



SUBJECT: Approval to Expropriate - Waterdown Road from Craven Avenue to Mountain Brow Road

TO: Committee of the Whole

FROM: Legal Department

Report Number: L-19-19

Wards Affected: Ward 1

File Numbers: 575-03-W.47

Date to Committee: July 8, 2019

Date to Council: July 15, 2019

Recommendation:

Receive and consider the Inquiry Officer's Report enclosed as Appendix 'A' of this report.

Adopt the reasons for approval set out in Appendix 'B' of this report, entitled Decision and Reasons for Approval to Expropriate Land.

As approving authority under the *Expropriations Act*, approve the expropriation of the lands set out in Appendix 'C' of this report (the "Subject Lands"), which are required for the reconstruction, realignment, widening and improvement of Waterdown Road from Craven Avenue to Mountain Brow Road, and works ancillary thereto.

Enact a By-law as set out in Appendix 'D' of this report.

Purpose:

A City that Moves

- Increased Transportation Flows and Connectivity

Background and Discussion:

The City is undertaking works to upgrade Waterdown Road from a rural two-lane road to a fully-illuminated urban four-lane platform from north of Craven Avenue to Mountain Brow Road. The project will include construction of a multi-use asphalt pathway on the

west side of Waterdown Road, an auxiliary northbound left turn lane at Flatt Road, as well as the installation of traffic signals at Mountain Brow Road.

On July 16, 2018 Council approved the commencement of expropriation proceedings to acquire the lands necessary to facilitate the Waterdown Road project. Following Council approval, an Application for Approval to Expropriate Land was obtained and a Notice of Application for Approval to Expropriate Land was served on the registered owners of the Subject Lands. A Notice of Application for Approval to Expropriate Land was also published once a week for three consecutive weeks in the Burlington Post. Pursuant to section 6 of the *Expropriations Act*, each owner had 30 days from the date of service of the Notice to request an Inquiry to determine whether the proposed expropriations were fair, sound and reasonably necessary.

2362302 Ontario Inc., the owner of the properties known municipally as 48 Flatt Road and 1664 Waterdown Road, was the only property owner to request an Inquiry. The Inquiry was held on May 15, 2019. The lands that were the subject of this Inquiry are part of the proposed residential development known as 'Eagle Heights' along the west side of Waterdown Road.

The *Expropriations Act* provides that an Inquiry of this nature shall determine whether the proposed expropriation is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority". The Hearing Officer considered the evidence of the City with respect to the proposed expropriation, as well as the evidence of the land owner, which focused primarily on issues related to sanitary servicing to the proposed Eagle Heights development. The Hearing Officer concluded that the proposed expropriation is fair, sound and reasonably necessary in the achievement of the City's objectives.

The report of the Hearing Officer is attached at Appendix 'A'. It is recommended that Council receive and consider this report in its capacity as approving authority under the *Expropriations Act*.

Additional confidential legal matters related to the lands owned by 2362302 Ontario Inc. are addressed in Appendix 'E' to Report L-19-19.

Strategy/process

It is recommended that the expropriation of the Subject Lands proceed in accordance with the Application for Approval to Expropriate Land served on the owners, particularly in light of the Inquiry Officer's report.

Upon approval by Council of the recommendations in this report, staff will proceed with all necessary steps to give effect to the expropriation in accordance with the *Expropriations Act*. This includes preparing and registering Plans of Expropriation, serving Notices of Expropriation, Notices of Election, statutory offers of compensation and

Notices of Possession. All such steps will proceed in accordance with timelines and other requirements prescribed by the *Expropriations Act*.

Options considered

Before initiating expropriation proceedings, staff were successful in acquiring the vast majority of the property interests required to facilitate the Waterdown Road project through amicable negotiations. Efforts at acquiring the Subject Lands have thus far been unsuccessful. Further delay with respect to the acquisition of the Subject Lands will adversely impact project timing, while allowing the deficiencies along Waterdown Road to remain unaddressed.

Financial Matters:

Total Financial Impact

The *Expropriations Act* provides a mechanism for the determination of compensation payable to owners, including a mechanism for claims to be arbitrated by the Local Planning Appeals Tribunal where parties cannot agree. Accordingly, total financial impact of these expropriations cannot be fully determined at this time. Staff will report back further to Committee and Council as necessary once the scope of compensation claims is known.

Source of Funding

The acquisition of property interests contemplated in this report will be 100% funded by the City of Hamilton in accordance with a 2012 cost sharing agreement that has been entered into between the City of Burlington and City of Hamilton for the Waterdown Road project.

The Waterdown Road North Rehabilitation and Capacity Improvement project was approved as part of the 2019 Capital Budget.

Public Engagement Matters:

Staff have previously met directly with owners of the Subject Lands in an effort to find common ground for the acquisition of properties required for the project.

Notices of Application for Approval to Expropriate were served on all affected owners and notices were also published in the Burlington Post as described in this report. A Hearing of Necessity took place on May 15, 2019 as described in this report.

On a go forward basis, affected owners will be provided with all such notices, appraisals, offers and other documents as are prescribed by the *Expropriations Act*.

Conclusion:

The expropriation of the Subject Lands is required to allow the construction of necessary improvements to Waterdown Road. It is recommended that Council authorize the recommendations in this report, which will allow these matters to move forward.

Respectfully submitted,

David Klacko
Solicitor
905-335-7600 Ext. 7612

Appendices:

- A. Inquiry Officer's Report
- B. Decision and Reasons for Approval to Expropriate Land
- C. Description of the Subject Lands
- D. Expropriation By-Law XX-2019
- E. Confidential appendix re: legal matters associated with lands owned by 2362302 Ontario Inc.

Notifications:

After Council's decision the City Solicitor will send all notices required by the *Expropriations Act* to affected parties.

A copy of Council's reasons for decision will be provided to the Inquiry Officer and 2362302 Ontario Inc. as prescribed by the *Expropriations Act*.

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.