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**Date:** June 2, 2020  
**To:** Mayor and Council  
**Author:** G.A. Plancke / Director of Municipal Services  
**RE:** Main St East at Jasperson Service Road  
**Report No.:** MS 2020-20

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## **AIM**

To advise Council of the specific details associated with the land acquisition process including expropriation, in order to provide a summary of cost, implications, timeframes and procedure for the establishment of a new service road immediately south of 329 Main St East.

## **BACKGROUND**

### **379-2019**

**Moved By** Councillor Thomas Neufeld

**Seconded By** Councillor Laura Lucier

That Administration be directed to provide a report to Council regarding the expropriation process for a service road, immediately south of the current building, including cost implications, timeframes, and procedure.

Main St East from Jasperson easterly has been a problematic traffic area for a number of years.

The former Town of Kingsville approved development of the site known as 329 Main St E. in the late 1980's which currently houses both a Tim Horton's, and a Taco Bell Franchise. As additional lands were developed in the area, traffic accessing businesses has created traffic congestion at peak times resulting in vehicle storage spilling onto Main St, as well as many near miss accidents due to vehicles entering and exiting.

Administration has been anxiously waiting for the property owner of 329 Main St East to request a site plan amendment, or submit plans for development of the vacant lands located south of the two businesses. Administration has discussed the requirements to include a new service road as condition of any additional development plans for this site.

To date the property owner has not elected to move forward with any site plan amendments, or development plans for the rear vacant portion.

McDonald's formerly occupied the Taco Bell site and had submitted plans to improve their drive-through which would have triggered site plan amendment. Once the conditions which included the new service road were identified, McDonald's opted to vacate that location and construct a new facility across the street.

As there has been no real progress from the private side, Council has directed administration to provide a report summarizing the expropriation process for lands required to construct a new service road immediately south of the current Taco Bell, Tim Horton's buildings including cost implications, timeframes, and procedure.

## DISCUSSION

Main St East and Jasperson Dr. are two major corridors in the Town of Kingsville. A number of significant public and private developments are now planned in this area over the next several years adding to the many other important developments already in place including several residential subdivisions, numerous existing and expanding commercial and higher density residential uses.

As identified in the Traffic Impact Study for Jasperson Dr / Main St E Corridor prepared by RC Spencer Associates in February of 2019 a five lane cross-section of Main St E as recommended would provide significant improvement to overall traffic operations in this immediate area. This improvement alone would result in an overall enhancement to traffic flow of approximately 75%. To date no preliminary estimates have been prepared to qualify the cost to improve Main St East to five lanes from Jasperson to the Greenway.

If the Town pursues the acquisition of lands for a new service road, the Class Environmental Assessment (Class EA) process will be triggered. A Class EA is a document that sets out a standardized planning process for classes or groups of activities. It applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed. A consultant would be retained to guide us through the Class EA process and perform the required regulatory procedures. Projects defined within a Class EA require no further environmental approval under section 5 of the *Environmental Assessment Act*, conditional upon being planned according to the procedures set out in the document and not being subject to a request for enhanced review ([Part II Order](#)). The Class EA process can last as long as 18 – 24 months from initiation

Municipal Services initially contacted specific consultants to guide us through the process to acquire the needed lands to create a rear service road should we not be successful in reaching a private purchases agreement(s). A draft plan was created by Verhaegen Land Surveyors OLS to establish a suitable corridor(s), and determine actual square footage required.

Based on the prepared draft plan(s), Ray Bower Appraisal Services Inc. was retained to prepare a Consultation Report in order to provide a comprehensive review of similar lands and values of same classification to establish a square foot land value cost should we proceed to negotiate, and or enter into expropriation talks with the land owner(s).

Based on their findings and evaluations they have established an average range of approximately \$11.00 to \$14.00 per square foot (ft<sup>2</sup>). For the purpose of this report, and discussion we have elected to use the higher \$14.00 ft<sup>2</sup> unit rate

There are two separate properties that would be impacted by the land acquisition process to create a service access road: 329 Main St East, and 313 Main St East.

The total lands and relative costs required from 313 Main St East based on the two options presented is:

Option A – 23607.41ft<sup>2</sup> @ \$14.00 ft<sup>2</sup> = \$330,503.74

Option B – 20591.36 ft<sup>2</sup> @ \$14.00 ft<sup>2</sup> = \$288,279.04

The total lands and relative costs required from 329 Main St East based on the two options presented is:

Option A – 19375.03 ft<sup>2</sup> @ \$14.00 ft<sup>2</sup> = \$271,259.42

Option B – 10763.91 ft<sup>2</sup> @ \$14.00 ft<sup>2</sup> = \$150,694.74

Total Option A = \$601,763.16

Total Option B = \$438,973.78

In addition, the cost to engineer and construct a service road to municipal standards has been estimated to be as high as \$2000.00 / meter. This translates into an additional \$380,000 for Option A, and \$280,000 for Option B.

These values do not take into consideration the impact of Injurious Affection and Set-Off Damages which would most likely come into effect which are discussed more fully below

According to the Ontario Expropriations Act (R.S.O. 1990, CHAPTER E.26), Injurious Affection means,

Where a statutory authority acquires part of the land of an owner,

(i) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

(ii) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute.

To establish an actual cost related to Injurious Affection requires further comprehensive evaluation, and analysis as it was not part of the original scope requested as part of the Consultation Report. Conservatively, Injurious Affection could increase the land value cost anywhere from 10 – 25%

## Overview of the Expropriation Process

The *Expropriations Act* and the Regulations (the "**Legislation**") thereto govern the expropriation process. As the Legislation provides an inordinate amount of power to municipalities, other levels of government, and other government bodies to expropriate land from private landowners, the Legislation also has safeguards built in to provide private landowners with the opportunity to be heard and for their interests to be protected. The first of these safeguards is the ability of an affected landowner to demand a Hearing

of Necessity to determine whether or not the expropriation is fair, reasonable, and necessary in the achievement of the objectives of the expropriating authority. The Hearing will result in a report that either supports the planned expropriation, recommends the expropriation proceed with modifications, or finds that the expropriation is not appropriate. The actual burden on municipalities is very low in proving that the expropriation is "fair, sound, and reasonably necessary", and as such, the report generally results in the expropriation being supported by the report, or supported with recommended modifications. The other safeguards in place through the Legislation and related decisions of the former OMB, the more recent LPAT, and the Courts is primarily monetary. These safeguards include measures to ensure the landowner receive the best price possible for their lands by applying the principle that the land should be valued as if it were being used for its best use. Further, landowners generally have all of their costs for legal fees and experts paid for by the municipality, and are awarded interest at the rate of 6% per annum compounded. As such, there is little risk to a landowner in litigating the amount of compensation to be paid to him or her.

The Legislation provides that a municipality is both the "Expropriating Authority" and the "Approval Authority". What this means is that municipalities as the Expropriating Authority begin the expropriation process by authorizing administration to commence an Application for Approval to Expropriate, which is in turn served on the affected landowners and published in a newspaper. Once the time for requesting a Hearing of Necessity has passed and/or any Hearings of Necessity have been conducted, the municipality then has to, as the Approval Authority, deliberate and determine whether or not the municipality should actually proceed to register an Expropriation Plan and take the property at issue into the name of the municipality.

The following is a basic procedure of the steps involved and the related timelines:

1. A By-law is passed by the municipality, as the Expropriating Authority, authorizing administration to commence an Application for Approval to Expropriate. As part of this By-law administration can also be authorized to enter into agreements to purchase the affected lands from any property owner that wishes to willingly sell their property rather than proceed through the expropriation process.
2. The Notice of Application for Approval to Expropriate is served upon the registered owner of the land to be expropriated and published once a week for three (3) weeks in the local newspaper.
3. The owner of the lands shall indicate within thirty (30) days after the first publication or service of the Notice if he or she requires a Hearing of Necessity.
4. If a Hearing of Necessity is requested, the Chief Inquiry Officer appoints an Inquiry Officer who fixes the date for the Hearing of Necessity.
5. At least five (5) days prior to the Hearing of Necessity, the municipality must serve on each owner who has requested a Hearing of Necessity a Notice indicating the grounds upon which it intends to rely at the Hearing of Necessity and make available for inspection any documents, maps, plans, etc. that it intends to use at the Hearing of Necessity.
6. The Inquiry Officer holds the Hearing of Necessity and reports to the

Approving Authority, i.e. the municipality, with the report including a summary of the evidence and arguments advanced by the parties, the Inquiry Officer's finding of fact, and the Inquiry Officer's opinion on the merits of the Application for Approval and reasons relied on in reaching that opinion.

7. The Inquiry Officer may recommend costs for a party at the Hearing of Necessity, but not in excess of \$200.00.

8. The municipality as Approving Authority considers the report of the Inquiry Officer and approves or does not approve the proposed expropriation with or without modifications. The decision of the municipality has to be in writing with reasons, and which decision has to be served on all parties within ninety (90) days after the date upon which the report of the Inquiry Officer was provided.

9. Within ninety (90) days of granting the approval, the municipality must register the Expropriation Plan, signed by the Expropriating Authority, which is also the municipality. At the time the Expropriation Plan is registered through the Registry Office, title to the lands vests in the municipality.

10. If no agreement on compensation has been reached by this point, the Expropriating Authority, the municipality, must serve on the owner of the lands, within thirty (30) days of the registration of the Expropriation Plan, a Notice of Expropriation of the owner lands in the form prescribed by the *Expropriations Act*.

11. The registered owner may then within thirty (30) days elect to have the compensation determined:

- (a) as of the date of the Notice of Hearing before the Inquiry Officer was served;
- (b) as of the date of registration of the Expropriation Plan; or
- (c) as of the date on which the owner was served with the Notice of Expropriation.

12. The compensation payable for the land expropriated is the market value of the land that might be realized if sold on the open market by a willing seller to a willing buyer. Other damages for disturbance of land, injurious affection or relocation difficulties may also be considered.

13. Where no agreement as to compensation has been reached, the Expropriating Authority, within ninety (90) days of the registration of the Expropriation Plan **and** before taking possession of the land, **must** serve upon the registered owner an offer of an amount in full compensation to the lands as estimated by the Expropriating Authority. The owner may accept this amount without prejudice to his or her rights to further adjustment in accordance with any compensation that may subsequently be determined by the LPAT.

14. The Expropriating Authority, the municipality, must base its offer of compensation upon an appraisal of the lands taken and shall serve a copy of that appraisal upon the owner at the time the offer is made.

15. Where compensation has not been agreed to, either party may serve a Notice of Negotiation upon the other requiring the compensation to be negotiated.

16. The Tribunal meets with the parties in an attempt to negotiate a settlement. If unsuccessful, either party may serve on the other and upon the Tribunal a notice requiring compensation to be determined by arbitration as though the negotiation had not taken place.

17. Fifteen (15) days prior to the hearing of an arbitration before the Tribunal, copies of appraisal reports upon which either party intends to rely must be served on the other party. No more than three (3) appraisers may be called by either party, unless leave from the Tribunal is obtained.

18. The Tribunal shall hold a Hearing to determine the compensation.

19. Where the amount determined by the Tribunal for compensation is at least 85% of the amount offered by the Expropriating Authority, the Tribunal shall make an order directing the Expropriating Authority to pay the reasonable legal, appraisal, and other costs actually incurred by the owner of the lands in the proceedings. If the award is less than 85% of the amount offered by the Expropriating Authority, the Tribunal may make such order, if any, for the payment of costs that it considers appropriate

## **LINK TO STRATEGIC PLAN**

To promote a safe community.

Support growth of the business community.

Effectively manage corporate resources and maximize performance in day-to-day operations.

## **FINANCIAL CONSIDERATIONS**

OLS for Draft and Expropriation Plan/Registration - \$5000.00

Appraisal for Lands (without Injurious Affection determination) - \$3500.00

Expropriation legal costs – estimated at \$30,000 (tbd)

Class EA process - \$50,000.00

Expropriation including 25% Injurious Affection – estimated @ \$752,203.95 – Option A

Expropriation including 25% Injurious Affection – estimated @ \$548,717.23 – Option B

Engineering – 15% of Construction cost Option A - \$57,000.00

Engineering – 15% of Construction cost Option B - \$42,000.00

Construction cost Option A - estimated at \$380,000.00

Construction cost Option B - estimated at \$280,000.00

Estimated total project cost - \$1,269,203.95 for Option A.

Estimated total project cost - \$958,182.23 for Option B.

This project has not been allocated budget in 2020.

## **CONSULTATIONS**

RC Spencer Associates Inc.

Ray Bower Appraisal Service Inc.

Verhaegen Land Surveyors

Administration Management Group

## RECOMMENDATION

That Council receive report # MS 2020-20 as a sufficient response to Resolution # 379-2019 to provide a report to Council regarding the expropriation process for a service road, immediately south of the current building, including cost implications, timeframes, and procedure.

Respectfully submitted,

*G.A. Plancke*

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G.A. Plancke Civil Eng. Tech (Env)  
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