

Clause No. 24 in Report No. 12 of the Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on June 26, 2014.

**24**  
**APPROVAL TO EXPROPRIATE**  
**WIDENING AND CONSTRUCTION OF BUS RAPID TRANSIT CORRIDOR**  
**DAVIS DRIVE (D1) VIVANEXT PROJECT 90991**  
**TOWN OF NEWMARKET**

**Committee of the Whole recommends adoption of the recommendations contained in the following report dated June 4, 2014 from the Commissioner of Corporate Services:**

**1. RECOMMENDATIONS**

It is recommended that:

1. Council, as approving authority, approve the expropriation of the following leasehold interests for the construction of the bus rapid transit corridor, on Davis Drive, within the Town of Newmarket:

<b>No.</b>	<b>Owner/Lessee</b>	<b>Municipal Address (YRRTC Reference)</b>	<b>Legal Description</b>	<b>Interest Required</b>
1	1377041 Ont. Inc O/A Hotspot 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	Leasehold Interests
2	Mr Van Long 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	Leasehold Interests
3	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	Leasehold Interests

No.	Owner/Lessee	Municipal Address (YRRTC Reference)	Legal Description	Interest Required
4	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	Leasehold Interests
5	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	Leasehold Interests

2. The Commissioner of Corporate Services be authorized to execute and serve any notices required under the *Expropriations Act* (the “Act”).
3. Council authorize the introduction of the necessary bylaw to give effect to these recommendations.

## 2. PURPOSE

This report seeks Council approval to expropriate the property leasehold interests required for the widening and reconstruction of 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*).

## 3. BACKGROUND

### **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, tenant occupied, and took possession March 12, 2014. A business case was prepared for the purchase of 161 Davis Drive, which concluded the most cost effective method to complete the 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 of 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, five 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: Hotspot Auto Parts, Al Forno Pizza, Top Choice Flooring, Happy Dayz, and AAA 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 two 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 leases could expire as late as May 31, 2023.

### **In May 2014, Council authorized an application for approval to expropriate lands required for the Davis Drive project**

On May 15, 2014, Council authorized an application for approval to expropriate the property leasehold interests of a total of six lessees, one unit has since been vacated. The Notice of Application for Approval to Expropriate was served to the registered owner and published as required under the *Act*, following Council authorization.

Upon publishing the Notice of Application to Expropriate, any non-registered owners, who desire a Hearing of Necessity as to whether the taking of the lands by the Region is fair, sound and reasonable, has thirty days after the first publication of the notice to notify the approving authority in writing. Neither the registered owner, who was served notice, nor any non-registered owners, including the lessees, requested a Hearing of Necessity.

Staff will continue negotiations to secure amicable settlements of the leasehold interests of the remaining five lessees. It is necessary to complete expropriation of the remaining property leasehold interests in order to secure access to 161 Davis Drive in time for construction to commence.

## **4. ANALYSIS AND OPTIONS**

### **Negotiations are currently underway to amicably relocate the remaining lessees**

Negotiations to amicably relocate the remaining five 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, as well as, additional construction costs. Some of the remaining leases extend 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 remaining lessees may exceed the YRRTC construction schedule**

Staff are currently in negotiations with the remaining lessees, who are receptive to amicable relocation and compensation settlements. Time delays exceeding the construction schedule may be encountered due to the on-going negotiations. The lessees have valid commercial leases with tenant eviction not being an option to the Region.

### **Three of the five remaining tenants are expected to vacate before the YRRTC September demolish schedule**

Amicable negotiations with two of the five remaining tenants has been successful with Al Forno Pizza, Unit #2, expected to vacate by July 1, 2014, and with Top Choice Flooring, Unit #6, expected to vacate by August 1, 2014. The lessee located at Unit #1, Hotspot Auto Parts, did not renew their lease and is expected to vacate by July 31, 2014.

### **Registration of an expropriation plan will secure the property leasehold interests required and ensure that construction can proceed**

It is anticipated that negotiations will be successfully concluded on the majority of the property 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.

Under the *Act*, registration of an expropriation plan vests the property leasehold interests to the expropriating authority. Subject to the Region taking certain procedural steps, the Region will obtain possession of the property leasehold interests required approximately three months after the registration of the plan of expropriation.

### **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 acquisition 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 registered owner within three months of registration of the expropriation plan. The appraisal required to support this offer will be prepared and the proposed offer will be the subject of a further report to Council. Any lessee with a remaining term on their lease, following expropriation, will have a right to claim disturbance damages and business loss.

## **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.

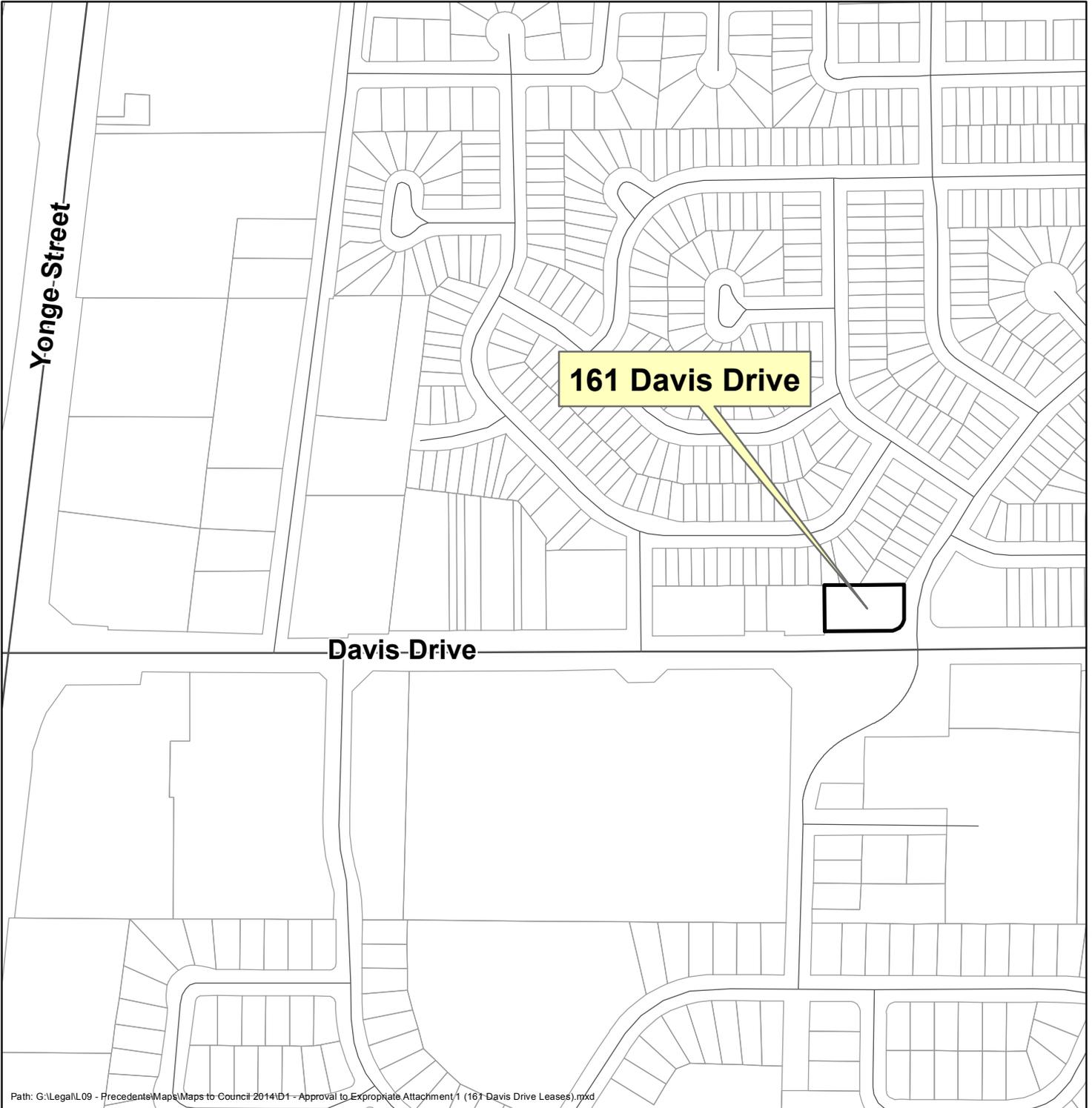
## **7. CONCLUSION**

The widening and construction of Davis Drive, between Yonge Street and Alexander Road, requires the acquisition of the leasehold interests at 161 Davis Drive. In order to ensure timely possession of the lands to commence construction, it is recommended that Council approve the expropriation of the balance 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.

*Attachment (1)*



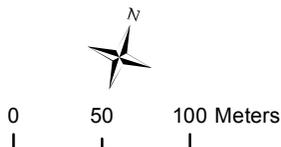
Path: G:\Legal\I09 - Precedents\Maps\Maps to Council 2014\D1 - Approval to Expropriate Attachment 1 (161 Davis Drive Leases).mxd

### LOCATION PLAN

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



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### Legend

-  Subject Property
-  Parcel
-  Road
-  Railway