



TO: GENERAL COMMITTEE

SUBJECT: ONTARIO LAND TRIBUNAL REPORT – ACQUISITION OF 922 VETERAN’S DRIVE TO FACILITATE MCKAY ROAD ROW EXPANSION – REID DRIVE TO WEST OF HIGHWAY 400 (PROJECT EN1257) AND VETERAN’S DRIVE NEW TRUNK WATERMAIN (PROJECT EN1258)

WARD: 7

PREPARED BY AND KEY CONTACT: A. MILLS, MANAGER OF LEGAL SERVICES (EXT 5051)
D. FOX, P. ENG., ENGINEERING PROJECT MANAGER, (EXT 4301)

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES
S. DIEMERT, P. ENG., DIRECTOR OF INFRASTRUCTURE

GENERAL MANAGER APPROVAL: B. ARANIYASUNDARAN, P. ENG., GENERAL MANAGER OF INFRASTRUCTURE AND GROWTH MANAGEMENT

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the Inquiry Officer’s Report, attached as Appendix “A” to Staff Report INF001-23 regarding the City’s application to expropriate a fee simple interest from Paul Cooper for property known municipally as 922 Veteran’s Drive and legally described as Parts 1, 2 and 3 on 51R-43260 (the “Subject Property”) be received for information purposes.
2. That further to motion 21-G-184 and in conjunction with the recommendation of the Inquiry Officer’s Report, the Expropriation By-law be presented to complete the acquisition of the Subject Property.
3. That staff be authorized to continue with the expropriation process.

PURPOSE & BACKGROUND

Report Overview

- 4 The purpose of this Staff Report is to advise Council of the outcome of the Hearing of Necessity held for the City’s expropriation of the Subject Property and to seek approval to continue with the expropriation process.

5. On June 28, 2021, City Council adopted motion 21-G-184 regarding Property Acquisition to facility McKay Road ROW Expansion – Reid Drive to West of Highway 400 (Project EN1257) and Veteran’s Drive New Trunk Watermain (Project EN1258) (Ward 7), which in part read as follows:

“That the Director of Legal Services be authorized to commence negotiation and expropriation proceedings to acquire the properties necessary to facilitate the construction of the McKay Road West Trunk Sanitary Sewer and Roadway Improvements and the Veteran’s Drive Trunk Watermain projects including the properties identified on Appendix “A” to Staff Report INF006-21, municipally known as 922 Veteran’s Drive and 918 Veteran’s Drive (the “Property Requirements”).”
6. Staff commenced expropriation of the Subject Property by delivering the registered owner a Notice of Application for Approval to Expropriate Land (the “Expropriation Notice”).
7. The *Expropriations Act* permits an owner to make a request within 30 days of receiving the Expropriation Notice for a Hearing of Necessity at the Ontario Land Tribunal to ensure that the proposed taking is fair, sound and reasonably necessary.
8. The registered owner requested a Hearing of Necessity which was held on September 21, 2022 (Case No. OLT-22-003835) and the Inquiry Officer’s findings were released on November 30, 2022.

ANALYSIS

9. The acquisition of the Subject Property is necessary for two City projects; McKay Road ROW expansion – Reid Drive to west of Highway 400 (Project EN1257) and Veteran’s Drive New Trunk Watermain (Project EN1258) (the “Project”) for road expansion, intersection improvements, sewers, and watermains on McKay Road West and Veteran’s Drive, as reported in the Environmental Study Report (ESR) “Salem Secondary Plan Area Transportation Improvements” (October 12, 2017).
10. The detailed design of Veteran’s Drive and McKay Road West improvements commenced in the spring of 2019. The traffic engineering design undertaken during this phase confirmed the design criteria from the EA for the improvements at the intersection of McKay Road West and Veteran’s Drive. Additionally, this assessment finalized the intersection needs and auxiliary turning lane requirements which indicated the need for one southbound right turn lane and one southbound left turn lane on Veteran’s Drive north of McKay Road. The design is presented in Appendix “B” attached to Staff Report INF001-23
11. The Inquiry Officer concluded that the City’s application for approval to expropriate the Subject Property is fair, sound and reasonably necessary in the achievement of City’s objectives with respect to the Project.
12. Timely acquisition of the Subject Property is necessary to maintain current construction timelines and as such staff recommend proceeding with the expropriation.

ENVIRONMENTAL AND CLIMATE CHANGE IMPACT MATTERS

13. The following environmental and climate change impact matters have been considered in the development of the recommendation:
- a) The Project has followed the guidelines for a Municipal Class Environmental Assessment (Schedule C), and physical, natural, social, cultural/heritage and economic environmental matters have been considered. The ESR discussed how environmental matters have been considered in the development of the recommended preferred design alternative. The evaluation process considered criteria for natural, social, cultural/heritage and economic environmental matters and physical environment criteria such as traffic, pedestrians, cyclists, transit, property, noise, utilities, municipal services, and driveway grades/operations.

ALTERNATIVES

14. The following alternatives are available for consideration by General Committee:

Alternative #1 General Committee could choose to alter the recommended motion by not providing the authority to continue with the expropriation of the Subject Property.

This alternative is not recommended as acquiring the Subject Property is necessary to create road improvements and construct sanitary sewer and watermain to support growth in South Barrie and would delay the start of the Watersand Construction Ltd., Wormwood Developments Ltd. and Mattamy (Salem) Limited developments.

FINANCIAL

15. The Salem Landowner Group Inc. and Mattamy (Salem) Limited have executed a Funding Agreement with the City and provided funding necessary for the acquisition of the Subject Property in exchange for Development Charge credits from the City.

LINKAGE TO 2022-2026 STRATEGIC PLAN

16. The recommendations included in this Staff Report support the following goals identified in the 2022-2026 Strategic Plan.
- Thriving Community
 - Infrastructure Investments
17. The planned infrastructure improvements are being implemented based on the need to service Barrie's secondary plan areas and growth to 2041.



APPENDIX "A"

HEARING OF NECESSITY – INQUIRY OFFICER'S REPORT

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 30, 2022

CASE NO(S): OLT-22-003835

PROCEEDING COMMENCED UNDER subsection 6(2) of the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended

Owner:	Paul Cooper
Expropriating Authority:	Corporation of the City of Barrie
Property Address/Description:	922 Veteran's Drive
Municipality:	City of Barrie
OLT Case No.:	OLT-22-003835
OLT Lead Case No.:	OLT-22-003835
OLT Case Name:	Paul Cooper v. Barrie (City)

Heard: September 21, 2022 by Video Hearing

APPEARANCES:

Parties

Counsel

City of Barrie

E. Rizwani

Paul Cooper

A. Quinn

REPORT DELIVERED BY D.S. COLBOURNE AND ORDER OF THE TRIBUNAL

[1] The Tribunal conducted a hearing of necessity on September 21, 2022, under s. 7 of the *Expropriations Act*. The property in question is located at the intersection of McKay Road and Veteran's Drive, which is located in a part of the City of Barrie ("City")

or “Expropriating Authority”) annexed from the Township of Innisfil (“Township”), under the Barrie-Innisfil Boundary Adjustment Act of 2015.

[2] Since that time the area annexed has been the subject of an Infrastructure Master Plan for the purpose of preparing plans for water, wastewater, stormwater and transportation infrastructure to manage the substantial forecasted growth expected.

[3] As proposed in the Multi-Modal Active Transportation Master Plan, the City initiated a Class Environmental Assessment (“EA”) study for transportation improvements. The EA process for a Schedule C Municipal Class EA was followed with the required public meetings or Public Information Centres.

[4] Currently, McKay Road and Veteran’s Drive are two-lane rural roads with ditches, 7 metres (“m”) of pavement and 2.5 m of gravel shoulders, all in a 20 m right-of-way (“ROW”). This is a signalized intersection with two lanes in all directions and no auxiliary turning lanes.

[5] As set out in the Notice of Grounds and supported by the evidence of Dan Fox on behalf of the Expropriating Authority, the preferred alternative designs for McKay Road and Veteran’s Drive adopted a ROW configuration, which included sidewalks, bike lanes, and centre median lanes. As well, the modelling for the traffic volumes projected indicated that these roads would be major arterials. Capacity analysis demonstrated the need for five-lane (34 m, ROW) roadway configuration on both roads to support immediate growth, and in the future, seven lanes (41 m, ROW) for McKay Road. This would take into account subsequent phases of commercial and residential development, as well as other planned road improvements for the area.

[6] Another significant design conclusion was the need to raise the vertical profile of both roads by approximately 2-3 m to accommodate stormwater drainage.

[7] Mr. Fox's evidence, on behalf of the Expropriating Authority, outlining all of the foregoing, was also that in order to construct the Project in accordance with the master plans, Environmental Service Review, and Detailed Design, the planned roadway and slope grading will encroach significantly onto the subject property. It will cut into the existing dwelling, making it impossible to safely access and/or occupy the dwelling.

[8] The Project involves significant municipal underground services with specialty construction crews working at different times throughout the duration of the Project. Thus, given the proximity of the dwelling to the proposed work zone, maintaining occupancy and safe access during all phases of construction would prohibit the work proceeding safely, if at all.

[9] In all designs for roads and intersections, Transportation Association of Canada Geometric Design Guide for roads sets an industry standard which restricts arterial access to a minimum distance of 70 m from a signalized intersection. Any private access would be prohibited for this property after construction, and provision for that distance from the intersection.

[10] The access driveway indicated on the construction drawings apparently was for the Expropriating Authority's purposes when they were in possession of the property, and were not indicative of any proposed private access.

[11] All of this in the Expropriating Authority's view supports the taking of the whole of the property, Parts 1, 2 and 3 on Plan 51R-43260, for the purposes of constructability, and not just Parts 2 and 3, as suggested by the evidence of Dominic Conforti. There is a significant slope in the proposed design of the roadway for purposes of drainage to the ditch, which is what would extend into the existing dwelling located on Part 1 of the survey.

[12] Mr. Conforti, a professional engineer on behalf of the owner, suggested that the same could be accomplished by inserting a retaining wall and cutting back on the length of the slope.

Findings and Opinion

[13] Details supporting how the retaining wall proposal would accomplish all of the drainage, and include all of the infrastructure proposed, were not offered. The Tribunal raised the issue of livability for the remaining dwelling in future, let alone during construction which could be accomplished by leaving the dwelling vacant. In this instance, there would be no access to the property in future, and the final road surface at the intersection would appear to be at the dwelling's roof level.

[14] Mr. Fox also indicated that in any event the foundation for a retaining wall would be approximately 1 ½ m from the residence.

[15] The issue of constructability and livability, in my view, negates the future occupancy of the dwelling.

[16] After considering all the evidence and arguments, I conclude the proposal meets the test in the *Expropriations Act* ("Act") and the summation of as set out by the courts. The test in s. 7(5) of the Act is whether the proposed taking is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority". Court decisions such as *Re Parkins and the Queen* (1977), 13 L.C.R. 327 (O.C.A.) conclude that the test of the inquiry officer must apply and can be expressed as whether the proposal is "reasonably defensible in the achievement of the authority's objectives."

[17] For the reasons given above, I find that the proposed taking by the City of fee simple interests in the parcel described above is reasonably defensible in the achievement of the objective of the Expropriating Authority.

“D.S. Colbourne”

D.S. COLBOURNE
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

APPENDIX "B"

LOCATION CONTEXT AND DESIGN

