

Clause 10 in Report No. 3 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on February 18, 2016.

10  
 Expropriation Settlement  
 Viva Bus Rapid Transit Corridor  
 531 Davis Drive  
 Town of Newmarket

Committee of the Whole recommends adoption of the following recommendations contained in the report dated January 22, 2016 from the Commissioner of Corporate Services:

1. Recommendations

It is recommended that:

1. Council authorize the settlement of the expropriation of the following land required for the construction of the bus rapid transit corridor on Davis Drive, in the Town of Newmarket, on the terms set out in this report.

No.	Owner	Municipal Address	Legal Description	Interest Required
1.	SHI Properties Inc.	531 Davis Drive Newmarket	Parts 1, 2, Plan YR1373077	Fee Simple
			Part 3, Plan YR1373077	Permanent Easement
			Part 4, Plan YR1373077	Temporary Easement
			Part 1, Plan YR1887768	Temporary Easement
A permanent easement or right in the nature of a permanent easement, in, under, over, along and upon the lands described herein for the purpose of entering on the lands with all vehicles, machinery, workmen and other material to construct and maintain retaining walls and works ancillary thereto.				

Expropriation Settlement  
 Viva Bus Rapid Transit Corridor  
 531 Davis Drive  
 Town of Newmarket

No.	Owner	Municipal Address	Legal Description	Interest Required
<p>The temporary easement or rights in the nature of a temporary easement, in, under, over, along and upon the lands for the purpose of entering on the lands with all vehicles, machinery, workmen and other material to provide for hard and soft landscaping, grading and reshaping the lands to the limit of the reconstruction of Davis Drive and works ancillary thereto.</p>				
2.	SHI Properties Inc.	531 Davis Drive Newmarket	Part 1, Plan YR2094678	Temporary Easement
<p>The parts enumerated hereunder refers to land in which an estate, right or interest for a limited time being a temporary easement or rights in the nature of a temporary easement commencing on May 31, 2014 and expiring on October 31, 2015, 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 to provide for hard and soft landscaping, including but not limited to paving, grading and re-shaping the lands to the limit of the reconstruction of Davis Drive, removal, relocation and/or installation of signage, pedestrian access and walkways, parking measures including restriping of aisles, lanes and parking stalls, shoring and formwork, drainage and erosion/sediment control measures, traffic signals, fencing, handrails, geotechnical testing, boreholes testing and other investigated works, construction staging and storage of construction related vehicles, machinery, materials and equipment, and the temporary relocation of existing utilities ancillary and necessary to the works to be performed in association with the purpose of implementing road and intersection improvements along Davis Drive, including associated local roads, and to provide designated lanes for the vivaNext transit system and works ancillary thereto is expropriated by The Regional Municipality of York.</p>				

2. The Commissioner of Corporate Services be authorized to execute the Minutes of Settlement and all necessary documentation to complete the transaction in accordance with the Minutes of Settlement.

2. Purpose

This report seeks Council approval to accept the Minutes of Settlement for land that has been expropriated for the vivaNext Davis Drive project, as shown in Attachment 1.

### 3. Background

The dedicated bus rapid transit lanes for vivaNext along Davis Drive in Newmarket is operational

To facilitate public transit along Davis Drive in Newmarket, the Region, via York Region Rapid Transit Corporation (YRRTC), has substantially completed the construction of dedicated centre lanes for Viva buses and improvements to the road infrastructure. Landscaping features and other minor works will be completed in 2016. The rapidway extends for 2.6 kilometers from Yonge Street to just past the Southlake Regional Health Centre along Davis Drive, and opened to the public in December 2015.

Lands for the Davis Drive project were obtained via expropriation

The Davis Drive rapidway required various interests from 133 property owners. Possession of all lands was obtained via expropriation. Part of the original expropriation included fee simple, permanent easement and temporary easement interests from the subject property located at 531 Davis Drive. The property is a multi-tenant medical (Dixon Medical Centre) office building with paid parking located at the northwest corner of Davis Drive and Bayview Parkway.

In addition to the original expropriation, the Region required extensions to the term of the temporary easement in order to accommodate ongoing construction. The temporary easement was a part of the original expropriation, although extensions to the terms (commencement and termination dates) were required and obtained through expropriation. The area of the easement did not change with any of the expropriations. Only the term was revised.

### 4. Analysis and Options

A full and final settlement was reached at the Board of Negotiations

As part of the expropriation process, the owner was served with offers of compensation in accordance with Section 25 of the *Expropriations Act* (the "Act"). One offer was served for each of the expropriations, including the original expropriation and the two subsequent expropriations of the temporary easement extensions. All offers included options to accept:

Expropriation Settlement  
Viva Bus Rapid Transit Corridor  
531 Davis Drive  
Town of Newmarket

- a) full payment of all compensation including market value and damages, wherein the owner would release the Region from all claims for further compensation, or;
- b) payment for market value of the land, wherein the owner could make a claim for further compensation.

The owner did not accept any of the Region's offers of compensation, so no monies were paid. The owner requested a meeting at the Board of Negotiation (the "Board"), which is a tribunal that operates under the authority of the *Act*. The purpose of the Board is to provide a fair and accessible forum to assist the Region and expropriated parties to negotiate a settlement. The Board does not make a binding decision, but usually provides a recommendation based on the submissions made by the parties. In February 2015, the Region and the owner were able to reach a full and final settlement at a Board meeting.

This settlement included the market value, business loss, disturbance damages and other costs as provided under the *Act*.

Deductions in the settlement include environmental remediation

As part of the Region's due diligence, environmental testing was conducted on the expropriated fee simple and permanent easement lands. The tests concluded that the lands were impacted and required remediation. The Region and the owner agreed that part of the remediation cost be deducted from the market value of the lands. Remediation of the lands has been completed. As part of the settlement of the expropriation claim, the Region will withdraw legal action against the owner for the remediation costs.

A portion of the permanent easement that is no longer required will be transferred back to the owner

The Region expropriated a permanent easement along the frontage of the subject property to construct a retaining wall. As design of the retaining wall was finalized, it was found that the project did not require the entire easement area. As part of the full and final settlement, the owner requested the return of the land that was no longer required by the project.

The Region will complete a survey of the area required for the retaining wall and register a permanent easement on this area only. The Region will then abandon the remainder of the expropriated easement and transfer the lands to the Owner. The owner will release all rights under the *Act* as it relates to the Region's

Expropriation Settlement  
Viva Bus Rapid Transit Corridor  
531 Davis Drive  
Town of Newmarket

abandonment of the surplus expropriated lands and the Owner's right to repurchase these lands.

The Region will not incur additional expenses once the settlement is completed

The negotiated settlement is considered to be in the best interest of the Region, and will avoid continued accruing interest costs to the Region in accordance with the *Act*. Upon completion of this agreement, the Region will not incur any further claims and associated legal and litigation expenses from the owner in relationship to the expropriation.

Link to key Council-approved plans

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

Public transit is enhanced through the Davis Drive project, addressing the Interconnected Systems for Mobility of Vision 2051. As well, one of the objectives of the Regional Official Plan is to provide convenient and accessible transit services which the project will achieve. Lastly, transportation networks help strengthen the Region's Economy, a priority area of the Strategic Plan.

## 5. Financial Implications

The funding to complete this property settlement is included in the 2016 YRRTC Capital Budget. The project is funded by the Province, via the Metrolinx Master Agreement. This settlement is subject to notification to Metrolinx under the terms of the Master Agreement between the Region, YRRTC and Metrolinx.

## 6. Local Municipal Impact

The construction of dedicated bus lanes and related facilities, as well as road and intersection improvements along Davis Drive is critical to the achievement of the vision for this corridor for the Region. Additionally, upon completion this project will improve public transit facilities and enrich the Davis Drive streetscape in Newmarket.

Expropriation Settlement  
Viva Bus Rapid Transit Corridor  
531 Davis Drive  
Town of Newmarket

## 7. Conclusion

The Region expropriated fee simple, permanent and temporary easement interests from the owner of the property located at 531 Davis Drive in Newmarket for the vivaNext project in 2009. The Region has negotiated a full and final settlement with the owner. The proposed settlement will include releases from the owner and a registered easement in favour of the Region to finalize the arrangement.

It is recommended that Council authorize the expropriation settlement described in this report to conclude the land acquisition, settle all claims related to the expropriation of the subject property and come to a full resolution of the Region and owner's interests in the land acquired.

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.

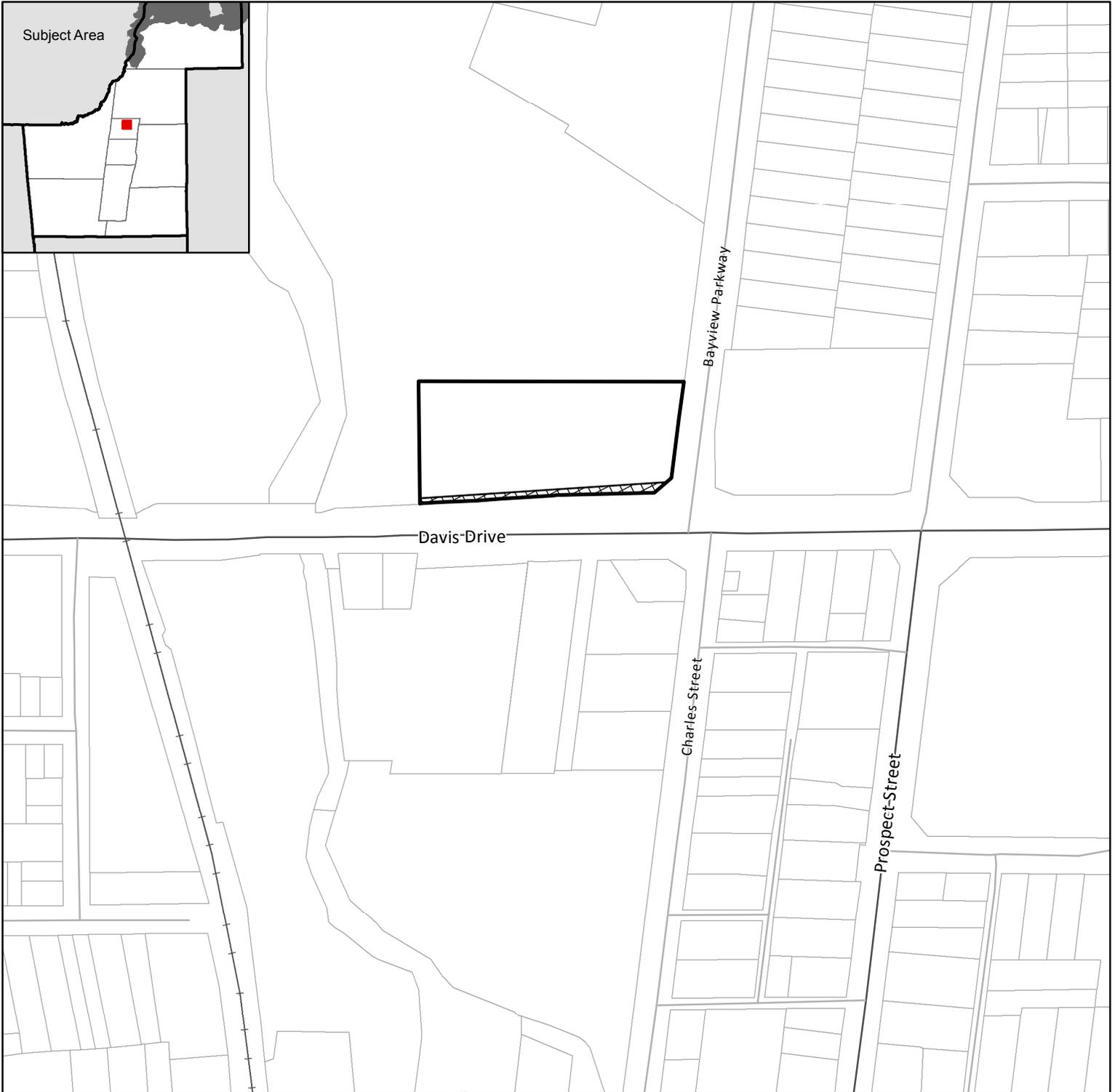
January 22, 2016

Attachments (1)

Private Attachment (1)

6580779

Accessible formats or communication supports are available upon request



**LOCATION PLAN**  
 Expropriation Settlement  
 Viva Bus Rapid Transit Corridor  
 531 Davis Drive, Town of Newmarket

Produced by:  
 The Regional Municipality of York  
 Property Services, Corporate Services  
 November 2015

Data Sources:  
 © Copyright, The Regional Municipalities of Durham and Peel,  
 County of Simcoe, City of Toronto  
 \* © Queen's Printer for Ontario 2003-2015

See York.ca for disclaimer information.



**Legend**

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