

Town of Whitby

Staff Report

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Report Title: Correcting Transfer to Acquire Parts 2, 3, 4, 5, 9 & 10 on Plan 40R-32247, being all of PIN 26487-0201(LT) from Metrolinx, and Dispose and transfer Parts 2, 3, 4, 5, 9 & 10 on Plan 40R-32247, being all of PIN 26487-0201 (LT) to The Regional Municipality of Durham

Report to: Committee of the Whole

Date of meeting: May 13, 2024

Report Number: LS 06-24

Department(s) Responsible:

Legal and Enforcement Services
Financial Services Department

Submitted by:

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

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

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1. Recommendation:

1. That Part Lot 22, Broken Front Concession, and part of the Road Allowance between Lots 22 and 23, Broken Front Concession, designated as Parts 2, 3, 4, 5, 9 and 10 on Plan 40R-32247, Town of Whitby (being all of PIN 26487-0201 (LT)), as shown in Attachment 2 outlined in green (the "Subject Property") be acquired from Metrolinx and the Subject Property be declared surplus and conveyed to the Regional Municipality of Durham (the "Region") subject to the conditions set forth in Legal Services Report 06-24;

2. That the Clerk bring forward by-laws authorizing the acquisition of the Subject Property from Metrolinx and the disposition of the Subject Property to the Region to the Council Meeting scheduled for May 27, 2024;
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 and disposition of the Subject Property herein; and
4. That the Mayor and Clerk be authorized to execute any and all agreements and documents necessary to complete the acquisition of the Subject Property from Metrolinx and the disposition of the Subject Property to the Region.

2. Highlights:

- On November 20, 2017, Council passed By-law #7337-17 (included as Attachment #1) to authorize the sale of certain lands to Metrolinx for the purpose of constructing the East Rail Maintenance Facility.
- On April 5, 2018, the conveyance of the lands to Metrolinx was completed and upon investigation by Town staff in Legal Services it was found that the Subject Property was inadvertently included in the transfer to Metrolinx at the time of registration. The Subject Property was intended to remain in the ownership of the Town.
- The Region has approached the Town to acquire ownership of the Subject Property for the purpose of constructing the future Highway 401 overpass crossing at Hopkins Street.
- To convey the Subject Property to the Region it is necessary to correct ownership of the Subject Property. In this regard, the Town has approached Metrolinx and requested that the Subject Property be conveyed back to the Town for nominal consideration and Metrolinx has agreed to this request.
- Town staff will continue to negotiate and finalize the acquisition of the Property from Metrolinx and will continue to negotiate and finalize the disposition of the Property to the Region.
- Town staff recommend the acquisition of the Property from Metrolinx for nominal consideration and the subsequent disposition of the Property to the Region for nominal consideration.

3. Background:

On November 20, 2017, Council passed By-law #7337-17 to authorize the sale of PIN 26487-0012 (LT) [Part of], Parts 2, 3 and 5 on Plan 40R-28183, and PIN 26487-0062 (LT), Part 6 Plan 40R-28183, Town of Whitby (as shown in Attachment 3 outlined in yellow) (the "Metrolinx Lands") to Metrolinx for the purpose of Metrolinx's construction of

the East Rail Maintenance Facility in accordance with Corporate Services Report CS 12-14.

On April 5, 2018, the Town transferred the Metrolinx Lands to Metrolinx by registration of Transfer/Deed of Land registered as Instrument No. DR1693446 and, due to administrative error, the Subject Property was inadvertently included in the legal description of the transfer. Upon registration of the transfer, Metrolinx incorrectly became the registered owner of the Subject Property.

In June 2021, the Region approached the Town to request the conveyance of the Subject Property for the construction of the future Highway 401 overpass at Hopkins Street. To proceed with granting the conveyance of the Subject Property to the Region, it is necessary for Metrolinx to first convey the Subject Property back to the Town. Metrolinx has agreed to the request to transfer the Subject Property back to the Town for nominal consideration.

4. Discussion:

Due to the planned Regional infrastructure construction and improvements of the future Highway 401 overpass at Hopkins Street, the Region has requested the conveyance of the Subject Property from the Town. A map of the area including the location of the Subject Property and the Metrolinx Land is provided in Attachment 4 to this report.

The conveyance from Metrolinx to the Town and Town to the Region would help facilitate the construction of the Hopkins Street Highway 401 overpass. The Region has advised that the construction of the Hopkins overpass infrastructure is tentatively scheduled between 2026 to 2030. There are currently four streets and roads that cross Highway 401 within the Town of Whitby. Three of the crossings are interchanges (Lake Ridge Road, Brock Street, and Thicksen Road) and are not considered pedestrian or cyclist friendly. The Region recommends an overpass for Highway 401 at Hopkins Street from the realigned Victoria Street (Regional Road 22) to Consumers Drive (Regional Road 23).

5. Financial Considerations:

The proposed acquisition of the Subject Property from Metrolinx will be at nominal cost to the Town except for staff time and land conveyance costs. As the conveyance of the Subject Property back to the Town from Metrolinx is to correct the previous administrative error, no appraisal will be obtained or is required.

The proposed disposition of the Subject Property to the Region will be at nominal consideration. Per discussion with Regional staff, this is the standard practice when the Region acquires properties from lower tier municipalities for the purposes of Regional infrastructure projects. Based on the concept of one taxpayer, the fact that this Property is surplus to the Town's needs, and the lands are deemed non-viable, nominal consideration is appropriate for this transaction with the Region of Durham. Further, the Town's policy allows direct sales in land dispositions with other governments therefore no appraisal will be obtained or is required. The Region will be responsible for all registration costs with respect to the transfer to the Region.

Legal Services does not normally charge other governments or school boards any legal fees for the time spent by Legal Services to complete land transfers to those entities. This practice will be maintained for both the acquisition of the Subject Property from Metrolinx and the disposition of the Subject Property to the Region.

6. Communication and Public Engagement:

As the Property is deemed non-viable and is required for municipal (Regional) infrastructure, staff recommend that the notice requirements under Town Policy F 190 be waived.

7. Input from Departments/Sources:

Engineering, Operations, and Planning Services reviewed the Region's request to obtain ownership of the Property and had no comments or objections to the conveyance.

8. Strategic Priorities:

The acquisition of the Subject Property from Metrolinx and the disposition of the Subject Property to the Region for virtually no cost is consistent with Strategic Pillar 4.4: Ensure fiscal accountability and responsibly plan for growth, and in particular Action 4.4.1: Deliver services that respond to community needs while balancing the impact to taxpayers.

9. Attachments:

Attachment #1 – By-law #7337-17

Attachment #2 – Plan 40R-32247 outlining the Subject Property as Parts 2, 3, 4, 9 & 10

Attachment #3 – Plan 40R-28183 outlining the Metrolinx Lands as Parts 2, 3, 5 & 6

Attachment #4 – Location Map of the Subject Property and Metrolinx Lands

Attachment #5 – Land Acquisition By-Law # XXXX-24 (Draft)

Attachment #6 – Land Disposition By-Law # XXXX-24 (Draft)