

LAND NEGOTIATIONS

Issue

Plans to realign South Railway Street for municipal purposes have been halted due to the landowner's unwillingness to sell, leaving the Town with two options: leave the road or initiate an expropriation.

Motion Arising From Closed Session

That Administration be directed to issue a Notice of Intent to expropriate the property located at 30 South Railway Street (Plan 841 0463 Lot A).

Report

The Town has been negotiating with the owner of the property at 30 South Railway Street for the past year initially through a third party agent ([REDACTED]) as an undisclosed buyer.

Negotiations eventually led to the Town revealing its identity as the landowner was concerned the buyer would build something that competed with his other lands located at [REDACTED] South Railway Street.

The Town revealed its identity and shared its general intent to realign the road, rebuild services, address contamination and flood proofing. The landowner was complimentary on the Town's initiative and a verbal agreement was struck to proceed with a sale of [REDACTED] with conditions to include environmental assessments and geotechnical testing, and a separate agreement to ensure the landowner would be able to tie his property at [REDACTED] South Railway Street into services installed by the Town for 30 South Railway Street.

The Purchase and Sales Agreement (PSA) was to be forwarded to the landowner and the landowner was to supply the Town with existing environmental reports they had commissioned for the lands. The Town prepared the PSA with conditions to the vendor including a separate Memorandum of Understanding (MOU) that provided assurance that the vendor could tie into the Town's services (Option A). The vendor supplied environmental reports to the Town. These materials exchanged hands on April 25, 2022.

Concerned that Administration was not in alignment with Council and questioning if the MOU provided enough certainty (condition dates in the PSA were changed at this time), the landowner requested a meeting with the Mayor.

Mayor Thorn, Chief Administrative Officer Vincent, Community Growth, Investment and Sustainability Director Greene met with the landowner and the COO for Lansdown. At the meeting it was noted that Administration followed Council's direction (April 29, 2022) and that the MOU was recommended as the vehicle to

confirm future servicing tie-ins since a current Council cannot fetter the discretion of a future Council to budget for infrastructure at a specific time. Further it was discussed, and understood by Lansdown, that the Town could not contractually obligate the owner of lands at 30 South Railway Street to those at ■ South Railway Street as these properties have different legal entities.

It was also discussed that if Option A was not satisfactory to the vendor, that Option B could be provided. Option B eliminates the need for the MOU by increasing the sale price from ■ to ■ thus adding a monetary value for the future tie-ins. At the time, the landowner was in agreement and a new PSA was forwarded allowing four days for any edits and a signatory deadline of May 6, 2022 at 4:00 p.m.

Lansdown stated that they still had reservations and felt pressured to sign. The deadline was extended by four days to May 10, 2022 at 4:00 p.m. Just prior to 4:00 p.m. on May 10th the Town received a notice from Lansdown's COO that both offers (Option A and B) were rejected, and that they would be proceeding with their own development plans.

The options before the Town now are to do nothing (Option C), or expropriate the land (Option D).

Option C

Proceeding with Option C results in the road remaining in its current location and the Town constructing parking at the lands already purchased from CPR. Flood matters, contamination, and development would be addressed by the Town through the development process.

Option D

Expropriation involves three main steps: 1) decision to expropriate; 2) transfer of the land; and 3) compensation for expropriation.

1) Decision to expropriate

- The Town begins the process by issuing a Notice of Intention to expropriate.
- Once that notice is served to the landowner, the landowner has 21 days to object to the expropriation.
- If the landowner objects, an inquiry is conducted. The Minister designates an inquiry officer within 15 days of the Town notifying the Minister that there has been an objection (this may be extended to 20 days), and the officer then has 30 days to issue a report (this may be extended to 60 days).
- Once the report is received, the Town must decide if it is going to proceed with the expropriation.
- If the Town decides to proceed with the expropriation, a certificate of approval is issued and is filed with Land Titles.

2) Transfer of the land

- When the certificate of approval is filed with Land Titles, it has the effect of transferring title to the property to the Town.

- After the certificate of approval is registered, the Town has 30 days to serve notice to the landowner of when the Town requires possession. In this instance, the landowner must be given at least 90 days' notice.

3) Compensation

- When the Town registers the certificate of approval, it must immediately serve a Notice of Expropriation to the landowner. It then has 90 days to give the landowner a written notice of the proposed payment along with that payment. If the landowner disagrees with the Town's proposed payment amount, the landowner has one (1) year to take the issue to the Land and Property Rights Tribunal.

The above deadlines are statutory however, there is risk that the Minister may take longer to appoint an inquiry officer or the officer's report is delayed. Further, if the landowner agrees to the taking but wants to dispute the compensation payable, the parties can agree to what is called a "section 30 agreement", which would allow the Town to have the property sooner and this does require agreement of the landowner.

Attachment(s)

1. Notice of Intention to Expropriate

Prepared by: Redacted as per FOIP s. 1(n)(i), 24(1)(g), and 25(1)(c)
Jeff Greene
Community Growth, Investment and Sustainability Director
May 12, 2022