

Town of Whitby

Staff Report

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Report Title: Conveyance of a Portion of Old Lake Ridge Road from the Regional Municipality of Durham and Boundary Road Agreement between Town of Whitby and Town of Ajax

Report to: Committee of the Whole

Date of meeting: March 4, 2024

Report Number: LS 02-24

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of Legal and Enforcement Services/Town Solicitor

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

For additional information, contact:

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1. Recommendation:

1. That Part of Lot 1, Concession 1 (Geographic Township of Pickering) and Part of Road Allowance between Township of Whitby and Township of Pickering, designated as Part 4 on Plan 40R-30216, being a portion of PIN 26494-0728 (LT) ("Property #1"), and Part of Lot 1, Concession 1 (Geographic Township of Pickering) and Part of Road Allowance between Township of Whitby and Township of Pickering, designated as Part 3 on Plan 40R-29191, SAVE and EXCEPT Parts 3 and 4 on Plan 40R-30216, being all of PIN 26494-0745 (LT) ("Property #2"), (collectively, the "Properties" or "Old Lake Ridge Road") be acquired from The Regional Municipality of Durham subject to the conditions set forth in Legal Services Report LS 02-24;
2. That Council direct staff to negotiate and enter into a Boundary Road Agreement with The Corporation of the Town of Ajax to the satisfaction

of the Commissioner of Legal Services and Enforcement/Town Solicitor, or designate, to outline the future rights and obligations relating to Old Lake Ridge Road (the “Boundary Road Agreement”);

3. That the requirement to obtain an appraisal and give public notice in accordance with Town of Whitby Policy F-190 regarding the Acquisition, Sale or other Disposition of Land Policy be waived for the acquisition of the Properties;
4. That the Clerk be authorized to bring forward a by-law authorizing the acquisition of the Properties; and,
5. That the Mayor and Clerk be authorized to undertake all necessary actions and execute an Offer to Sell with the Regional Municipality of Durham, a Boundary Road Agreement with The Corporation of the Town of Ajax, and any other documents to give effect thereto.

2. Highlights:

- The Regional Municipality of Durham (the “Region”) has approached the Town of Whitby (“Whitby”) with a request that Whitby acquire ownership of Property #1 (as shown in Attachment 1 outlined in green) and Property #2 (as shown in Attachment 1 outlined in pink) for nominal consideration from the Region. Both Property #1 and Property #2 form what is now known as Old Lake Ridge Road and both parcels are to be removed from the Region’s Regional Road By-Law.
- Whitby staff recommend the acquisition of the Properties from the Region for nominal consideration.
- As Old Lake Ridge Road forms part of the boundary road between Whitby and the Town of Ajax (hereinafter “Ajax”), Whitby and Ajax have agreed, in principle, to enter into a Boundary Road Agreement to outline each parties’ future rights and obligations relating to Old Lake Ridge Road.
- Whitby staff recommend finalizing and executing the Boundary Road Agreement with Ajax.

3. Background:

Old Lake Ridge Road as a Boundary Road between Whitby and Ajax

The section of Lake Ridge Road between Highway 401 and Kingston Road/ Dundas Street was realigned to facilitate the new Highway 401 bridge and interchange. As a result of the realignment, a section of Lake Ridge Road, namely Old Lake Ridge Road, is no longer an arterial road. Old Lake Ridge Road runs from Almond Avenue to the south to Cresser Avenue to the north and serves as a local municipal access road for residents who reside in the adjacent Almond Village neighbourhood, which is located in Whitby.

The Properties were transferred to the Ministry of Transportation (the “MTO”) as part of the Highway 407 Phase 1 project. As this project is now complete, the Properties are to be transferred to the Town.

The *Public Transportation and Highway Improvement Act* only allows the transfer of a road to the municipality in which it is located. As Old Lake Ridge Road is part of the boundary road between Whitby and Ajax, the MTO is unable to transfer the Properties directly to Whitby and Ajax. It was agreed that the MTO would transfer the Properties to the Region, and the Region would subsequently transfer the Properties to Whitby and Ajax.

Ajax does not have a desire to own Old Lake Ridge Road as it is a local access road for a neighbourhood located in Whitby. Whitby and Ajax have agreed to enter into a Boundary Road Agreement, wherein Whitby will assume all responsibilities for maintenance of the Road as well as all liabilities in connection with the Road, save and except for any liabilities which are the direct result of Ajax’s negligence.

4. Discussion:

Old Lake Ridge Road serves as the access road to the Almond Avenue neighbourhood which abuts the road to the east and is entirely located in Whitby. To the west of Old Lake Ridge Road are parcels of vacant land that separate it from Lake Ridge Road. There are 10 residential properties that front onto Old Lake Ridge Road, all of which are geographically located in Whitby.

As the function of Old Lake Ridge Road is to serve the Whitby residents of the Almond Avenue neighbourhood, it is recommended that the Properties be acquired from the Region and the Boundary Road Agreement be entered into with Ajax. This will ensure that Whitby has ownership and retains full control over the maintenance and repair of the road in future.

Transfer of Old Lake Ridge Road from the Region to Whitby

The Region has declared the Properties to be surplus and will be removing the parcels from the Region’s Regional Road By-Law.

The Region has provided an offer to sell the Properties to Whitby for the nominal sum of \$2.00. It is anticipated that the transfer of the Properties will be completed within 45 days of both Whitby and the Region executing an agreement of purchase and sale.

As per discussions with the Region, the Region agreed to resurface the Properties, at its expense, prior to the transfer to Whitby. Resurfacing of the Properties has been completed to the satisfaction of Whitby staff.

Boundary Road Agreement between Whitby and Ajax

Whitby and Ajax have agreed to enter into a Boundary Road Agreement (see Attachment 2) with respect to the future maintenance of Old Lake Ridge Road. The key terms of the Boundary Road Agreement are as follows:

- Ajax can only perform work or repairs on Old Lake Ridge Road with the prior consent of Whitby;

- Whitby will assume control of and be solely responsible for maintaining Old Lake Ridge Road. Whitby will be responsible for work or repairs on Old Lakeridge Road and may undertake routine work or other major installations on Old Lakeridge Road without notice to, or the consent of, Ajax; and
- the initial term of the Boundary Road Agreement will be 25 years, with two options to renew for additional 25-year terms. Any extension will be on the same terms and conditions as originally agreed to, unless mutually agreed in writing by both Whitby and Ajax.

5. Financial Considerations:

The acquisition of the Properties from the Region is for nominal consideration. The Region will be preparing the documents required to complete the transaction with each party being responsible for its own fees and disbursements, which are expected to be minimal.

Relating to the Boundary Road Agreement, both Whitby and Ajax will be responsible for its own fees and disbursements, which are expected to be minimal.

Old Lake Ridge Road was recently resurfaced by the Region at no cost to Whitby. Other infrastructure such as streetlights have already been installed as part of the Almond Avenue neighbourhood construction. Whitby will be responsible for the ongoing maintenance of Old Lake Ridge Road once the Boundary Road Agreement is in effect.

6. Communication and Public Engagement:

In accordance with Town Policy F-190 regarding the Acquisition, Sale, or Other Disposition of Land Policy, at least one independent appraisal completed by an accredited appraiser is to be obtained in order to determine the fair market value of the land. As the Properties are a Highway as defined by Town Policy F-190 regarding the Acquisition, Sale or Other Disposition of Land Policy, staff recommend that the appraisal requirement be waived.

7. Input from Departments/Sources:

Financial Services has reviewed this report, and Legal Services has consulted Operational Services in relation to the maintenance of Old Lake Ridge Road.

Legal Services has reviewed this report and provided advice regarding the completion of this matter and will be facilitating the negotiation and completion of this transaction if approved by Council.

8. Strategic Priorities:

The acquisition of the Properties creates goodwill with the Region and advances Pillar 4 of Whitby's Community Strategic Plan, Whitby's Government – Accountable and Responsive. Entering into the Boundary Road Agreement with Ajax and ensuring the ongoing maintenance of Old Lake Ridge Road by the Town is consistent with the strategic priority to design service delivery around customer needs.

9. Attachments:

Attachment 1 – Location Map of Old Lake Ridge Road

Attachment 2 – Boundary Road Agreement

Attachment 3 – Land Acquisition By-Law XXXX-24