



REGION OF WATERLOO

**CORPORATE RESOURCES
Legal Services**

TO: Chair Jim Wideman and Members of the Planning and Works Committee

DATE: August 14, 2012 **FILE CODE:** L07-90

SUBJECT: AUTHORIZATION TO EXPROPRIATE LANDS (1ST REPORT) DESIGNATED AS PHASE II OF STAGE 1 OF THE RAPID TRANSIT PROJECT RELATING TO PROPERTY AND INTERESTS FROM EBY STREET SOUTH BETWEEN CHARLES STREET EAST AND KING STREET EAST IN THE CITY OF KITCHENER TO BORDEN AVENUE SOUTH AND OTTAWA STREET SOUTH IN THE CITY OF KITCHENER

RECOMMENDATION:

THAT The Regional Municipality of Waterloo direct and authorize the Regional Solicitor to take the following actions with respect to the expropriation of further lands required for the construction of Stage 1 of the Rapid Transit Project commencing at Eby Street South between Charles Street East and King Street East in the City of Kitchener and running East along portions of Charles Street East and King Street East to Borden Avenue South and Ottawa Street South and including lands on Madison Avenue South, Cameron Street South, Pandora Avenue South, and Stirling Avenue South at the City of Kitchener, in the Regional Municipality of Waterloo in accordance with the Recommended Rapid Transit Implementation Option Report E-11-072 dated June 15, 2011:

- A. Complete application(s) to the Council of the Regional Municipality of Waterloo, as may be required from time to time, for approval to expropriate land, which is required for the Rapid Transit Project Stage 1 and described as follows:

Fee Simple Partial Takings:

1. Part Lot 12 (H. Eby) South of King Street, Plan 364, being Part 1 on 58R17381, Part of PIN 22501-0067, City of Kitchener, Regional Municipality of Waterloo (22 Eby Street South, Kitchener)
2. Part Lot 14 (B. Moogk), Part Lot 15 (P. Grab), South of King Street, Plan 364, being Part 2 on 58R17381, Part of PIN 22502-0049, City of Kitchener, Regional Municipality of Waterloo (301 – 319 King Street East, Kitchener)
3. Part Lot 15 (P. Grab), South of King Street, Plan 364, being Part 3 on 58R17381, Part of PIN 22502-0050, City of Kitchener, Regional Municipality of Waterloo (No applicable municipal address, Kitchener)
4. Part Lot 16 or 15 (Hueglin), Part Lot 17 (B. Moogk) South of King Street, Plan 364, being Part 4 on 58R17381, Part of PIN 22502-0113, City of Kitchener, Regional Municipality of Waterloo (21 Cedar Street South, Kitchener)
5. Part Lot 18, South of King Street, Plan 364, being Parts 5 and 6 on 58R17381, Part of PIN 22502-0084, City of Kitchener, Regional Municipality of Waterloo (220 Charles Street East, Kitchener)

6. Part Lot 18, South of King Street, Plan 364 and Part Lot 19, South of King Street, Plan 365, being Part 7 on 58R17381, Part of PIN 22502-0086, City of Kitchener, Regional Municipality of Waterloo (230 Charles Street East, Kitchener)
7. Part Lot 19, South of King Street, Plan 365, being Part 8 on 58R17381, Part of PIN 22502-0087, City of Kitchener, Regional Municipality of Waterloo (28 Madison Avenue South, Kitchener)
8. Part Lots 20, 21 and 22, South of King Street, Plan 365, being Part 9 on 58R17381, Part of PIN 22502-0092, City of Kitchener, Regional Municipality of Waterloo (471 King Street East, Kitchener)
9. Part Lots 23 and 24, South of King Street, Plan 365, being Part 10 on 58R17381, Part of PIN 22502-0093, City of Kitchener, Regional Municipality of Waterloo (481 King Street East and 24 Cameron Street South, Kitchener)
10. Part Lots 63, 64 and 205, Part of Cameron Street (closed by by-law 6362, Instrument No. 363820), Plan 303 and Part Lot 25, South of King Street and West of Cameron Street, Plan 365, being Part 1 on 58R-17414, Part of PIN 22504-0011, City of Kitchener, Regional Municipality of Waterloo (301 Charles Street East, Kitchener)
11. Part Lots 76 and 205, Plan 303, being Part 2 on 58R17414, Part of PIN 22504-0042, City of Kitchener, Regional Municipality of Waterloo (104 Stirling Avenue South, Kitchener)
12. Part Lot 182, Streets and Lanes and Part Lot 64, Plan 303, being Parts 1 and 11 on 58R17386, Part of PIN 22502-0098, City of Kitchener, Regional Municipality of Waterloo (310 Charles Street East, Kitchener)
13. Part Lot 207, Plan 303, being Part 2 on 58R17386, Part PIN 22502-0100, City of Kitchener, Regional Municipality of Waterloo (332 Charles Street East, Kitchener)
14. Part Lot 78, Plan 303 being Part 3 on 58R17386, Part of PIN 22502-0105, City of Kitchener, Regional Municipality of Waterloo (625 King Street East, Kitchener)
15. Part Lot 16, Plan 634 being Part 4 on 58R17386, Part of PIN 22509-0140, City of Kitchener, Regional Municipality of Waterloo (22 Pandora Avenue South, Kitchener)
16. Part Lot 15, Plan 634 being Part 5 on 58R17386, Part of PIN 22509-0141, City of Kitchener, Regional Municipality of Waterloo (354 Charles Street East, Kitchener)
17. Part Lots 10 to 14, Plan 634 being Part 6 on 58R17386, Part of PIN 22509-0142, City of Kitchener, Regional Municipality of Waterloo (659 King Street East, Kitchener)
18. Part Lot 76, Plan 303, Part Lots 17, 33 and 34, Plan 634 and Part Lot 67, Streets and Lanes being Parts 7 and 8 on 58R17386, Part of PIN 22504-0045, City of Kitchener, Regional Municipality of Waterloo (355 Charles Street East, Kitchener)
19. Part Lot 41, Plan 634 being Part 9 on 58R17386, Part of PIN 22506-0003, City of Kitchener, Regional Municipality of Waterloo (21 Stirling Avenue South, Kitchener)
20. Part Lot 1, Plan 404 being Part 10 on 58R17386 and Part Lots 3 and 4, Plan 404, being Part 1 on 58R17395, Part of PIN 22506-0010, City of Kitchener, Regional Municipality of Waterloo (432 Charles Street East, Kitchener)
21. Part of Park Lot 25, Plan 404 being Part 2 on 58R17395, Part of PIN 22506-0217, City of Kitchener, Regional Municipality of Waterloo (480 Charles Street East, Kitchener)
22. Part of Park Lot 25, Plan 404 being Parts 3 and 4 on 58R17395. Part of PIN 22506-0009, City of Kitchener, Regional Municipality of Waterloo (50 Borden Avenue South, Kitchener)
23. Part of Park Lot 25, Plan 404, being Part 5 on 5817395, Part of PIN 22506-0093, City of Kitchener, Regional Municipality of Waterloo (512 – 516 Charles Street East, Kitchener)

24. Part of Park Lot 25, Plan 404, being Part 6 on 58R17395, Part of PIN 22506-0091, City of Kitchener, Regional Municipality of Waterloo (520 Charles Street East, Kitchener)
25. Part of Lot 12, Plan 262 being Part 7 on 58R17395, Part of PIN 22506-0090, City of Kitchener, Regional Municipality of Waterloo (526 Charles Street East, Kitchener)
26. Part Lot 13, Plan 262 being Part 8, 58R17395, Part of PIN 22506-0089, City of Kitchener, Regional Municipality of Waterloo (530 Charles Street East, Kitchener)
27. Part Lot 14, Plan 262 being Part 9 on 58R17395, Part of PIN 22506-0088, City of Kitchener, Regional Municipality of Waterloo (no applicable municipal address, Kitchener)
28. Part Lot 14, Plan 262 being Parts 10 and 11 on 58R17395, Part of PIN 22506-0086, City of Kitchener, Regional Municipality of Waterloo (534 Charles Street East, Kitchener)
29. Part Lot 15, Plan 262, being Part 12 on 58R17395, Part of PIN 22506-0084, City of Kitchener, Regional Municipality of Waterloo (542 Charles Street East, Kitchener)
30. Part Lots 16, 17 and 18, Plan 262 being Part 13 on 58R17395, Part of PIN 22506-0080(R) City of Kitchener, Regional Municipality of Waterloo (1027 King Street East, Kitchener)
31. Part Lot 19, Plan 262, being Part 14 on 58R17395, Part of PIN 22506-0067, City of Kitchener, Regional Municipality of Waterloo (564 Charles Street East, Kitchener)
32. Part Lot 20, Plan 262, being Part 15, 58R17395, Part of PIN 22506-0218, City of Kitchener, Regional Municipality of Waterloo (1081 King Street East, Kitchener)
33. Part Lots 21 and 22, Plan 262 being Part 16 on 58R17395, Part of PIN 22506-0077, City of Kitchener, Regional Municipality of Waterloo (22 Ottawa Street South, Kitchener)
34. Part Lot 11, Plan 262 and Part Lots 6 to 11, Plan 262, being Parts 17 and 18 on 58R17395, Part of PIN 22506-0215, City of Kitchener, Regional Municipality of Waterloo (50 Ottawa Street South, Kitchener)
35. Part Lot 12 (A. Geckle) South of King Street, Plan 364, being Part 1 on 58R1929, Part of PIN 22502-0040, City of Kitchener, Regional Municipality of Waterloo (no applicable municipal address, Kitchener)

1. Serve notices of the above application(s) required by the Expropriations Act;
2. Forward to the Chief Inquiry Officer any requests for a hearing that may be received;
3. Attend, with appropriate Regional staff, at any hearing that may be scheduled;
4. Discontinue expropriation proceedings or any part thereof, in respect of the above described lands, or any part thereof, upon the registration on title of the required documentation to complete a transaction whereby the required interests in the lands are conveyed; and
5. Do all things necessary and proper to be done, and report thereon to Regional Council in due course.

SUMMARY: NIL

REPORT:

Introduction

On June 15, 2011, Regional Council approved light rail transit (LRT) as the preferred transit

technology from Conestoga Mall in the City of Waterloo to the Ainslie Street Terminal in the City of Cambridge. Stage 1 of the LRT project (Stage 1) will include LRT service from Conestoga Mall in the City of Waterloo to Fairview Park Mall in the City of Kitchener.

The Region of Waterloo initiated a Transit Project Assessment (TPA) with respect to Stage 1 in November of 2011, which has been completed and has provided results that are permissive of the construction and operation of LRT along the proposed corridor.

Current Project Status and Phase 1 Update

The functional design of the project is presently underway. Construction of the rapidway is proposed to commence in mid 2014 to be preceded by certain utility relocation work commencing as early in 2013. Property acquisitions with respect to Stage 1 are being completed in 3 phases in accordance with the required possession date for the various properties. Regional Council approved the commencement of expropriation proceedings with respect to the first phase (Phase 1) of lands required for Stage 1 on February 28, 2012 in accordance with Report CR-RS-12-013. At this time, Regional Staff is actively negotiating the acquisition of Phase 1 lands with property owners, as well as, submitting contemporaneously with this Report a Second Report with respect to the expropriation of Phase 1 lands in order to secure possession of those lands on a timely basis.

Phase 2

This Report pertains to the second phase (Phase 2) of lands required for Stage 1 of the Rapid Transit Project. Phase 2 entails partial takings from 35 properties. The depth of the partial takings varies on a property by property basis from under 0.5 metres to approximately 8 metres, with most falling somewhere in the middle. It is noted that two of these properties are owned by the City of Kitchener and, as such, acquisition will be through negotiation with regard to those properties. Possession of the Phase 2 properties is required by the Region on or about June 30, 2013.

In order to meet the Rapid Transit Project timelines, the Commissioner of Transportation and Environmental Services has authorized modified prerequisites for the commencement of the expropriation process with respect to lands required for Rapid Transit in accordance with the Region's revised land acquisition policy for infrastructure projects. Accordingly, Regional Staff have contacted, in writing, all property owners impacted by the Region's Phase 2 land requirements, except for one as further explained below, and have followed up in person or via telephone with all owners that have made themselves available. The property owners have been informed of the Region's intention to proceed with the expropriation process, including this report, and have been provided with the Region's Expropriation Information Sheet which explains the expropriation process. A copy of the Expropriation Information Sheet is attached as Appendix "A" hereto. As well, each owner has been provided a copy of the Property Acquisition Process Information Sheet and a Property Impact Plan (PIP) illustrating the required taking for each particular property. The owners have also been advised that it is the Region's intention to seek a negotiated settlement prior to the completion of the Expropriation process and that the process has been commenced only to ensure that possession of the required lands is secured by the date set by Project staff in order to meet the Project timeline.

As a caveat to the preceding paragraph, Regional Staff have been unable to contact the owner of a small vacant strip of land on Charles Street East in the City of Kitchener legally described as Part Lot 14, Plan 262 being PIN 22506-0088. The Region requires a small piece of that property more particularly described as Part 9 Plan 58R-17395, City of Kitchener being approximately 1.5 metres wide and 0.5 metres deep. The owner has been deceased over fifty years, there have been no legal dealings with the property since the owner's passing, and there is suggestion that the two abutting land owners have acquired prescriptive rights over the property by virtue of its use and occupation. The property does not have a municipal address. Regional Staff continue to search for the heirs of the deceased, if any. Regional Staff are also in communication with the abutting land

owners to keep informed of any possessory claims that may be made. There is a possibility that recourse will have to be made to the Superior Court of Justice in order to determine legal ownership.

Should a negotiated settlement be reached with any of the property owners and a conveyance of the required acquisition completed before the expropriation process is complete, the expropriation process with respect such lands would be discontinued by the Regional Solicitor.

It is to be noted that the expropriation of the lands referred to above is on an "as is" basis and, therefore, the Region assumes all responsibility for the said lands upon assumption of title.

For reference purposes, the Project Area has been attached as Appendix "B" hereto.

CORPORATE STRATEGIC PLAN:

The report supports Focus Area 3.1 of Council's Strategic Focus: Implement a light rail transit system in the central transit corridor, fully integrated with an expanded conventional transit system.

FINANCIAL IMPLICATIONS:

Funding for the property acquisitions related to the Rapid Transit project is included in the approved 2012 ten year capital program for Rapid Transit.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Rapid Transit staff have been consulted in the preparation of this Report.

ATTACHMENTS

Appendix "A" – Copy of the Expropriation Information Sheet
Appendix "B" – Project Area

PREPARED BY: *Liviu Cananau*, Solicitor

APPROVED BY: *Gary Sosnoski*, Commissioner, Corporate Resources

APPENDIX A



The following information is provided as a general overview of the expropriation process and is not legal advice. For complete information, reference should be made to the Ontario Expropriations Act as well as the more detailed information in the Notices provided under that Act.

Expropriation Information Sheet

What is Expropriation?

Governmental authorities such as municipalities, school boards, and the provincial and federal governments undertake many projects which require them to obtain land from private property owners. In the case of the Regional Municipality of Waterloo, projects such as the construction or improvement of Regional Roads sometimes require the purchase of land from private property owners. In many cases, the Region of Waterloo only needs a small portion of the private property owner's lands or an easement for related purposes such as utilities, although in certain instances, entire properties are required.

Usually the governmental authority is able to buy the land required for a project through a negotiated process with the affected property owners. Sometimes, however, the expropriation process must be used in order to ensure that the land is obtained within a specific timeline. Put simply, an expropriation is the transfer of lands or an easement to a governmental authority for reasonable compensation, including payment of fair market value for the transferred lands, without the consent of the property owner being required. In the case of expropriations by municipalities such as the Region of Waterloo, the process set out in the Ontario *Expropriations Act* must be followed to ensure that the rights of the property owners provided under that *Act* are protected.

IMPORTANT NOTE: The Region of Waterloo tries in all instances to obtain lands needed for its projects through a negotiated agreement on mutually acceptable terms. Sometimes, the Region of Waterloo will start the expropriation process while negotiations are underway. This dual approach is necessary to ensure that the Region of Waterloo will have possession of all of the lands needed to start a construction project on schedule. However, it is important to note that Regional staff continues to make every effort to reach a negotiated purchase of the required lands on mutually agreeable terms while the expropriation process is ongoing. If agreement is reached, expropriation proceedings can be discontinued and the land transferred to the Region of Waterloo in exchange for payment of the agreed-upon compensation.

What is the process of the Region of Waterloo under the Expropriations Act?

- Regional Council considers a request to begin an application under the *Expropriations Act* to obtain land and/or an easement for a specific Regional project. No decision is made at this meeting to expropriate the land. This step is simply direction for the Region of Waterloo to provide a "Notice of Application for Approval to Expropriate" to affected property owners that the process has started to seek approval to expropriate the land.

- As stated in the Notice, affected property owners have 30 days to request a Hearing to consider whether the requested expropriation is “fair, sound and reasonably necessary in the achievement of the objectives” of the Region of Waterloo. This Hearing is conducted by a provincially-appointed Inquiry Officer. Prior to the Hearing, the Region of Waterloo must serve the property owner with a Notice setting out its reasons or grounds for the proposed expropriation. **Compensation for lands is not determined at this Hearing.** The Inquiry Officer can order the Region of Waterloo to pay the property owner up to \$200.00 as compensation for the property owner’s costs in participating in this Hearing, regardless of the outcome of the Hearing.
- If a Hearing is held, a written report is provided by the Inquiry Officer to the property owner and the Region of Waterloo. Council must consider the Report within 90 days of receiving it. The Report is not binding on Council and Council may or may not accept the findings of the Report. After consideration of the Report, Council may or may not approve the expropriation of the land or grant approval with modifications. A property owner may wish to make written and/or verbal submissions to Council at the time that it is considering the Report.
- If no Hearing is requested by the property owner, then Council may approve the expropriation of the land after expiry of a 30 day period following service of the Notice of Application for Approval to Expropriate.
- If Council approves the expropriation then, within 3 months of this approval, the Region of Waterloo must register a Plan at the Land Registry Office that describes the expropriated lands. The registration of this Plan automatically transfers title of the lands to the Region of Waterloo, instead of by a Deed signed by the property owner.
- Within 30 days of registration of the Plan, the Region of Waterloo must serve a Notice of Expropriation on the affected property owner advising of the expropriation. Within 30 days of this Notice, the property owner may serve the Region of Waterloo with a Notice of Election selecting the valuation date under the *Expropriations Act* for calculation of the compensation.
- In order to obtain possession of the expropriated lands, the Region of Waterloo must also serve a Notice of Possession setting out the date that possession of the land is required by the Region of Waterloo. This date has to be 3 months or more from the date that this Notice of Possession is served on the affected property owner.
- Within 3 months of registration of the Plan, the Region of Waterloo must provide the affected property owner with payment for the full amount of the appraised fair market value of the expropriated land or easement and a copy of the appraisal report on which the value is based. If the property owner disagrees with this amount, and/or claims other compensation and/or costs under the *Expropriations Act*, the compensation and/or costs matter may be referred to a provincially-appointed Board of Negotiation in an effort to reach a mediated settlement and/or an appeal may be made to the Ontario Municipal Board (OMB) for a decision. In any event, the Region of Waterloo continues in its efforts to reach a negotiated settlement with the affected property owner prior to the OMB making a decision.

