



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 12-139

TO: Mayor and Members of Council

FROM: Hal Linscott, Director, Legal Services
Denis Leger, Commissioner, Transportation, Properties & Emergency Services

RESOURCE STAFF: Peter Huigenbos, Acting Director of Real Estate & Construction Services

DATE OF MEETING: July 17, 2012

SUBJECT: John Counter Boulevard – Approval to Commence Expropriation

EXECUTIVE SUMMARY:

This report recommends that in order to be “shovel ready”, staff be authorized to commence expropriation proceedings for nine (9) remaining properties required by the widening of John Counter Boulevard between Sir John A. Macdonald Blvd and Princess Street.

A total of 33 properties were identified for acquisition in the Environmental Assessment completed for John Counter Boulevard in 2006 between Division Street and Princess Street. Staff have negotiated the acquisition of 19 with an additional 4 having been acquired through site plan process. Of the 10 remaining, only 9 properties can be acquired through expropriation. The last piece needed is from the entrance to the CN-owned Via Rail station. The City cannot expropriate this land because under the Expropriations Act, a municipality cannot expropriate from a crown corporation.

The expropriation process will allow the City to secure title to the property necessary to construct the expanded right-of-way in a timely fashion. Negotiations regarding compensation will continue in parallel with the expropriation process. Expropriation will be abandoned in cases where agreements are reached prior to the completion of the process.

RECOMMENDATION:

THAT the Director of Legal Services be authorized to commence expropriation proceedings against the properties identified in the John Counter Boulevard Environmental Assessment between Sir John A. Macdonald Blvd and Princess Street and to complete or settle the expropriations within the previously approved budgeted funds for all of the subject properties in conjunction with attempts to acquire the properties through negotiated settlements; and

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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.

AUTHORIZING SIGNATURES:

<p><u>ORIGINAL SIGNED BY DIRECTOR OF LEGAL SERVICES</u> Hal Linscott, Director, Legal Services</p>
<p><u>ORIGINAL SIGNED BY COMMISSIONER _____</u> Denis Leger, Commissioner, Transportation, Properties & Emergency Services</p>
<p><u>ORIGINAL SIGNED BY DIRECTOR OF LEGAL SERVICES</u> Gerard Hunt, Chief Administrative Officer</p>

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Cynthia Beach, <i>Sustainability & Growth</i>	N/R
Lanie Hurdle, <i>Community Services</i>	N/R
Jim Keech, <i>President and CEO, Utilities Kingston</i>	√

(N/R indicates consultation not required)

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OPTIONS/DISCUSSION:

Following several years of public consultation and review of alternative designs as per the requirements of the Environmental Assessment Act, Council approved the Recommended Solution endorsed by the Technical Steering Committee for the Counter Street Improvement Project in November of 2004 to:

1. Widen Counter Street (later renamed John Counter Boulevard) from Princess Street to Division Street to a four lane roadway complete with intersection improvements, turning lanes, bicycle lanes, sidewalks, boulevard landscaping and;
2. Construct a four lane CN Rail Overpass which requires the relocation of Portsmouth Avenue/Counter Street intersection approximately 150 meters east of the current location and undertake modifications to William J. Hackett Park.

The Notice of Completion received approval from the Ministry of the Environment (MOE) in March of 2006 for the City's preferred solution stating that it had demonstrated the need for the project to improve roadway capacity to address both current and anticipated growth in travel, the need to improve the safety and operation of an at-grade railway crossing, and the need to accommodate cycling, transit and pedestrians. The preferred solution as approved by the Ministry is illustrated in Exhibits "A" and "B".

Negotiations for acquisition of property started subsequent to the Ministry's approval of the Environmental Assessment (EA). The City requires a partial acquisition from each of a total of 33 different properties. To expedite processing, all acquisitions totalling under \$50,000 were delegated to the approval of the Director of Real Estate & Construction Services. All purchases above \$50,000 have been presented to Council individually for approval.

Negotiations have been focused in an east to west direction in keeping with the phasing of construction. As of this date, all property required to complete Phases 1 and 2 of the project between Division Street and Sir John A. Macdonald Blvd have been acquired to accommodate the commencement of construction in the spring of 2012. Through additional negotiations, numerous properties west of Sir John A. Macdonald to the CN rail overpass have also been acquired for Phase 3.

In addition to the 33 properties required to complete the new road alignment, the EA identified 2 other properties from which no land is required but the construction of the overpass over the railway to realign John Counter Blvd will eliminate access to a public road. Negotiations will be continued with these property owners. Resolution may include acquisition of part or all of the properties or alternative forms of access if feasible. These two parcels are not included in the expropriation process as they are not required for actual road construction.

Notwithstanding the City requires a portion of land from CN to complete the road alignment, a junior level of government cannot expropriate from a senior level of government. CN is a federal crown corporation from which the City cannot expropriate. Negotiations will continue separately with CN to acquire land as needed as well as negotiations on other matters regarding the future of the current grade crossing and access to the site. Negotiations will include CN's tenant, VIA.

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So far, the City has negotiated acquisition of lands needed for this project over a number of years without the need to expropriate. However, acquisition of the balance of the lands needed to complete John Counter Boulevard is strategically linked to the potential construction of the Third Crossing. It is staff's recommendation that the City needs to be "shovel ready" with this project to respond to funding opportunities as they arise. Shovel read includes the need to have all of the land necessary to complete the project. The expropriation process will guarantee that the City has title to the corridor in a reasonable period of time.

The expropriation process does not preclude settlement on a negotiated basis prior to its completion. Staff has had discussions with all remaining property owners and will continue to pursue acquisitions where possible in a parallel path with the expropriation process. The outcome of both objectives is the acquisition of properties for road widening purposes at fair market values, and compensation for other impacts to property as provided for under the Expropriation Act, all within a reasonable timeframe.

EXISTING POLICY/BY LAW:

N/A

NOTICE PROVISIONS:

The Expropriations Act R.S.O. 1990 c. E.26 is the key statute for this process and includes legislative requirements to provide notice to affected property owners within specific timelines and in the form prescribed by the Act.

ACCESSIBILITY CONSIDERATIONS:

This report and related information is available in alternative formats upon request.

FINANCIAL CONSIDERATIONS:

In 2006, a capital budget was approved for John Counter Boulevard to complete the land acquisition process including compensation for land, property improvements, appraisals, surveys, land transfer tax and legal costs and some detailed design work as may be required to settle agreements.

CONTACTS:

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Kathy Gray, Property Specialist, Real Estate & Construction Services

Ext. 2429

OTHER CITY OF KINGSTON STAFF CONSULTED:

Mark Van Buren, Director of Engineering Services

Stephen Dickey, Deputy Treasurer

EXHIBITS ATTACHED:

Exhibit "A" – John Counter Blvd Improvements Sketch, figure 1-3A

Exhibit "B" - John Counter Blvd Improvements Sketch, figure 1-3B

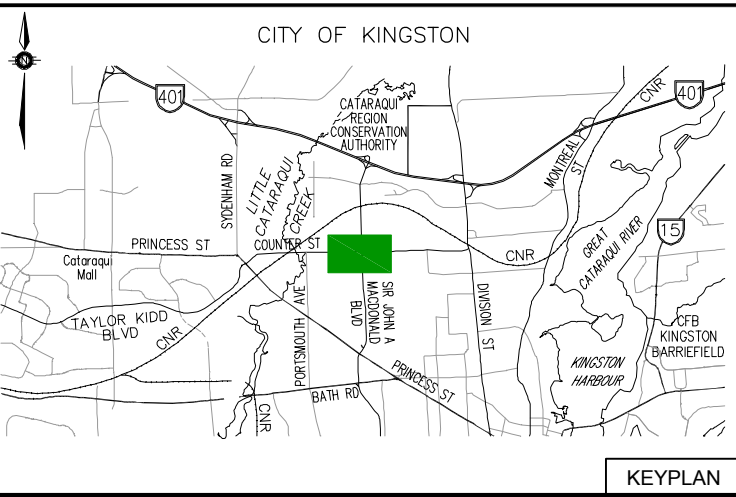
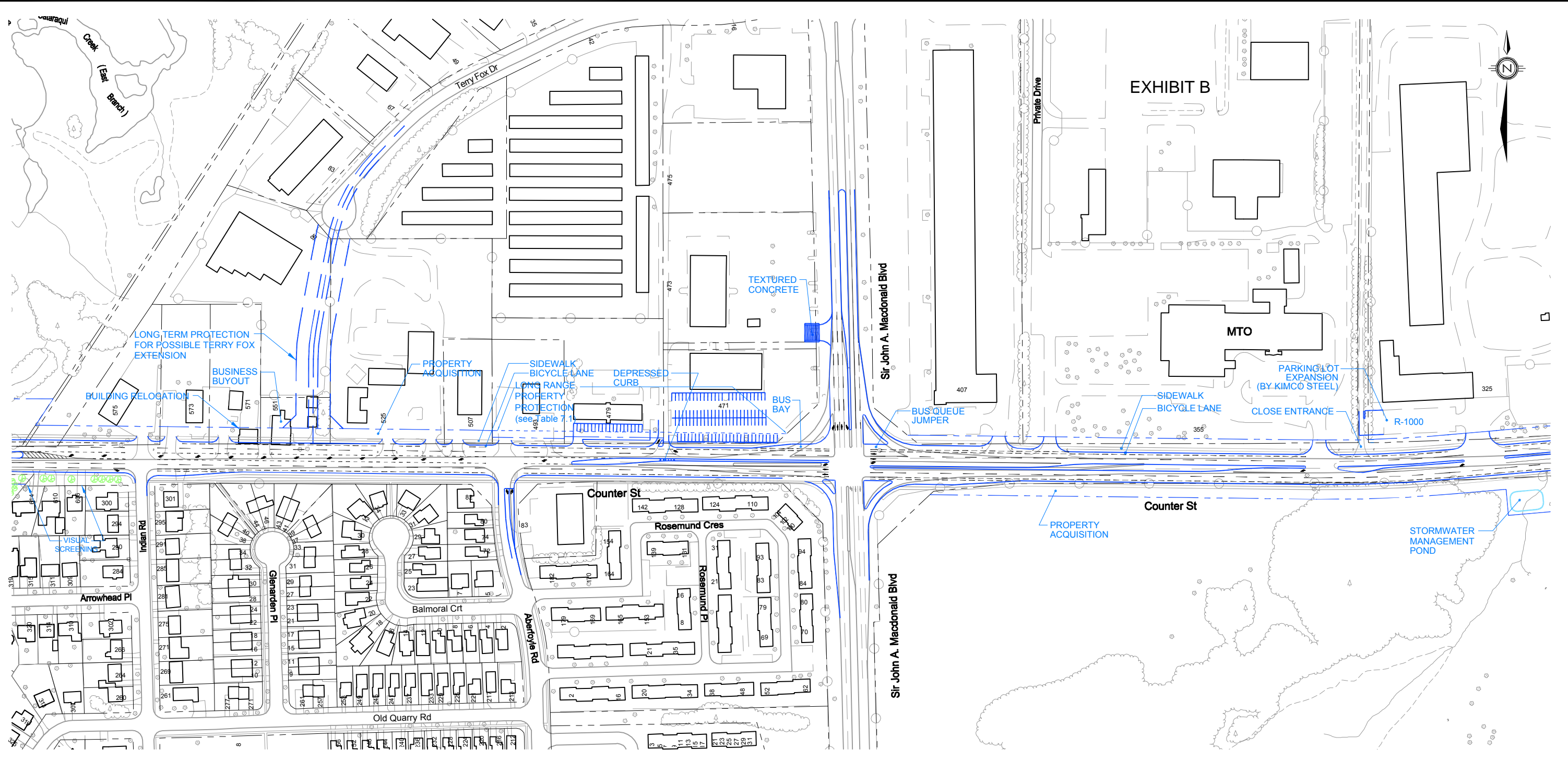


FIGURE 1-3B

RECOMMENDED PLAN

COUNTER STREET IMPROVEMENTS
ENVIRONMENTAL ASSESSMENT STUDY

