

Clause 13 in Report No. 13 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 22, 2016.

13
 Expropriation Settlement
 Viva Bus Rapid Transit Corridor
 8200 Warden Avenue
 City of Markham

Committee of the Whole recommends adoption of the following recommendations contained in the report dated September 2, 2016 from the Commissioner of Finance:

1. Council authorize the settlement of the expropriation and acquisition of the following land required for the construction of the bus rapid transit corridor in the Highway 7 East and Warden Avenue area of the City of Markham, on the terms set out in this report.

| No. | Owner | Municipal Address | Legal Description | Interest Required |
|-----|--------------------|----------------------------|--|--------------------|
| 1. | IBM Canada Limited | 8200 Warden Avenue Markham | Parts 3, 4, Plan 65R31823; Parts 1, 2, Plan 65R34058; and Part 1, Draft Reference Plan dated December 23, 2015 | Fee Simple |
| | | | Parts 1, 2, 5 through 22 inclusive, Plan 65R31823 | Temporary Easement |

The temporary easement is for a period of five years 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 the Highway 7 East and Warden Avenue area and works ancillary thereto.

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.

Report dated September 2, 2016 from the Commissioner of Corporate Services now follows:

1. Recommendations

It is recommended that:

1. Council authorize the settlement of the expropriation and acquisition of the following land required for the construction of the bus rapid transit corridor in the Highway 7 East and Warden Avenue area of the City of Markham, on the terms set out in this report.

| No. | Owner | Municipal Address | Legal Description | Interest Required |
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| 2. | IBM Canada Limited | 8200 Warden Avenue Markham | Parts 3, 4, Plan 65R31823; Parts 1, 2, Plan 65R34058; and Part 1, Draft Reference Plan dated December 23, 2015 | Fee Simple |
| | | | Parts 1, 2, 5 through 22 inclusive, Plan 65R31823 | Temporary Easement |
| <p>The temporary easement is for a period of five years 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 the Highway 7 East and Warden Avenue area and works ancillary thereto.</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.

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2. Purpose

This report seeks Council approval to accept the Minutes of Settlement for the land that has been acquired for the vivaNext Highway 7 East project, as shown in Attachment 1.

3. Background

The dedicated bus rapid transit lanes for vivaNext along the Highway 7 East corridor in Markham is operational

To facilitate public transit along the Highway 7 East corridor in Markham, the Region, via York Region Rapid Transit Corporation (YRRTC), completed the construction of dedicated centre lanes for Viva buses and improvements to the road infrastructure. The entire project is referred to as vivaNext, and the Highway 7 East portion of the rapidway extends for about 7.5 kilometers from Yonge Street to Warden Avenue. A portion of the rapidway runs south and east of Highway 7 East, along South Town Centre Boulevard and Cedarland Drive, to Warden Avenue. This portion of the vivaNext corridor opened to the public in January 2015.

Lands for the Highway 7 East project were obtained by expropriation and negotiated agreements

The Highway 7 East rapidway required various interests from 76 property owners. Twenty-seven properties were acquired by negotiations and 49 by expropriation. Part of the negotiations included fee simple and temporary easement interests from the subject property located at 8200 Warden Avenue.

The original property requirements from the subject property were obtained via a negotiated agreement

The entire 85-acre subject property is improved with a large four-story office complex (IBM Canada) and a single storey daycare facility. The portion of the property affected by the requirements was vacant with trees and landscaping.

The original requirements were acquired in 2010 by way of a negotiated Section 30 Agreement pursuant to the *Expropriations Act* (the "Act"). The Section 30 Agreement allowed the Region to obtain the property without registering an expropriation plan while reserving the owner's right to pursue further

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compensation. A Section 30 agreement is typically used when an owner is willing to negotiate the terms of a property acquisition and replaces a Section 25 offer required in a traditional expropriation.

A significant claim for land value loss was successfully resolved after two years of negotiations

In 2013, the owner made a claim for damages due to diminished access along the subject property's Cedarland Drive frontage, which is a City of Markham-owned public road. To settle this claim, the Region entered into negotiations with the owner and the City of Markham that lasted for over two years. It resulted in a Tri-Party agreement between the Region, the owner and the City of Markham to permit a new intersection along Cedarland Drive when the property is developed. This agreement settled the injurious affection (land value loss) portion of the owner's claim, and that portion of the claim was withdrawn.

Construction access for three additional property requirements were negotiated extensively between 2014 and 2016

In addition to the original 2010 acquisition, several project design changes created additional fee simple and temporary easement extension requirements.

The Region obtained possession of the additional property requirements in time for construction, which required a significant amount of negotiation. The negotiations demanded comprehensive communications between the owner, YRRTC, Realty Services Staff, and internal and external legal teams.

A Full and Final Settlement for market value was negotiated at the Board of Negotiation

Throughout the construction years, the Region and owner continued to negotiate a final compensation agreement for the remaining part of the claim, which was a significant difference in the appraised market value of land. In 2015, 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 2016, the Region and the owner were able to reach a full and final settlement of the remaining market value issue at the Board.

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4. Analysis and Options

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

The negotiated full and final 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 relation to the acquisition.

This full and final settlement includes the market value of land, a Tri-Party Agreement (resolving the injurious affection claim), disturbance damages for trees and landscaping, site plan amendments and other costs as provided under the *Act* with no further liabilities to the Region.

Environmental due diligence is underway on the lands

Environmental due diligence is underway. The results will be reviewed by staff in consultation with Legal Services. In the event contamination or other environmental concerns are identified with respect to the environmental condition of the lands, the Region will take appropriate action to minimize potential exposure to the Region. Any significant issues will be reported back to Council, if necessary.

Link to key Council-approved plans

The proposed acquisition for the Highway 7 East project supports the objectives of Vision 2051, the Regional Official Plan and the 2015 to 2019 Strategic Plan.

Public transit is enhanced through the Highway 7 East 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

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Agreement. This settlement is subject to approval by 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 Highway 7 is critical to achieving the Region's vision for this transit corridor. Additionally, upon completion this project will improve public transit facilities and enrich the Highway 7 East streetscape in Markham.

7. Conclusion

In 2010, the Region, by way of a Section 30 Agreement, acquired fee simple and temporary easement interests from the owner of the property located at 8200 Warden Avenue in Markham for the vivaNext project. The agreement provided the owner with rights to claim for further compensation in accordance with the Act. The Region has negotiated a full and final settlement with the owner.

It is recommended that Council authorize the expropriation settlement described in this report to conclude the land acquisition, settle all claims related to the acquisition 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.

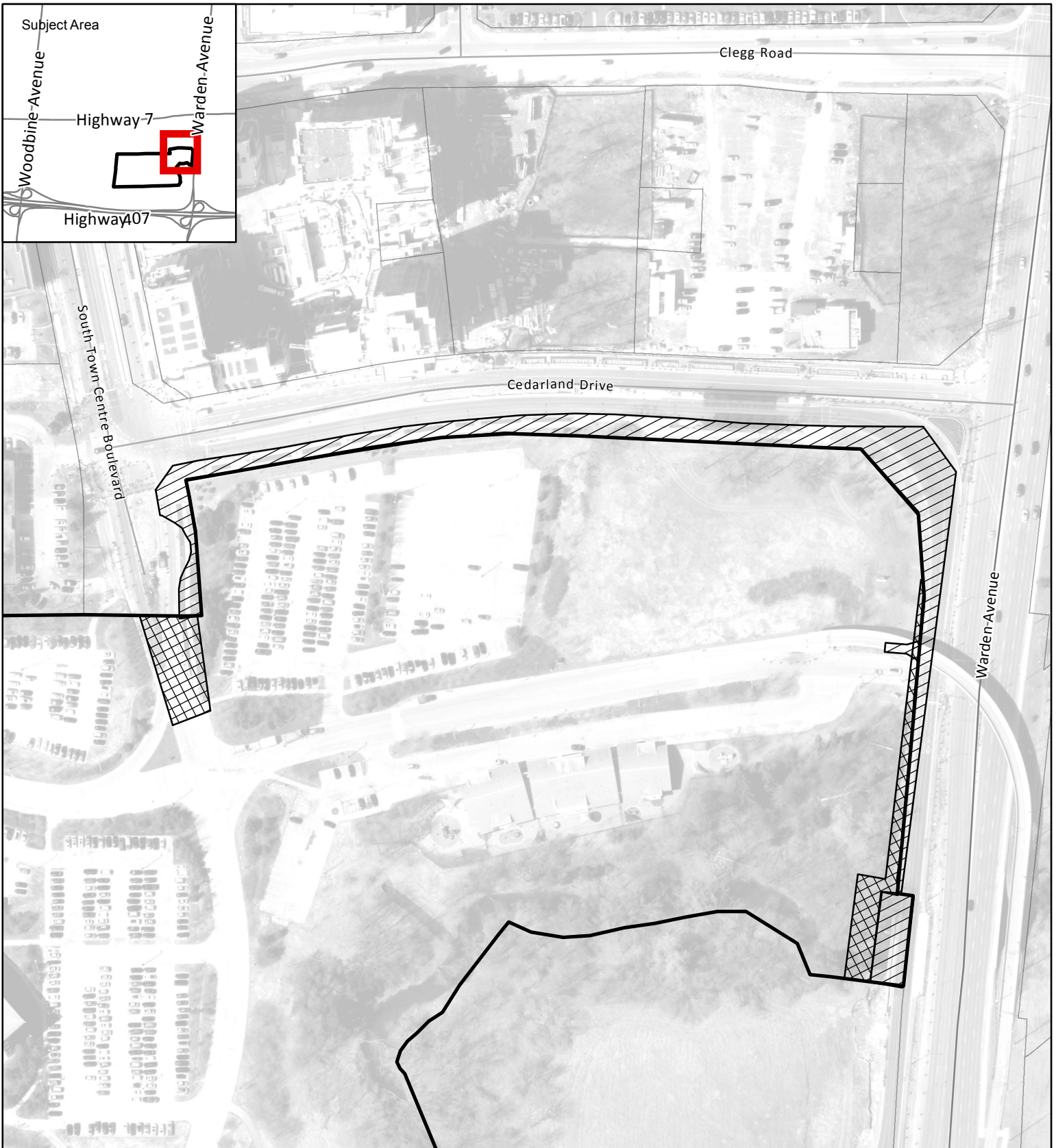
September 2, 2016

Attachments (1)

Private Attachments (1)

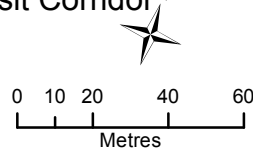
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Accessible formats or communication supports are available upon request



Location Plan

Expropriation Settlement
 Viva Next Bus Rapid Transit Corridor^N
 8200 Warden Avenue
 City of Markham
 September 15, 2016



Legend

- Subject Property
- Fee Simple
- Temporary Easement
- Parcel
- Road



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 Property Services, Corporate Services
 July 2016

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