

**APPROVAL OF EXPROPRIATION - SOUTH SIDE OF PEELAR ROAD
PARTS 3 AND 4, PLAN 65R-31411
HEARING OF NECESSITY REPORT
WARD 4**

Recommendation

The Director of Legal Services in consultation with the Commissioner of Engineering and Public Works recommends:

1. **THAT** Council approve the expropriation of a permanent and a temporary easement on the lands on the south side of Peelar Road for the reasons set out in Attachment 2.
2. **AND THAT** a By-law be enacted to approve the expropriation and authorize the taking of all steps necessary to obtain the possession of the easements.

Contribution to Sustainability

The construction of the culvert will provide for a sustainable natural environment and will address flood plain concerns of the TRCA.

Economic Impact

Should Council approve the expropriation, a Section 25 offer pursuant to the Act will be served on the owners, with payment in accordance with an Appraisal. The source of funding is included in Capital Project # EN-1728-08, Peelar Road Culvert Replacement.

Communications Plan

The owner will be advised of Council's decision and appropriate notices will be sent pursuant to the *Expropriations Act*.

Purpose

The purpose of this report is to provide Council with the Report of the Inquiry Officer on the Hearing of Necessity for its consideration and to seek approval for the expropriation.

Background - Analysis and Options

In May 2009, Council enacted By-law 95-2009 to provide for the making of an application for Approval to Expropriate and to serve a Notice of Expropriation for a permanent and easement on the property on the south side of Peelar Road for the purpose of replacing a culvert under Peelar Road.

The owner requested a Hearing of Necessity and the Hearing was held on July 6, 2010.

The Inquiry Officer found the proposed taking is fair, sound, and reasonably necessary and is reasonably defensible in the achievement of the objective of the expropriating authority.

Once Council has approved the expropriation, staff will proceed with the steps identified in the *Expropriations Act*. An expropriation plan will be registered on title; a Notice of Expropriation will be forwarded. Then a Section 25 Offer to Purchase based on an Appraisal Report will be submitted to the owner.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

None

Conclusion

Council is both the expropriating and the approving authority. Section 8 of the *Expropriations Act* provides that the approving authority shall consider the report of the Inquiry Officer and shall approve or not approve the expropriation and shall give written reasons for its decision.

The expropriation may be approved for the reasons set out in Attachment 2.

Attachments

1. Location Map
2. Notice of Grounds
3. Report of Inquiry Officer

Report prepared by:

Heather A. Wilson
Director of Legal Services

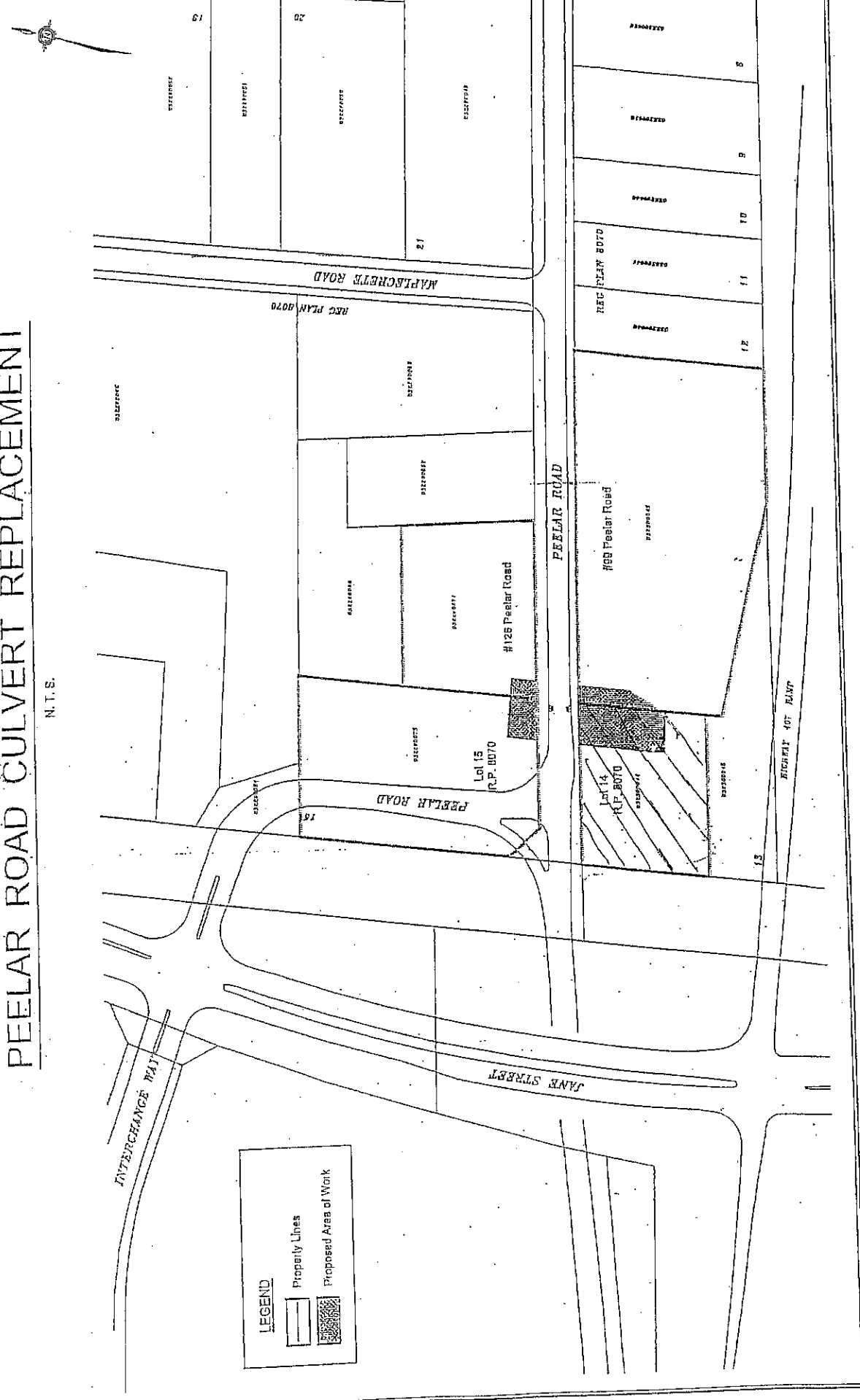
Respectfully submitted,

Janice Atwood-Petkovski
Commissioner of Legal and
Administrative Services

Heather A. Wilson
Director of Legal Services

PEELAR ROAD CULVERT REPLACEMENT

N.T.S.



LEGEND

- Property Lines
- Proposed Area of Work

1. The Land to be taken is required for or in connection with the following objectives:
 - (a) to construct, operate, maintain, inspect, remove, replace, reconstruct, enlarge and repair a concrete box culvert on, under and over a portion of the Land;
 - (b) to remove barriers to fish passage and allow migration of native fish species in the region;
 - (c) to address infrastructure requirements of the City of Vaughan relating to, but not limited to, storm water management in a planned and organized manner;
 - (d) to address safety and structural concerns with respect to the existing corrugated culvert structure;
 - (e) to address flood plain concerns and potential requirements of the Toronto and Region Conservation Authority;
 - (f) to provide for a sustainable natural environment;
 - (g) to provide for an appropriately located and sized concrete box culvert; and
 - (h) to implement the Official Plan for the City of Vaughan and Amendments thereto, to comply with the 2005 Provincial Policy Statement and The Places to Grow Growth Plan.

REPORT OF
VICTOR L. FREIDIN, Q.C.
INQUIRY OFFICER

IN THE MATTER OF THE proposed expropriation of land by The Corporation of the City of Vaughan for approval to expropriate land being Permanent Easement: part of Lot 14, Plan 8070, designated as part 3, on Plan 65R-31411, in the City of Vaughan, Regional Municipality of York, and Temporary Easement: Part of Lot 14, Plan8070, designated as Part 4, on Plan 65R-31411, in the City of Vaughan, Regional Municipality of York, for the period of one (1) year commencing on July 1, 2009 and terminating on June 30, 2010, in the Province of Ontario for the purpose of replacing and enlarging existing steel corrugated culvert under Peelar Road with a large concrete box culvert.

Hearing Date – July 6, 2010

**REPORT OF VICTOR L. FREIDIN, Q.C.
INQUIRY OFFICER**

The Hearing of Necessity regarding the above noted matter was held on Tuesday, July 6, 2010 at the Municipal Office, City of Vaughan, Public Hearing Room commencing at 9:30 a.m.

The City of Vaughan was represented by legal counsel, Crystal Higgs. Three witnesses were called by the City of Vaughan. They were Pat Marcantonio, Senior Engineering Assistant with the City of Vaughan, Mr. John P. Semjan, a professional with SRM Associates, and Mr. Kenneth Chow, Principal, Senior Water Resources Engineer with SRM Associates. Their Curriculum Vitae were marked Exhibits 4, 8, and 10 respectively.

The landowner was properly served with the Notice of Hearing but advised me that he was not going to attend. He submitted a letter to me dated June 29, 2010 and asked that I consider his comments when considering the evidence at the hearing. That letter was marked Exhibit 1.

A number of his comments address the issue of whether there is a need for the culvert in question. These concerns are beyond my jurisdiction as I must accept the objective of the Expropriating Authority, and my task is to determine if the proposed expropriation is reasonably defensible in order to achieve the City's objective.

Notwithstanding this jurisdictional issue, Mr. Di Benedetto's letter was canvassed at the hearing. I made a point of asking one or more of the witnesses to comment on each of the concerns identified by Mr. Di Benedetto.

Mr. Di Benedetto states that the current culvert is in good condition. This is not supported by the evidence of witnesses called by the City. Two inspection reports indicate that repairs are required. They were found in Exhibit 5, Tab 1 and Tab 6. Concerns regarding the present culvert include, but are not limited to defected plates, cracks at bolt holes, weakening engineered bedding, corrosion and absence of some bolts.

Mr. Di Benedetto states that the proposed work should not proceed until the Black Creek Optimization Study is completed. I accept the evidence at the hearing that this study has been completed, and in any event, does not impact what is being planned for the Peelar Road culvert.

The Notice of Grounds describes the reasons for the proposed work, and why Mr. Di Benedetto's property is required. Each of the matters described in paragraphs 1 and 2 of the Notice of Grounds were addressed and proven in evidence by witnesses for the City.

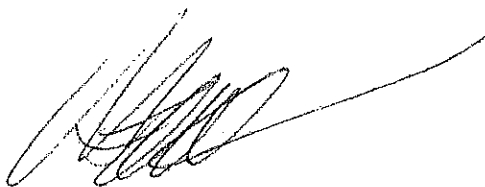
In terms of the specific timing of the work being done, I accept the evidence of the Expropriating Authority that it should proceed as soon as possible.

RECOMMENDATION

Based on the evidence present, it is my opinion that the proposed expropriation of Mr. Di Benedetto's property is fair, sound and reasonably necessary in the achievement of the objectives of the Expropriating Authority.

DATE: July 22, 2010

ALLOF WHICH IS RESPECTFULLY SUBMITTED



VICTOR L. FREIDIN, Q.C.
Inquiry Officer

EXHIBIT LIST

1. Letter from Tony Di Benedetto to Victor L. Freidin dated June 29, 2010.
2. Affidavit of Andrew Malcolm Brown sworn June 28, 2010.
3. Brief of Title Documents of The Corporation of the Town of the City of Vaughan.
4. CV of Pat Marcantonio.
5. Engineering Brief of The Corporation of the Town of the City of Vaughan.
6. Aerial photo of Peelar Road Culvert Replacement,
7. City of Vaughan, Extract from Council Meeting Minutes of February 11, 2008.
8. CV of John P. Semjan.
9. Photo of culvert showing corrosion of barrel and breakdown of coating, March 2009.
10. CV of Kenneth Chow.