

# Town of Whitby

## Staff Report

[whitby.ca/CouncilCalendar](http://whitby.ca/CouncilCalendar)



---

### Report Title: 5345 Thickson Road North Expropriation – Ontario Land Tribunal Report regarding a Hearing of Necessity

---

**Report to:** Council

**Date of meeting:** June 24, 2024

**Report Number:** LS 10-24

**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:**

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

Peter Angelo, Director of Engineering,  
Planning and Development Services.

---

#### 1. Recommendation:

1. That Council receive and consider the Report of the Ontario Land Tribunal dated May 17, 2024, and included as Attachment 2 of this Report LS 10-24, related to a Hearing of Necessity for the Town's expropriation of the property municipally known as 5345 Thickson Road North;
2. That Council approve the expropriation of the following property, as approving authority in accordance with the *Expropriations Act*, R.S.O. 1990, c E. 26, as amended, for the Mid-Block Arterial Roadway Project:
  - a. The property municipally known as 5345 THICKSON ROAD NORTH, WHITBY, ONTARIO and legally described as PART LOT 20, CONCESSION 5, TOWNSHIP OF WHITBY, PART ROAD ALLOWANCE BETWEEN LOTS 20 AND 21, CONCESSION 5, TOWNSHIP OF WHITBY AS IN D76143, SAVE AND EXCEPT PARTS 3 & 4 ON PLAN 40R-26759, S/T INTERESTS OF THE TOWNSHIP OF

---

**WHITBY; TOWN OF WHITBY, REGIONAL MUNICIPALITY OF  
DURHAM (hereafter, the “Property”);**

3. That Council approves the expropriation of the Property for the reasons set out in the Decision and Reasons document included as Attachment 3 to this Report LS 10-24.
4. That the Mayor and Town Clerk be authorized to execute a Certificate of Approval on behalf of Town Council, and that staff be authorized to register same in the proper Land Registry Office;
5. That the Town Clerk be authorized to sign and circulate the Decision and Reasons document required under the *Expropriations Act*, substantially in the form set out in Attachment 3 to this Report 10-24 and to the satisfaction of the Commissioner of Legal and Enforcement Services/Town Solicitor, or designate, and that staff be authorized to serve the Decisions and Reasons document on the parties to the Hearing and the Tribunal in accordance with the *Expropriations Act*;
6. That staff be authorized to prepare a Plan of Expropriation and register same in the proper Land Registry Office;
7. That the Mayor and Town Clerk be authorized to execute the Notice of Expropriation and Notice of Possession, and that staff be authorized to serve same upon the registered owner of the Property together with a Notice of Election in accordance with the *Expropriations Act*;
8. That staff proceed to prepare, update, and/or finalize appraisal reports of the market value of the Property and, if applicable, damages for injurious affection and other compensation for disturbance damages in accordance with the requirements of s. 25 of the *Expropriations Act*;
9. That the Commissioner of Legal and Enforcement Services/Town Solicitor, or designate, execute and serve upon the registered owner(s) of the Property, an offer of full compensation and an offer of immediate payment of 100% of the estimated market value of the lands expropriated in accordance with s. 25 of the *Expropriations Act*, and make payment of the compensation so offered upon acceptance by the owner(s);
10. That a 2024 capital project for the property expropriation be approved as outlined in Confidential Staff Report LS 11-24;
11. That Council authorize the payment of \$200 to the Owner of the Property for the costs related to the Hearing of Necessity as recommended by the Ontario Land Tribunal;
12. That staff be authorized to complete all necessary steps to complete the expropriation process and obtain the Property for the purpose of the Mid-Block Arterial Roadway capital project; and

---

**13. Council authorize staff to bring forward the by-law included in Attachment 4 to this Report LS 10-24 for approval.**

**2. Highlights:**

- Council initiated the expropriation of 5345 Thickson Road North through Confidential Report LS 10-23.
- The Town seeks to expropriate the whole of the lands comprising 5345 Thickson Road North.
- The owner of the Property requested a Hearing of Necessity before the Ontario Land Tribunal (the “**Tribunal**”).
- The Tribunal rendered a decision, finding that the expropriation of the entirety of the Property is “fair, sound and reasonably necessary”.
- The lands are a critical element of the construction of the Mid-Block Arterial Roadway (“**MBAR**”), and that the lands are required for the Town to be in the best position to fulfill potential Provincial and Federal approval conditions.
- Town staff recommend that Council approve the expropriation and permit staff to continue.

**3. Background:**

**The detailed design of the Mid-Block Arterial Roadway continues, with the first phase nearing completion**

The MBAR was identified in the Town’s 2010 Transportation Master Plan as an urban arterial roadway in south Brooklin. The proposed 4-lane arterial roadway extends from Cochrane Street/Highway 7 in a southeasterly direction between Winchester Road and Conlin Road to connect to Britannia Road in the City of Oshawa. The Environmental Assessment (“**EA**”) for the MBAR was approved in 2021, and the detailed design of the roadway continues.

The Town has been steadily proceeding with the acquisition of land for, and the construction of, the MBAR to complete the Town’s road network. The first phase of the construction from Ashburn Road to the future Garden Street extension continues and is nearly complete.

The construction of the MBAR is largely through new development, but there are gaps which have required the Town to expropriate land from landowners in the area.

**Expropriation of 5345 Thickson Road continues**

The Town Solicitor brought forward Confidential Report LS 10-23 to begin the process for the expropriation of the entirety of the Property at 5345 Thickson Road. The Property is approximately 3.9 hectares (9.6 acres) in area and is shown in Attachment 1 to this Report. The road alignment for the MBAR under the approved EA proceeds along the entire length of the Property and was chosen due to constraints related to the crossing of Pringle Creek and the Ministry of Transportation’s area of control along Thickson Road around Highway 407.

The expropriation of the Property is necessary for the extension of the MBAR eastward between Thickson Road and Garrard Road, to facilitate the construction of water,

wastewater and stormwater servicing, to increase traffic capacity, and to support the Town's future growth needs in the area.

#### 4. Discussion:

##### **The owner requested a Hearing of Necessity for the Expropriation of the Property**

After serving the owner with the Town's Notice of Application for Approval to Expropriate Lands for the Property, the owner exercised the right to hold a Hearing of Necessity with the Tribunal for the expropriation of the lands under Section 7 of the *Expropriations Act*. A Hearing of Necessity is an examination by the Tribunal of whether the Town's proposed expropriation of the Property is "fair, sound and reasonably necessary". The Tribunal issues a non-binding report (i.e. Council as the approval authority is not bound by the findings of the Tribunal's report) that Council must consider within a certain time for the expropriation to proceed. The deadline for Council to consider the Tribunal's report and approve the proposed expropriation is August 15, 2024.

At the Hearing of Necessity, the Tribunal heard evidence from the Peter Angelo, Director of Engineering regarding the need and rationale for the expropriation of the entirety of the Property. The owner brought forward evidence from his own expert witness to speak to his concerns. The concerns focused primarily around the taking of the entirety of the Property.

##### **The Tribunal agreed with the Town's position and found the Expropriation of the Property "fair, sound and reasonably necessary"**

The Tribunal issued its report on May 17, 2024, and is included as Attachment 2 to this Report.

The Tribunal found that the evidence of Mr. Angelo established that the Town must own the Property to make the required applications for the required Provincial and Federal approvals. The Tribunal also indicated that while there may be a possibility that the Town may not require the entirety of the Property in the future, given the stage in the design of the MBAR, it was reasonable for the Town to expropriate the entirety of the parcel at the outset so that it is in the best position to fulfill any conditions of such Provincial and Federal approvals that may require additional lands on the Subject Property beyond the standard road allowance, such as for habitat conservation and/or for creek protection work.

Pursuant to subsection 7(7) of the *Expropriations Act*, the Tribunal may also recommend to the approving authority (Council) that a party to the hearing be paid a fixed amount for the party's costs of the hearing, and the approving authority may in its discretion order the expropriating authority (the Town) to pay the recommended costs. Subsection 7(8) of the *Expropriations Act* holds that any costs recommended under this provision shall not exceed \$200.

In its report, the Tribunal recommended that costs of the hearing be paid to the owner in the amount of \$200. This recommendation is not binding on Council, and Council has unfettered discretion over whether to order the Town to pay these costs or not.

---

**Staff recommend Council proceed with and approve the Expropriation of the Property**

Council, as approving authority under the *Expropriations Act*, is required to consider the Tribunal's decision and: (i) approve the proposed expropriation, (ii) approve the proposed expropriation with modifications, or (iii) not approve the proposed expropriation.

Staff recommend that Council approve the proposed expropriation without modification.

Given the findings of the Tribunal and given that time remains of the essence for the expropriation and construction of the MBAR, staff recommend and seek approval for the expropriation of the entirety of the Property. Under the *Expropriations Act*, the Town must issue a Decision and Reasons should it wish to proceed with the expropriation of the entirety of the Property. A draft of the Decision and Reasons is included in this report for Council's review and approval as Attachment 3.

Upon Council's approval of the proposed expropriation and adoption of the reasons outlined in Attachment 3, staff will serve the Decision and Reasons on the owner and the Tribunal and complete the following steps as required under the *Expropriations Act*:

- a. the Mayor and Town Clerk shall execute the certificate of approval and plan of expropriation as required and shall execute and serve any notices required under the *Expropriations Act*;
- b. in accordance with Section 25 of the *Expropriations Act*,
  - i. an appraisal report shall be obtained in respect of the market value of the expropriated lands;
  - ii. an offer shall be served in accordance with Section 25 of the *Expropriations Act* prior to taking possession;
  - iii. payment of the compensation offered pursuant to Section 25 of the *Expropriations Act*, shall be made upon acceptance by the registered owner, and
- c. completion of any and all necessary steps to obtain possession of the expropriated lands and to resolve any compensation claims advanced under the *Expropriations Act* by the owner(s).

Staff have also prepared a by-law to facilitate the expropriation of the Property for Council's consideration, which is included as Attachment 4 to this Report.

## **5. Financial Considerations:**

The Property is part of Phase 3 of the Town's Mid-Block Arterial Roadway project. The Budget for MBAR Phase 3 (from Anderson Road to Oshawa) totals \$53.7 million and includes costs for design, consulting, property acquisitions and construction. On the June 24, 2024 Council Meeting Agenda, Council is also considering the approval of a

\$2.25 million capital project for the detailed design of Phase 3 of the MBAR, via report PDE 08-24, and the approval of this report would further the ongoing design and construction of Phase 3 of the MBAR.

Cost estimates to complete the expropriation are outlined in Confidential Staff Report LS 11-24. Subject to Council approval of this report, a capital project will be established for the expropriation of the Property as outlined in Staff Report LS 11-24.

## **6. Communication and Public Engagement:**

As required by the *Expropriations Act*, the registered owner of the Property was sent a copy of the 'Notice of Application for Approval to Expropriate Land' by registered mail, with the effective date of service being August 31, 2023. Further, in accordance with the *Expropriations Act*, the Town advertised in a newspaper having general circulation within the Town, the required 'Notice of Application for Approval to Expropriate Land' on three consecutive weeks on August 31, September 7, and September 14, 2023.

Upon Council's approval of the proposed expropriation and adoption of the reasons outlined in Attachment 3, staff will serve the Decision and Reasons on the owner and the Tribunal as required under the *Expropriations Act*.

## **7. Input from Departments/Sources:**

Legal Services has consulted with the Engineering Division of the Planning and Development Department, as well as with the Financial Services Department.

## **8. Strategic Priorities:**

This report advances Objective 2.3: Invest in infrastructure and assets, and in particular Action 2.3.1: Construct mid-arterial roadway (MBAR) south of 407, between Cochrane and Thornton of the Town's Community Strategic Plan. The Expropriation of these lands will facilitate the design and construction of the MBAR between Thickson Road and Garrard Road, towards Thornton Road in Oshawa.

## **9. Attachments:**

Attachment 1 – Aerial view of 5345 Thickson Road North

Attachment 2 – Hearing of Necessity Tribunal Report dated May 17, 2024

Attachment 3 – Decisions and Reasons

Attachment 4 – Draft By-law 8105-24