipt of the Inquiry Officer's report by the Region.

4. Analysis and Options

Approval to expropriate is recommended based on the Inquiry Officer's Report

The Inquiry Officer's report, provided in Attachment 2, was submitted to legal counsel for both the Region and the owner on January 22, 2016. The Inquiry Officer's report set 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*. Evidence provided during the Hearing confirmed that following the Region's discussions with the owner, the size of the original taking was reduced by shifting the retaining wall to further reduce property requirements.

Based on the property owner's acknowledgement of the need for the takings and the evidence provided by both parties, the Inquiry Officer concluded that the taking of land at 9770 Highway 27, in the City of Vaughan, is fair, sound and reasonably necessary. The Inquiry Officer was satisfied that the Region considered many alternatives during the environmental assessment and the selected plan to maintain the existing centre line west of Highway 27, kept property requirements and environmental impacts to a minimum.

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.

Approval to expropriate will allow the Region to secure ownership of the lands

The approval to serve the owner with a notice of application for approval to expropriate was the first of three steps involving authorization by Council in the expropriation process. The second step in the process is the purpose of this report, which seeks the approval from Council to obtain ownership of the lands through the registration of an expropriation plan.

The approval to make an offer of compensation to the owner is the third step in the Council approval process. The Region can take possession a minimum of three months after serving the notice of possession, but only after the statutory offer of compensation has been made.

The three steps in the expropriation approval process are illustrated in the graphic below.



Notice of the expropriation will be served upon the owner in accordance with the *Act*

Expropriation plans will be registered upon receiving Council approval of the recommendations of this report. The Region will acquire title to the land when the expropriation plan is registered at the Land Registry Office. The owner will then be served with notices of expropriation and possession of the lands. However, in accordance with the *Act*, it is necessary to make an offer of compensation prior to securing possession of the land. The offer of compensation will be the subject of a forthcoming report to Council.

Environmental due diligence has been undertaken

The environmental due diligence reports for this property have been reviewed by staff in consultation with Legal Services. No issues were identified, and no further action is warranted with regard to the environmental condition of the lands.

Link to key Council-approved plans

The proposed acquisition for the Major Mackenzie Drive project supports the objectives of Vision 2051, the Regional Official Plan and the 2015 to 2019 Strategic Plan.

One of the goal areas of Vision 2051 is Interconnected Systems for Mobility, which the project addresses by contributing to a transportation network that links people to jobs. As well, the Major Mackenzie project supports one of the objectives of the Regional Official Plan, which is to ensure streets support all modes of transportation. Lastly, a strategic objective identified in the Strategic Plan is the focus on networks and systems that connect people, goods and services.

5. Financial Implications

The funding required to complete the property acquisitions has been included in the 2016 Capital Budget for Transportation Services, Capital Delivery – Roads.

6. Local Municipal Impact

The widening and reconstruction of Major Mackenzie Drive, from approximately 500 metres west of the CPR crossing to Islington Avenue will provide upgraded capacity to improve traffic operations for the travelling public and will support the accommodation of the forecasted growth within this area, as established by “Places to Grow” and reflected in the York Region Official Plan.

7. Conclusion

The Region commenced the expropriation process for partial land takings from eight property owners in order to facilitate the widening of a portion Major Mackenzie Drive from approximately five hundred metres west of the CPR crossing to Islington Avenue. Upon receipt of the Notice of Application for Approval to Expropriate, the owner of the property that is the subject of this

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report requested a Hearing of Necessity to determine if the proposed taking was fair, sound and reasonably necessary. The Hearing of Necessity was held on January 8, 2016. The Inquiry Officer in a report submitted on January 22, 2016 to legal counsel for both the Region and the owner, concluded that the taking of land at 9770 Highway 27, in the City of Vaughan, is fair, sound and reasonably necessary.

The *Act* requires Council, as approving authority, to consider the Inquiry Officer's report and determine whether to proceed with the expropriation. Based on the findings stated in the Inquiry Officer's report, staff recommends that Council approve the expropriation of the lands.

For more information on this report, please contact Michael Shatil, Director, Property Services Branch at ext. 71684.

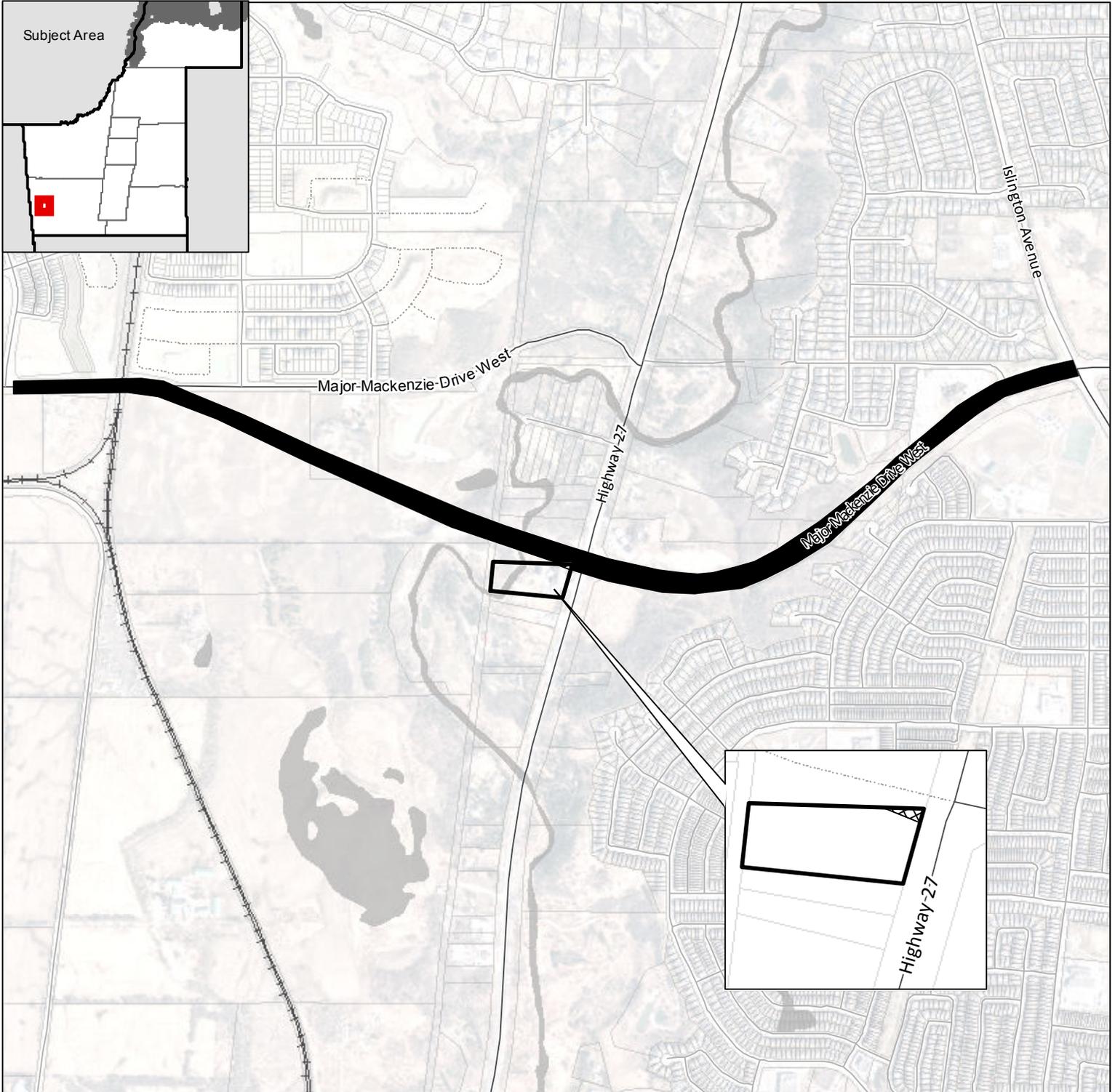
The Senior Management Group has reviewed this report.

January 25, 2016

Attachments (2)

eDOCS #6602678

Accessible formats or communication supports are available upon request



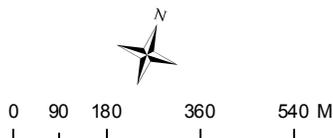
LOCATION PLAN

Approval to Expropriate
 9770 Highway 27
 City of Vaughan

Produced by:
 The Regional Municipality of York
 Property Services, Corporate Services
 January 2016

Data Sources:
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See York.ca for disclaimer information.



Legend

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

EXPROPRIATIONS ACT, R.S.O. 1990 Ch. E.26

IN THE MATTER OF an application by The Regional Municipality of York for approval to expropriate in fee simple the lands described as Part of Lot 19, Concession 8, designated as Part 9 on reference plan 65R-35529, and a temporary easement of the lands described as Part of Lot 19, Concession 8, designated as Part 10 on reference plan 65R-35529 for the purposes of the widening and reconstruction of Major Mackenzie Drive West from Islington Avenue to approximately five hundred metres west of the Canadian Pacific Railway Crossing.

Date of Hearing: January 8th, 2016

Appearances:

Regional Municipality of York

Paul Scargall

Vanessa Bacher

1264564 Ontario Ltd.

Nidhi Punyarthi

THE OBJECTIVE:

The Region's overall objective is to improve road connectivity and safety, accommodate growth and improve its transportation network. This all part and parcel of the Transportation Master Plan (TMP) and its 2009 update, which is supportive of the Official Plan. The Official Plan anticipates population and employment growth in Western Vaughan. "Discontinuous roads, including a significant jog in Major Mackenzie Drive (MMD) at Highway 27,contribute to future operation challenges of the transportation system in Western Vaughan" (pg.E-3 Tab 12, Exhibit 1).

The region undertook the western Vaughan transportation Improvements IEA process all of which was approved by the Minister on February 13, 2006. The Executive Summary is contained in Tab 12, Exhibit 1. Alternatives to the overall undertaking were screened considering the impacts on Natural and Socio-Environmental factors. Focusing on alternative methods for carrying out the undertaking 4 alignments were considered. They all appear to be west of the Humber River. Since the centre line of the east leg of the MMD is to be continued west of Highway 27, it is only west of the Humber river that the alternatives are possible.

THE PROJECT:

The specific part of the overall Regional objective, the subject of the hearing request, is the elimination of the Major Mackenzie jog at its intersection with Highway 27. Currently the east and west intersections of MMD with Highway 27 are about a half kilometre apart. The proposal is to extend the east leg of MMD (the most southerly part) straight across Highway 27, and then after the new bridge crossing of the Humber river to proceed northerly to connect with the existing west leg of MMD.

THE LANDS:

The majority of the lands which will contain the new alignment west of Highway 27 are those of the Toronto Region Conservation Authority lands all as set in the Reference Plan 65R35529 Tab 3A, Exhibit 1. The lands in the ownership of 1264564 Ontario Ltd., are located at the south west corner of the proposed intersection, and are shown as Parts 9 & 10 on the aforementioned Reference Plan. Those lands are occupied by the Kleinberg Inn, parking and necessary support for that facility. Part 9, an area of 385 sq. ft. is a fee simple taking and it will in part contain a new retaining wall and the fill necessary to support the elevated portion of the road. Part 10 is a temporary taking necessary to support the construction of the road. It will be returned in its present state. Otherwise the lands at the improved intersection on the west side are either in the ownership of the Conservation authority or already part of the Highway 27 right of way.

THE REGION'S EVIDENCE

The evidence was given by Armin Naderi of Aecom who has been Project Manager of the MMD roadwork design since 2015. In addition to outlining the foregoing, he described more of the details of the proposed alignment and construction. The roadway will be 6 lanes in a 36 m. right of way with the recommended lane widths of 3 ½ m. for through lanes and 3 m. for turning lanes. There will also be a pedestrian and a bike lane. Maintaining the same centre line west of highway 27 reduces property acquisition requirements and thereby property as well as environmental impacts.

All of the alternative alignments west of Highway 27 require the same takings from the subject requestor.

After discussions with the property owner, the area of the initial taking was reduced by moving the proposed retaining wall further north of its original location. The retaining wall is necessary since the intersection elevation is to be raised as shown on the Humber River Bridge Section contained in Tab 9 of Exhibit 1. The intersection is to be elevated since the bridge is to be elevated all to obtain the required hydraulic clearance. The bridge platform is to be thinner for the same reason all of which is to accommodate the 100 year storm potential. Any water runoff from the bridge or the elevated roadway is to be accommodated in the proposed drainage system.

THE REQUESTOR'S EVIDENCE

Dino Giuliani outlined the history of the Kleinberg Inn and their 42 year ownership. He presented copies of minutes of a meeting with Aecon in 2012 as well as a page of two photos showing the flooding impacts of Hurricane Hazel on properties at the Intersection of Islington Ave. and Highway 7.

After **acknowledging the necessity of the takings**, he outlined his concerns neither of which are related to the property takings, but to the overall intersection project.

The initial concern was a discrepancy between the takings outlined at the hearing, and a document his mother received early on in the process, which he suggested outlined a smaller area than currently proposed. None of the individuals present, nor the Region's witness could clarify. Mr. Naderi reiterated his knowledge which outlined that the areas of taking had been reduced from the original proposal with the movement of the retaining wall.

Mr. Giuliani had previously asked questions which he felt had not been properly answered with respect to the potential one in a 100yr. storm (Hazel) impacts (public safety) with the new Humber River bridge adjacent to the Inn property. In response Mr. Naderi had no knowledge with respect to the previous questions, but that stated that the public safety element had been considered in the design of the bridge and its elevation all to provide for the necessary hydraulic clearance. He also pointed out that the most serious impacts would be upstream of the bridge while the Inn is downstream.

FINDINGS AND CONCLUSION

Based on the evidence of Mr. Naderi and the acknowledgment of necessity and the nature of the concerns outlined by the requestor, I am of the opinion that the takings are fair, sound and reasonably necessary in the objectives of the Region.

Dated at Toronto

January 12, 2016

D.S. Colbourne

Hearing Officer

APPENDIX A

Witnesses:

For York Region:

Armin Naderi – Project Manager - Aecom

For 1264564 Ontario Ltd.

Dino Giuliani

Exhibits:

1. Region's Document Brief
2. E.A. excerpts - Appendix 5c
3. Meeting Minutes Aecom October 10 2012
4. Hurricane Hazel - Islington Ave./Highway 7