

Approval of Expropriations - Yellowhead Trail Freeway Conversion

Consideration of Inquiry Officer's Report for 12560 Fort Road

Recommendation

1. That having considered the report of the inquiry officer in Attachment 2, the expropriation of the property, and interests, as shown and legally described in Attachment 3 (the "Property") be approved, for the reasons contained in Attachment 1 of the June 22, 2020, Office of the City Manager report CR_7900.
2. That all steps under the *Expropriation Act*, RSA 2000, c E-13 (the "Act"), be taken to complete the expropriations, including but not limited to, serving City Council's decision, registering certificates of approval of expropriation, and serving the notices of expropriation, notices of proposed payment and notices of possession.
3. That Attachment 8 of the June 22, 2020, Office of the City Manager report CR_7900 remain private pursuant to sections 24 (advice from officials), 25 (disclosure harmful to economic and other interests of a public body) and 27 (privileged information) of the *Freedom of Information and Protection of Privacy Act*.

Executive Summary

Under the *Expropriation Act*, an owner may object to a proposed expropriation. If an owner objects, an inquiry hearing is held and the inquiry officer issues a written report. The report of the inquiry officer is not binding on City Council; however, City Council must consider the report and approve or disapprove the expropriation; or approve the expropriation with any modifications it considers appropriate. Administration recommends that after considering the inquiry officer's report, City Council approve the expropriation of the Property for the proposed reasons contained in Attachment 1.

Personal information has been redacted from Attachment 3 in accordance with section 17(1) of the *Freedom of Information and Protection of Privacy Act*.

Report

Background

On July 16, 2019, City Council approved the commencement of the expropriation process to acquire the Property for the Yellowhead Trail Freeway Conversion Program (the "Project"). The Property is irregularly shaped and consists of 1.56 acres. The Property, effectively, has direct frontage to Fort Road. The Property is zoned IB (Industrial Business) and is currently being used for a used auto sales business. The improvements to the Property include gravel, perimeter chain link fencing, above ground power poles (one with lighting) and a wooden light pole.

A notice of intention to expropriate was registered on the title to the Property, served on the owners and advertised in the Edmonton Journal in accordance with the *Act*. Several owners of interests in the Property, including the registered owner of the Property, objected to the proposed expropriation. An inquiry officer was appointed by the Province and an inquiry was held in late January 2020 to the middle of February 2020 to determine whether the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority. The inquiry officer issued a written report on March 2, 2020 (Attachment 2).

Inquiry Officer's Report

The inquiry officer found that, having considered all of the documentary evidence presented, the testimony of the witnesses and expert witness, and arguments of the parties, the intended expropriation of the Property to accommodate the development of the Project is not fair, sound or reasonably necessary to achieve the City's objectives.

The inquiry officer found that:

1. The City's objectives in relation to the Project include construction of road-related infrastructure, but the proposed drainage infrastructure to manage stormwater and surface runoff in the area to be built on the Property was not incidental to this infrastructure and not a necessary part of the road construction.
2. There were insufficient preliminary engineering studies of a reliable nature, and the details of the proposed drainage infrastructure were not sufficiently advanced, for the inquiry officer, in her opinion, to make a reasoned decision as to the appropriateness of the proposed drainage infrastructure.
3. When permission to commence expropriation was sought from City Council in July 2019, there was no detailed information about the drainage infrastructure or the need for drainage in the area of the Property, apart from a general reference to stormwater management in the concept study for the Project.

4. No detailed analysis had been completed by the City's outside consultants as to the cost-benefit of the concept-level drainage infrastructure. The City's outside consultants were not engaged until December 2019 and produced their first deliverable relating to the drainage infrastructure in January 2020.
5. The City had, in large part, behaved fairly toward the objecting parties but the objecting parties were not advised until December 2019 of the City's intention to construct the drainage infrastructure on the Property.
6. In the inquiry officer's opinion, but for the expressed need to construct the drainage infrastructure, there would be no need to take the entire Property.

Recommendations and Reasons

After considering the inquiry officer's report, Attachment 2, Administration recommends that City Council approve the expropriation of the Property for the proposed reasons contained in Attachment 1.

Legal Implications

1. An owner may object to an expropriation within 21 days of being served with a notice of intention to expropriate.
2. A notice of intention to expropriate is advertised twice in the Edmonton Journal.
3. If an objection is filed within the prescribed objection period, the Province appoints an inquiry officer to conduct a hearing into whether the expropriation is fair, sound and reasonably necessary.
4. The inquiry officer must make a written report within 30 days after appointment. An extension order was issued by the Deputy Minister's designate extending the time for the inquiry officer to report by an additional 30 days. This extension also extends the deadline to register the certificate of approval of expropriation for an additional 30 days.
5. City Council must consider the inquiry officer's report but the report is not binding on City Council. City Council must consider the inquiry officer's report and approve or disapprove the expropriation; or approve the expropriation with any modifications that it considers proper within 30 days of receiving the inquiry officer's report.
6. A Ministerial Order was issued by the Minister of Justice and Solicitor General for the province on March 30, which froze all timelines under various Alberta statutes, including the *Expropriation Act*, effective March 17 until June 1. All limitation periods and timelines affected by the Ministerial Order resumed running on June 1, 2020.
7. City Council must provide written reasons for its decision and serve its decision and written reasons on the parties to the inquiry by July 17, 2020.
8. The Proposed Reasons to Approve Expropriation of the Property, Attachment 1, are proposed reasons to support City Council's decision, should it decide to

approve the expropriation of the Property. City Council may amend or modify the proposed reasons.

9. If City Council approves the expropriation, a certificate of approval of expropriation will be registered and the City will become the owner of the Property. If a certificate of approval is not registered or not registered within the timeline in the *Act*, including applicable extensions, the proposed expropriation is deemed abandoned.
10. If an expropriation is abandoned, the City is responsible to pay any actual loss sustained by the owner and the reasonable legal, appraisal and other costs incurred by the owner up to the abandonment.
11. After an interest is expropriated, the City must serve the owner with a notice of possession stating the date it must vacate by.
12. Prior to vacating, an owner will receive compensation in accordance with the *Act*. The City is required to provide an owner with an appraisal setting out market value.
13. The Land Compensation Board will determine compensation if the parties cannot agree.
14. Reasonable costs in connection with filing an objection and an inquiry are paid by the City.
15. Reasonable legal, appraisal and other costs actually incurred by an owner in order to determine compensation are paid by the City.
16. Additional legal implications are included in the private Attachment 8.

Budget/Financial Implications

Funding for the acquisition of lands required for the Yellowhead Trail Freeway Conversion Program is provided from Capital Profile CM-99-0060. Expropriation costs currently identified are within the land budget for the Yellowhead Trail Freeway Conversion Program.

Corporate Outcomes and Performance Management

Corporate Outcome(s): Goods and services move efficiently			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Goods and services move efficiently	Business Satisfaction: Goods and Services Transportation (percent of survey respondents who are satisfied/very satisfied)	50.5% (2017)	53.0% (2018)

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	Travel Time and Reliability for Goods and Services Movement (time in minutes: seconds to drive 10 km route)	10:09 (2017) - 50% of the time 13:35 (2017) - 85% of the time	12:30 (2018) - 50% of the time 16:00 (2018) - 85% of the time
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Corporate Outcome(s): Edmonton is a safe city			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Traffic disruptions at intersections are minimized through collision reduction	Rate of inner-ring road (75 St, Whitemud Drive, 170 St, Yellowhead Trail) intersection collisions per million vehicles	1.01 (2017)	0.99 (2018)
	Rate of inner-ring road (75 St, Whitemud Drive, 170 St, Yellowhead Trail) midblock collisions per million vehicles-km of travel	0.79 (2017)	0.99 (2018)

Corporate Outcome(s): The City of Edmonton has sustainable and accessible infrastructure			
Outcome(s)	Measure(s)	Result(s)	Target(s)
The City of Edmonton has sustainable and accessible infrastructure	Edmontonians' Assessment: Access to Amenities and Services that Improve Quality of Life (percent of survey respondents who agree/strongly agree)	68% (2017)	70% (2018)

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	Current Mitigations	Potential Future Mitigations
Project Management	Project goes over budget, has poor quality, or is delayed.	2- Unlikely	2 - Moderate	4 - Low	Recommendation that City Council approve the proposed expropriation of the identified property and interests.	Complete the steps required under the <i>Expropriation Act</i> to finalize the expropriation, including registering a certificate of approval of expropriation.

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Legal	If a certificate of approval of expropriation is not registered within the required timeline, the proposed expropriation is presumed to be abandoned.	2- Unlikely	3 - Major	6 - Low	Recommendation that City Council approve the proposed expropriation of the identified property and interests.	Complete the steps required under the <i>Expropriation Act</i> to finalize the expropriation, including registering a certificate of approval of expropriation.
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Attachments

1. Proposed Reasons to Approve Expropriation of the Property
2. Report of the Inquiry Officer, Sharon Roberts, March 2, 2020
3. Map and Legal Description of the Property, including registered and non-registered interests
4. WSP Memo & Draft Stormwater Management Report
5. Excerpt of Section 14 of the *Municipal Government Act* and Previous Inquiry Officer Decisions
6. City Strategy on Sewer Separation and Epcor Letter
7. Chapter 9 of the TAC Geometric Design Guide for Canadian Roads and Excerpt from the City's Access Management Guidelines
8. Legal Implications - In Private [Privileged and Confidential]

Others Reviewing this Report

- M. Persson, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement
- J. Meliefste, Acting Deputy City Manager, Integrated Infrastructure Services