

Clause 22 in Report No. 7 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on April 19, 2018.

22

Expropriation of Land
1 Henderson Drive
Town of Aurora

Committee of the Whole recommends adoption of the following recommendations contained in the report dated March 28, 2018 from the Commissioner of Corporate Services:

1. Council authorize an application for approval to expropriate a permanent easement in the following land, for the construction and installation of a new storm sewer outlet between Yonge Street and Poplar Crescent, in the Town of Aurora.

No.	Owner	Municipal Address	Legal Description	Interest Required
1.	Topostar (Aurora) Inc.	1 Henderson Drive Aurora	Parts 1, 2, 3, 4, 5 Plan 65R-37685	Permanent Easement
The permanent easement required is described as a limited interest in perpetuity in, under, over, along and upon and for municipal purposes including, but not limited to, entering on the lands with all vehicles, machinery, workmen and other material (i) to construct and maintain permanent municipal infrastructure which may include installation, maintenance, relocation, of retaining walls, shoring and formwork and/or drainage, erosion or sediment control measures such as storm sewers, and (ii) for construction purposes which include, but are not limited to, (1) relocation of existing services and utilities, (2) staging and storage of materials and equipment, (3) geotech testing, borehole testing, and other investigative works, (4) removal, relocation and/or installation of signage, (5) hard and soft landscaping, paving, grading and reshaping the lands to the limit of the reconstruction of municipal road fronting the lands herein described, (6) the installation and removal of temporary (i) pedestrian access and walkways, (ii) parking measures including re-striping of aisles, lanes, and parking stalls, (iii) shoring and formwork, (iv) drainage and erosion/sediment control measures, (v) traffic signals, (vi) fencing, and (vii) handrails, and (7) works ancillary to any of the foregoing and necessary to the works to be performed in association with the purpose of implementing the				

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construction and installation of a new outlet storm sewer between Yonge Street and Poplar Crescent in Aurora.

2. The Commissioner of Corporate Services be authorized to execute the Application for Approval to Expropriate Land and the Notice of Application for Approval to Expropriate Land (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 (Hearing of Necessity) held under the *Act*.
4. Council, as approving authority, approve the expropriation of the land provided there is no Hearing of Necessity requested in accordance with the *Act*. Council approval is deemed to be given effective 31 days following the publication of the Notice and when a Hearing of Necessity is not requested in accordance with the *Act*.
5. Where approval to expropriate the land is given, the Commissioner of Corporate Services be authorized to register a plan of expropriation and execute and serve any notices required under the *Act*.
6. Where approval to expropriate the land is given, Council authorize the introduction of the necessary bylaw to give effect to these recommendations.

Report dated March 28, 2018 from the Commissioner of Corporate Services now follows:

1. Recommendations

It is recommended that:

7. Council authorize an application for approval to expropriate a permanent easement in the following land, for the construction and installation of a new storm sewer outlet between Yonge Street and Poplar Crescent, in the Town of Aurora.

No.	Owner	Municipal Address	Legal Description	Interest Required
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No.	Owner	Municipal Address	Legal Description	Interest Required
8.	Topostar (Aurora) Inc.	1 Henderson Drive Aurora	Parts 1, 2, 3, 4, 5 Plan 65R-37685	Permanent Easement
The permanent easement required is described as a limited interest in perpetuity in, under, over, along and upon and for municipal purposes including, but not limited to, entering on the lands with all vehicles, machinery, workmen and other material (i) to construct and maintain permanent municipal infrastructure which may include installation, maintenance, relocation, of retaining walls, shoring and formwork and/or drainage, erosion or sediment control measures such as storm sewers, and (ii) for construction purposes which include, but are not limited to, (1) relocation of existing services and utilities, (2) staging and storage of materials and equipment, (3) geotech testing, borehole testing, and other investigative works, (4) removal, relocation and/or installation of signage, (5) hard and soft landscaping, paving, grading and reshaping the lands to the limit of the reconstruction of municipal road fronting the lands herein described, (6) the installation and removal of temporary (i) pedestrian access and walkways, (ii) parking measures including re-striping of aisles, lanes, and parking stalls, (iii) shoring and formwork, (iv) drainage and erosion/sediment control measures, (v) traffic signals, (vi) fencing, and (vii) handrails, and (7) works ancillary to any of the foregoing and necessary to the works to be performed in association with the purpose of implementing the construction and installation of a new outlet storm sewer between Yonge Street and Poplar Crescent in Aurora.				

9. The Commissioner of Corporate Services be authorized to execute the Application for Approval to Expropriate Land and the Notice of Application for Approval to Expropriate Land (the “Notice”) and to serve and publish the Notice, as required under the *Expropriations Act* (the “Act”).
10. 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 (Hearing of Necessity) held under the *Act*.
11. Council, as approving authority, approve the expropriation of the land provided there is no Hearing of Necessity requested in accordance with the *Act*. Council approval is deemed to be given effective 31 days following the publication of the Notice and when a Hearing of Necessity is not requested in accordance with the *Act*.

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12. Where approval to expropriate the land is given, the Commissioner of Corporate Services be authorized to register a plan of expropriation and execute and serve any notices required under the *Act*.
13. Where approval to expropriate the land is given, Council authorize the introduction of the necessary bylaw to give effect to these recommendations.

2. Purpose

This report seeks Council approval for an application to expropriate a permanent easement on land required for the construction and installation of a new outlet storm sewer between Yonge Street and Poplar Crescent, in the Town of Aurora, as shown on the map in Attachment 1.

This report seeks Council approval to expropriate the interest in the land in the event no Hearing of Necessity is requested, and have not otherwise been acquired by the Region through ongoing negotiations.

3. Background

A new road sub-surface drainage system and outlet storm sewer is required on Yonge Street, north of Industrial Parkway, in Aurora

Over the past 10 years, a section of Yonge Street between Industrial Parkway South to north of the GO Transit Rail Line in Aurora has experienced numerous minor structural deformations within the driving lanes. Minor remedial works were undertaken in 2007. Occasional minor structural deformations in this section of roadway continue to this day.

The Region recently commissioned a study to carry out field investigations, determine the root cause of the problem and recommend a permanent design solution. The study recommended the design and construction of a road sub-surface drainage system overlaid by a concrete pavement, spanning the entire width of road over the full length of study area. The recommended design also includes a new outlet storm sewer to drain local groundwater entering the road sub-surface drainage system.

Construction of the road sub-surface drainage system and outlet storm sewer is scheduled to commence in the fall of 2018. The land that is the subject of this report is located within the limits of the project.

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An outlet storm sewer is proposed to be constructed on land located at 1 Henderson Drive in the Town of Aurora

The new outlet storm sewer will extend from the new road sub-surface drainage system to the existing storm sewer maintenance hole located near the intersection of Henderson Drive and Poplar Crescent. As such, a permanent easement will be required from the property at 1 Henderson Drive. The easement is required to accommodate a section of the new outlet storm sewer. Timely possession of lands is required for construction to start in the fall of 2018.

4. Analysis and Implications

Staff have met the owner's representative several times and will continue to negotiate with the property owner throughout the expropriation process

Land requirements for the construction of this portion of the project will affect one property owner and a number of commercial tenants in this prominent corner commercial plaza. Metro (grocery store) is the key anchor tenant, and the permanent easement is on lands currently used for access and deliveries, at the back of the plaza.

Staff commenced discussions with this property owner in late 2017, and will continue to negotiate the acquisition of the permanent interest property rights needed for construction. In accordance with the Region's land acquisition policy, an independent property appraiser has been engaged to provide an individual market value appraisal to be used during negotiations.

Initiating the expropriation process now will allow access to the land and ensure timely delivery of needed repairs

The preferred approach to obtaining interest in land is to negotiate an amicable transaction with the property owner. However, in many cases various events affect the timing of negotiations, such as owners who prefer to finalize negotiations at the completion of the project. In this regard, expropriation is deemed a necessary approach to ensure possession of property requirements for the needs of the project.

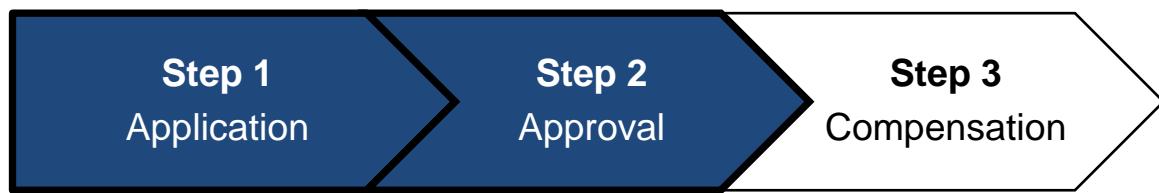
In an effort to secure possession and complete the property acquisition for this project, it is recommended that the expropriation process proceed concurrently with ongoing negotiations.

Council Approval is required at three stages of the expropriation process

Approval by Council is required at three stages in the expropriation process. These include the request to Council to authorize an application for approval to expropriate the land, the expropriation itself, and the offer of compensation made to the former owner of the land for the losses suffered as a consequence of the expropriation.

In an effort to ensure possession of the interest in the land to meet the construction schedule, the first and second steps in the Council approval process have been combined for this report, as indicated in Figure 1 below. The third step will be the subject of a future report to Council, in the event the expropriation proceeds. Possession of the land cannot be obtained until this third step has been completed and the owner is served an offer of compensation.

Figure 1
Council Approval Steps



Owners have the right to request a Hearing of Necessity upon receipt of a Notice of Application for Approval to Expropriate

The first step in the expropriation process is to serve the registered owner with a notice of intention to expropriate, following Council approval. Upon receipt of the Notice of Application for Approval to Expropriate, the owner has the right within 30 days of receipt to request an inquiry (Hearing of Necessity) to determine whether the taking of the land by the Region is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

If an owner requests a Hearing of Necessity, then subsequent to the Hearing, an inquiry officer will provide a report providing an opinion as to whether the taking is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority, including an explanation for the Inquiry Officer's findings.

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Registration of an expropriation plan will secure ownership of the land by the Region

If no Hearing of Necessity is requested, an expropriation plan will be registered at the Land Registry Office within three months of Council granting approval of a by-law to proceed with the expropriation. This is the second step in the expropriation process, with registration of the plan anticipated to be in the summer of 2018.

Registration of the expropriation plan is a key step in the expropriation process. It is at this point that the Region acquires ownership of the interest in the land. However, further steps are required to obtain possession, or the right to access the land.

Following the registration of the expropriation plan, the notice of expropriation and possession will be served on the owner. Under the *Act*, possession of the interest in the land is to take place no sooner than three months after registration of the expropriation plan. In addition, offers of compensation must be served on the owner to obtain possession.

Environmental due diligence will be completed prior to the Region taking ownership of the interest in the land

A Phase One Environmental Site Assessment (ESA) has been completed to assess the potential environmental condition of the lands. Based on the results of the Phase One ESA, a Phase Two ESA will be completed to confirm the presence or absence of environmental impacts identified in the Phase One ESA. Prior to registration of the expropriation plan, the results of the environmental due diligence conducted for the lands will be reviewed by staff, including consultation with Legal Services. In the event environmental impacts are identified, staff will take the necessary steps to minimize the Region's exposure to environmental risk and liability and may report to Council with recommendations.

5. Financial Considerations

The funding required to complete the property acquisition that is the subject of this report is included in the 2018 Capital Budget for Transportation Services, Capital Planning and Delivery.

Under section 25 of the *Act*, the Region is obligated to serve offers of compensation on an owner within three months of the registration of the expropriation plan. The appraisals required to support these offers will be prepared and the proposed offers will be the subject of a further report to Council.

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6. Local Municipal Impact

Once construction is complete, the reconstruction of Yonge Street will minimize the amount of rehabilitation work that needs to be done, and minimize the disruption to traffic flow in the area.

7. Conclusion

Remedial works required on Yonge Street from Henderson Drive south to Industrial Parkway, in the Town of Aurora require the acquisition of a permanent easement interest in land from one property owner.

Negotiations with the property owner to acquire the easement are proceeding concurrently with the expropriation process, in an effort to obtain the interest in the land by fall 2018. It is necessary to initiate the expropriation process now to ensure the timely acquisition of the required land to meet construction timelines.

Staff will continue to negotiate the acquisition of the interest in the required land until an expropriation plan is registered. The expropriation proceedings will be abandoned in the event negotiations are successful.

The expropriation process requires various approvals by Council. Upon approval of the recommendations of this report, staff will notify the affected property owner of the Region's intent to expropriate, and will proceed with the expropriation of the interest in the land if no Hearing of Necessity is requested. The Region will not take possession of the interest in the land until Council approves the offers of compensation to the owner, which will be the subject of a future report.

For more information on this report, please contact Michael Shatil, Director, Property Services Branch at 1-877-464-9675 ext. 71684.

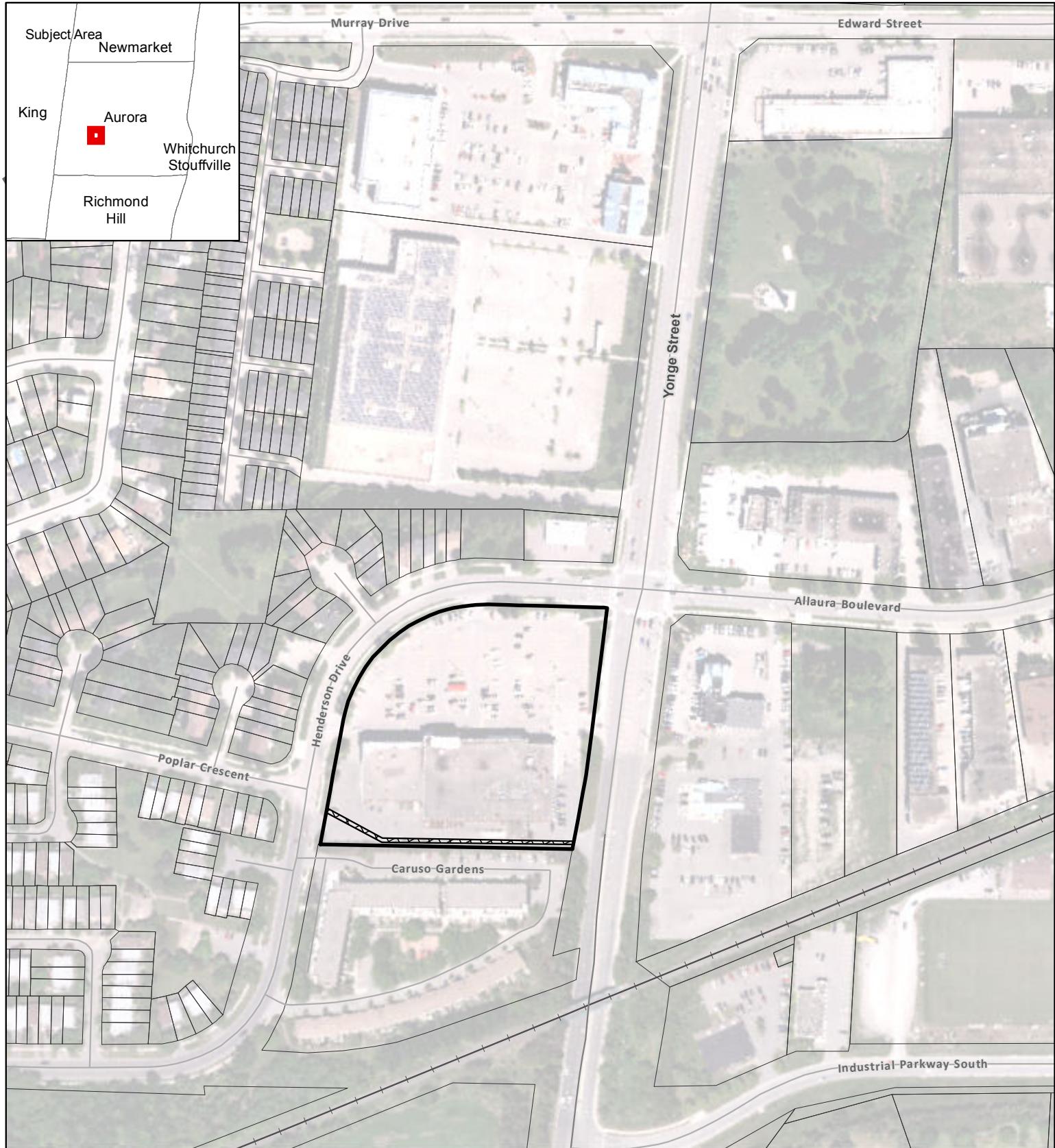
The Senior Management Group has reviewed this report.

March 28, 2018

Attachments (1)

eDOCS# 8296588

Accessible formats or communication supports are available upon request



Location Plan

Expropriation of Land
1 Henderson Drive
Town of Aurora
April 12, 2018



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Property Services, Corporate Services
March 2018

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Legend

- Subject Property
- Interest Required
- Parcel
- Road