



**City of Kingston
Report to Council
Report Number 15-422**

To:	Mayor and Members of Council
From:	Cynthia Beach, Commissioner, Corporate & Strategic Initiatives
Resource Staff:	Peter Huigenbos, Manager, Real Estate & Land Development
Date of Meeting:	November 3, 2015
Subject:	Expropriation Settlement for property adjacent to Belle Park

Executive Summary:

On July 19, 2012, Council directed staff to expropriate and negotiate a settlement for the acquisition of the former CN corridor lying to the north and south of Belle Park Drive. The northern half of the corridor adjacent to Belle Park was required to facilitate environmental management project work related to the former Belle Park landfill. Staff attempted to contact the owner of the corridor from 2011 to 2013 without success. The corridor runs adjacent to the western limit of Belle Park and continues south to River Street. Staff were authorized to acquire the southern portion if necessary as part of the settlement. Acquisition of the northern half of the corridor was completed by expropriation in 2013 in accordance with the notice provisions of the Expropriation Act.

On March 16, 2015, the City was contacted by the owner through a local lawyer to negotiate a settlement for the expropriation. As part of the settlement conditions, the owner is requiring that the City acquire the entire former rail corridor and not just the northern half required for the former Belle Park Landfill environmental management. On October 6 2015, staff received a signed settlement agreement from the owner for both the northern and southern halves of the corridor.

The southern half of the corridor is within the alignment of the potential Wellington Street Extension as well as the staff recommended route for the K & P Trail as per EITP report 15-018. On March 3, 2015, Council directed staff to halt expenditures toward the acquisition of land for the southerly section of the Wellington Street Extension until further direction from Council. Given that the City does need to complete the outstanding matters around the expropriation settlement and in consideration of Council's direction dating from March 3, 2015, staff is seeking direction from Council to acquire as part of the settlement agreement the southern portion of the

November 3, 2015

Page 2 of 5

corridor which includes a portion of the potential width within the Wellington Street Extension corridor.

Recommendation:

That Council direct staff to finalize the settlement for the expropriation for the northern portion of the corridor property adjacent to Belle Park designated as Part 1 of 13R-13584 and Part 1 of 13R-13627, and additionally acquire the southern portion of the corridor property designated as Part 1 of 13R-13626, recognizing that the southern portion is within part of the width of the potential Wellington Street Extension, and recognizing that the acquisition of all Parts noted above is in conformance with Council’s direction to staff on July 19, 2012.

Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Cynthia Beach, Commissioner,
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Lanie Hurdle, Community Services

Denis Leger, Transportation, Facilities & Emergency Services Not required

Jim Keech, President and CEO, Utilities Kingston Not required

Desiree Kennedy, Chief Financial Officer & City Treasurer Not required

November 3, 2015

Page 3 of 5

Options/Discussion:

On July 19, 2012 Council approved Report No. 12-187 directing staff to expropriate a section of the former CN rail corridor north and south of Belle Park Drive east of Montreal Street:

THAT the Director of Legal Services be authorized to commence expropriation proceedings against the property described as Part of Lot 19, Plan B-3, and Part of Farm Lots 1, 2, 3 and 4, Concession West of the Great Cataraqui River, in the City of Kingston designated as Part 1 of 13R-13584 and Part 1 of 13R-13627 and to complete or settle the expropriation with funds from the capital budget allocated for the Belle Park Solution in conjunction with attempts to acquire the property through negotiated settlements which may additionally include Part 1 of 13R-13626; and

THAT the Corporation of the City of Kingston make an application to City Council, as approving authority, for approval to expropriate the said lands and that the Mayor and Clerk be authorized to execute the necessary forms of application; and

THAT the "Notice of Application for Approval to Expropriate" be served and published and that any requests for inquiries received, pursuant to the "Notice of Application for Approval to Expropriate" be forwarded to the Chief Inquiry Officer appointed by the Ontario Municipal Board and the Chief Inquiry Officer be requested to report to Council with respect to any such request; and

THAT the Mayor and Clerk be authorized to execute all associated and required documents in a form approved by the Director of Legal Services.

Acquisition of the lands was required to facilitate the capital work for environmental management and stream channelization upgrades for the former Belle Park Landfill site (Exhibit "A"). Expropriation of the land was necessary as staff was unable to contact or locate the owner of the corridor after two years of making inquiries. External legal counsel with expertise in expropriation was engaged to advise staff on the expropriation and the process to ensure that proper procedures for notice in the case of an absentee landowner were followed. Staff proceeded with the completion of the expropriation and acquisition of the required lands in 2013.

Notwithstanding the absence of the landowner's participation from both the prescribed procedures for notice and the public expropriation process under the Expropriations Act, the City could only reasonably expropriate the portion of the corridor required for the environmental management works. The balance of the owner's lands were identified as having utility to the City as part of the proposed Wellington Street extension and potential K&P Trail at the time of expropriation, however, there were no grounds to expropriate the balance of the lands and no direction to do so, save and except should it become a point of negotiation with the landowner in a potential settlement agreement.

In cases where a municipality only has the need to expropriate a portion of a property for public purposes, the owner can claim that the balance of the land is no longer of use or value and require that the expropriating authority (the City) take all of the lands as a condition of settlement

November 3, 2015

Page 4 of 5

and compensate accordingly. Given the unusual configuration of this property and the lack of utility to the owner, staff anticipated that the owner of this property would likely insist that the City take all of the lands once engaged in settlement negotiations. The approval of Council in July of 2012 to initiate the expropriation included a provision that the Director of Legal Services be authorized to settle the expropriation which included the acquisition of the balance of the lands if necessary.

In Council Meeting 2015-10 on March 3, 2015, Council passed the following motion regarding the proposed Wellington Street Extension:

That expenditures towards the acquisition of land and construction of the Wellington Street Extension (WSE) southern section (from Montreal/Railway Sts. to Bay St.) be halted effective immediately, until further direction from council;

On March 16, 2015, staff were contacted by a local lawyer who had represented the landowner in the past to indicate that the owner had been in touch with him and wished to settle the expropriation. As anticipated, the request for the City to take all of the lands was presented as a settlement condition by the landowner.

It should be noted that the subject property is only 18 meters wide in locations and is not wide enough for, and could not accommodate, the potential Wellington Street extension. To accommodate the extension, Council approval of the acquisition of additional width would be required including acquisition of lands from the neighbouring former Davis Tannery site. The acquisition of the southern portion of the corridor as a component of the expropriation settlement will, however, support the objectives of Council with respect to the development of the K&P Trail. Report 15-018 to the Environment, Infrastructure and Transportation Policies (EITP) Committee identified that the southern half of these lands would be required to complete the off road trail between River Street to the former landfill entrance at Montreal Street.

Staff has received the settlement agreement executed by the owner which includes compensation for the expropriated lands and the acquisition of the balance of the owner's lands at the same rate per acre. Total settlement is \$120,000 for both portions (the northern and southern portions are approximately equal in area) plus legal costs as provided for by the Expropriations Act. Settlement of the matter without any further arbitration or litigation is in the best interest of the City and will avoid any accruing interest cost to the City in accordance with the Expropriations Act. Upon completion of the agreement, the City will not incur any further claims and associated legal and litigation expenses from the owner in relation to this expropriation.

It should also be noted that the environmental management capital works at the former Belle Park Landfill site which required acquisition of the northern portion of the former CN rail lands have already commenced and are scheduled for completion in 2016, and that the City had the right to commence this work as per the expropriation process.

November 3, 2015

Page 5 of 5

Existing Policy/By-Law:

The acquisition of the corridor property (former CN rail corridor lands) is at fair market value as per the Acquisition of Real Property Policy approved on August 12, 2014.

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

The cost of the settlement of the expropriation is \$120,000 for both the northern and southern corridor parcels, plus legal and closing costs. Funds from the capital budget allocated for the Belle Park Solution are available to pay the total cost of acquisition, which aligns with the 2012 direction from Council. Should the southern corridor lands be used for a specific municipal purpose in the future, Council may consider a transfer of budget back to the Belle Park Solution capital budget equivalent to the cost of the southern corridor parcel.

Contacts:

Peter Huigenbos, Manager, Real Estate & Land Development

Other City of Kingston Staff Consulted:

Susan Nicholson, Director, Legal Services and City Solicitor

Paul MacLatchy, Director, Environment & Sustainable Initiatives

Luke Follwell, Director, Recreation & Leisure Services

Exhibits Attached:

Exhibit 'A' – Location of Lands to be acquired by City as per the expropriation settlement

Exhibit "A "– Location of Lands to be acquired by the City
as per the expropriation settlement
Report 15-422



