



File No. P-2368

<b>TO:</b>	<b>THE COUNCIL OF THE CORPORATION OF THE CITY OF LONDON</b>  <b>AS THE EXPROPRIATING AUTHORITY UNDER THE <i>EXPROPRIATIONS ACT</i></b>  <b>MEETING ON DECEMBER 9, 2014</b>
<b>FROM:</b>	<b>JOHN BRAAM, P. ENG. MANAGING DIRECTOR AND CITY ENGINEER ENVIRONMENTAL AND ENGINEERING SERVICES</b>
<b>SUBJECT:</b>	<b>EXPROPRIATION OF LANDS VETERANS MEMORIAL PARKWAY SOUTH EXTENSION – TS1325</b>

**RECOMMENDATION**

That, on the recommendation of the Managing Director and City Engineer, Environmental and Engineering Services, with the concurrence of the Director, Roads and Transportation, on the advice of the Manager of Realty Services, with respect to the expropriation of lands for the project known as the Veterans Memorial Parkway South Extension between Highway 401 and Wilton Grove Road, the following actions be taken:

- a) the proposed by-law attached as Schedule 'B' **BE INTRODUCED** at the Municipal Council meeting on December 9, 2014 by The Corporation of the City of London as Expropriating Authority, with respect to the lands described in Schedule 'A' attached hereto (the "Expropriated Lands");
- b) the Civic Administration **BE DIRECTED** to take all necessary steps to prepare a plan or plans showing the Expropriated Lands and to register such plan or plans in the appropriate registry or land titles office, pursuant to the *Expropriations Act, R.S.O. 1990, c. E.26*, within three (3) months of the Approving Authority granting approval of the said expropriation;
- c) the City Clerk **BE AUTHORIZED** to sign on behalf of the Expropriating Authority, the plan or plans as signed by an Ontario Land Surveyor showing the Expropriated Lands; and
- d) the City Clerk **BE AUTHORIZED AND DIRECTED** to execute and serve the notices of expropriation required by the *Expropriations Act, R.S.O. 1990, c. E.26* and such notices of possession that may be required to obtain possession of the Expropriated Lands.

**PREVIOUS REPORTS PERTINENT TO THIS MATTER**

Built and Natural Environment Committee – March 28, 2011 – Veterans Memorial Parkway Extension to Wilton Grove Road

Built and Natural Environment Committee – August 15, 2011 –Class Environmental Assessment for Veterans Memorial Parkway South Extension - Appointment of Consulting Engineer

Civic Works Committee – April 23, 2012 - Veterans Memorial Parkway South Extension Environmental Assessment - Consultant Assignment Scope Change

Civic Works Committee – February 4, 2013 – Highway 401 Interchange Projects - Agreement with Ministry of Transportation

Civic Works Committee - May 6, 2013 - Veterans Memorial Parkway South Extension and Highway 401 Interchange Improvements Transportation Environmental Study Report



Planning and Environment Committee – August 20, 2013 – Veterans Memorial Parkway South Extension – Official Plan Amendment and Zoning Bylaw Amendment

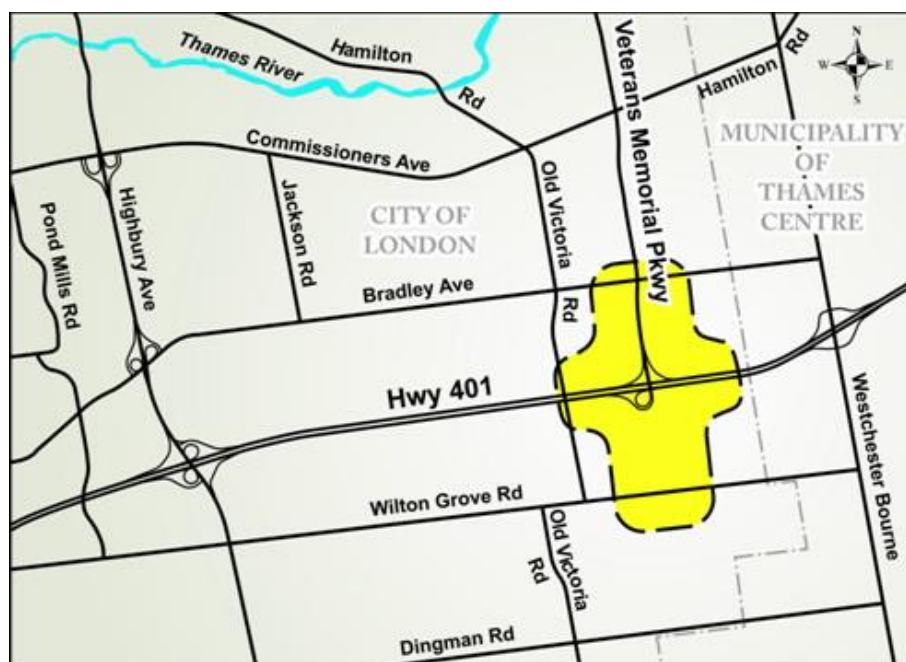
Corporate Services Committee – December 10, 2013 – Expropriation of Lands Veterans Memorial Parkway South Extension – TS1325

Corporate Services Committee – December 9, 2014 – Expropriation of Lands Veterans Memorial Parkway South Extension – TS1325

## BACKGROUND

At its meeting held on May 14, 2013, Municipal Council approved and accepted the Environmental Assessment (EA) for the Veterans Memorial Parkway (VMP) South Extension and Highway 401 Interchange Improvements. The study met the requirements of both the Schedule “C” Municipal Class EA and the Provincial Group ‘B’ Class Environmental EA. The Transportation Environmental Study Report was subsequently placed on public record for a 30-day review period during which no Part 2 Orders were received. The project EA is thereby complete.

The primary study area extends from the Veterans Memorial Parkway/Highway 401 Interchange south to Wilton Grove Road. However, the study area also includes a broader area, extending north to Bradley Avenue and east and west along Highway 401 to encompass the Veterans Memorial Parkway extension and the Highway 401 Interchange improvements. The below map shows the extent of the study area.



The associated Official Plan Amendment and Zoning Bylaw Amendment incorporating the recommendations of the EA were the subject of a public participation meeting before Planning and Environment Committee on August 20, 2013. No comments were received. The future VMP Extension will have a future right-of-way (ROW) width of 60 m. The recommended plan will impact 5 properties. No residences or business will be directly impacted.

Ministry of Transportation Ontario (MTO) will acquire the land required for the VMP interchange improvements and the City of London will acquire the land for the VMP Extension as outlined in the project delivery agreement. The unique arrangement for the VMP project is based on which agency is the long-term property owner and may leverage synergies with City industrial land acquisition.

Negotiations were commenced by the MTO/City with no current indications of reaching amicable agreements with any of the parties. It is necessary to continue the appropriate expropriation procedures for the properties in order for the project to proceed and meet the prescribed timelines. MTO will continue Expropriation concurrent with the City in order to address their respective interests.

A Hearing of Necessity inquire was held on June 25, 2014, with the legal assistance of Mr. Geoff Belch and Mr. Doug MacRae presenting evidence on behalf of the City. After hearing all pertinent evidence Mr. D.S. Colbourne, the Inquiry Officer concluded that he is satisfied that the takings of Parts 4 and 8, Plan 33R-18721 are fair, sound and reasonably necessary in the achievement of the objective of the expropriating authority and are reasonably defensible.

Appendix “B” – see attached for the findings and opinion of the Inquiry Officer.

**Anticipated Construction Timeline**

Property requirements for award of an MTO Design-Build contract and utility relocation to be secured as soon as possible.

<b>SUBMITTED BY:</b>	<b>REVIEWED AND CONCURRED BY:</b>
<b>BILL WARNER MANAGER OF REALTY SERVICES</b>	<b>EDWARD SOLDO. P. ENG. DIRECTOR ROADS AND TRANSPORTATION</b>
<b>RECOMMENDED BY:</b>	
<b>JOHN BRAAM, P. ENG. MANAGING DIRECTOR ENVIRONMENTAL AND ENGINEERING SERVICES AND CITY ENGINEER</b>	

**SCHEDULE ‘A’**

**DESCRIPTION OF LANDS TO BE EXPROPRIATED FOR VETERANS MEMORIAL PARKWAY  
SOUTH EXTENSION - BETWEEN HIGHWAY 401 AND WILTON GROVE ROAD**

The following lands are required in fee simple:

- Parcel 1.

Part of Lot 5 in Concession 2 in the geographic Township of Westminster now in the City of London and County of Middlesex designated as Part 4 on Plan 33R-18721 being part of PIN 08197-0003(LT).
- Parcel 2.

Part of Lot 5 in Concession 2 in the geographic Township of Westminster now in the City of London and County of Middlesex designated as Part 8 on Plan 33R-18721 being part of PIN 08197-0004(LT).
- Parcel 3.

Part of Lot 4 in Concession 3 in the geographic Township of Westminster now in the City of London and County of Middlesex designated as Part 9 on Plan 33R-18721 being part of PIN 08196-0083(LT).

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## SCHEDULE 'B'

Bill No.  
2014

By-law No. L.S.P.-\_\_\_\_\_

A By-law to expropriate lands in the City of London, in the County of Middlesex, for the Veterans Memorial Parkway South Extension between Highway 401 and Wilton Grove Road.

WHEREAS the Municipal Council of The Corporation of the City of London, as Approving Authority, pursuant to the *Expropriations Act, R.S.O. 1990, c. E.26*, at its meeting held on December 9, 2014 approved the expropriation of the lands and premises hereinafter described in Appendix "A" of this by-law:

AND WHEREAS the said Approving Authority has directed that its Certificate of Approval be issued in the prescribed form;

AND WHEREAS The Corporation of the City of London, as Expropriating Authority, at its meeting held on December 9, 2014 accepted the recommendation of Approving Authority;

BE IT THEREFORE ENACTED by the Municipal Council of The Corporation of the City of London, as follows:

1. The lands described in Appendix 'A' of this by-law be, and the same, are hereby expropriated pursuant to the *Expropriations Act, R.S.O. 1990, c. E. 26*, and the *Municipal Act, 2001*, as amended.
2. The appropriate municipal officials are authorized and directed to take all proper and necessary steps and proceedings including the employment of valuers, to settle by arbitration or otherwise, the amount of compensation to be paid in respect of the expropriation of the said lands, providing that the amount of compensation shall not be reached by agreement unless adopted and approved by the Municipal Council of The Corporation of the City of London.
3. The appropriate municipal officials are authorized and directed to prepare a plan or plans, as necessary, showing the lands to be expropriated for registration in the appropriate Registry of Land Titles Office, and the Mayor and the Clerk are authorized and directed to sign the plan of expropriation, all pursuant to the *Expropriations Act*.
4. The appropriate municipal officials are authorized and directed to execute and serve the Notice of Expropriation and the Notice of Possession pursuant to the *Expropriations Act*.
5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First reading – December 9, 2014  
Second reading – December 9, 2014  
Third reading – December 9, 2014

**APPENDIX ‘A’**

**To By-law L.S.P.-\_\_\_\_\_**

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## APPENDIX “B”

### IN THE MATTER OF THE EXPROPRIATIONS ACT

**AND IN THE MATTER OF** an application by the Corporation of the City of London for approval to expropriate the lands described as Parts 4, 8 on Reference Plan 33R-18721 dated October 11, 2013 for the purpose of the Veterans Memorial Parkway South extension, between Highway 401 and Wilton Grove Road.

**Date of Hearing:** June 25<sup>th</sup>, 2014

#### Appearances:

- |  |   |
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| <ul style="list-style-type: none"> <li>• City of London</li> <br/><br/><br/><br/><br/><br/><br/> <li>• Bruynland Farms Inc.</li> <li>• 2378172 Ontario Limited</li> <li>• 33 Cardigan Inc.</li> <li>• WMJO Limited</li> <li>• 1086717 Ontario Limited</li> <li>• 27 Cardigan Inc.</li> </ul> | <p>Geoffrey Belch</p><br><br><br><br><br><br><br><p>Allan R. Patton</p> |
|--|---|

This inquiry was held pursuant to Section 7 of the Expropriations Act, R.S.O. 1990, c. E.26 (as amended) (the “Act”) to determine whether the proposed takings by the City of London of the portions owned by the requestors is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority as the Act states, or is “reasonably defensible” as the courts have interpreted this text.

#### THE OBJECTIVE OF THE EXPROPRIATING AUTHORITY

These applications by the City of London, together with the applications for expropriation by the Minister of Transportation are for the construction of improvements to the interchange of Veteran’s Memorial Parkway (VMP) where it intersects with Highway 401, and the extension of VMP as a 2 lane expressway south to Wilton Grove Road to provide additional turning lanes, ramp improvements and signalization, and the related relocation and extension of VMP and all works related thereto.

The 401 interchange improvements are the responsibility of the Province, while the VMP extension south of Highway 401 is that of the City. The applications for expropriation by the Province although involving the same owners is the subject of another report, as the parties requested separate hearings.

#### THE PROPERTIES

The properties forming the extension of the VMP south of Highway 401 to Wilton Grove Road, fee simple takings, are Parts 4 & 8 on Plan 33R-18721. They are 60.28 m in width and run from the parts to be expropriated for the interchange improvements south to Wilton Grove Road, including turning triangles at the intersection. Part 9, a fee simple taking, on Plan 33R-18721 is a sliver of land on the south side of Wilton Grove Road east of the proposed extension of VMP, which will provide turning lane capacity at that intersection.

The only evidence provided was that of Douglas MacRae, Division Manager – Transportation Planning & Design for the City. As he described it the alignment of VMP south to Wilton Grove Road is not constrained by any specific features identified during the EA **or by the property owners**. The safest,



most economic alignment therefore is straight and it straddles the lot line between the Brunyland and Cardigan properties.

The new road will traverse an animal movement corridor, with potential for a heightened road mortality risk for amphibians, snakes and turtles. As a result the Crinklaw Drain will be relocated and redesigned to accommodate small wildlife species movement.

The Wilton Grove intersection has minimal constraints and maintaining the existing centre line was recommended. Minor road widening property requirements are required for left and right turning movements on both sides and they form part of the VMP road taking.

## PROCEDURAL MATTER

Though evidence was led with respect to all parts, **in argument**, Mr. Belch advised that Bruynland Farm Inc. was not a party to the hearing, as Mr. Patton had not filed a request for a hearing of necessity on behalf of **that owner** for their parts 8 & 9.

A review of the documentation filed with the Chief Inquiry Officer on behalf of Mr. Patton, indicates that requests for hearings of necessity were received from 33 Cardigan Inc., and 1086717 Ontario Limited for Part 8, and 27 Cardigan Inc. for Part 4.

The March 18, 2014 letter from the City of London referring to requests for hearing indicates again that 1086717 Ontario Limited and 33 Cardigan Inc. requested hearings for Part 4, and 27 Cardigan Inc. requested a hearing for Part 8. Those are also the owners referred to in the letter of April 1, 2014 from the Chief Hearing Officer to myself as the hearing officer.

The **reference plan**, however, indicates that for Parts 4 & 9 **the most recent transferee** is Bruynland Farm Inc., and for Part 8 **the most recent transferee** is 27 Cardigan Inc.

The notice of hearing issued refers to Part 4, 8 as the matters to be the subject of the hearing of the takings by the City of London.

Ultimately the position of Counsel for the City was that I add Brunyland Farms Inc. as a party to the hearing, provided Mr. Patton did not require a further hearing on any issues. Mr. Patton acknowledged that there would not be a need for a further hearing and requested that Bryunland Farms Inc. be added as a party.

I do have the jurisdiction to consider the “necessity” of the taking of Part 4 as a hearing was requested by owners other than Brunyland Farms. I therefore add Brunyland Farms as a party, in respect of that part.

As to Part 9, the Act provides the Inquiry Officer with the ability to add parties to a hearing if their properties would be affected by the taking of another property. The determination would be the “affect” of a taking of other than their property on whether the taking of the other property was reasonable, sound and necessary in the achievement of the objectives of the authority. In my view in this matter the determination of the “necessity” of the taking of Part 9 is not within my authority as no request for hearing was filed. I can, however, consider whether the taking of Parts 4 and 8 affects the part 9 area of the Brunyland farm. **It can be seen that Part 9 is an integral part of the project**, so it is “affected” by the other takings, and I can consider that affect, but not the “**necessity**” of the taking of Part 9.

## THE PROJECT

Mr. MacRae’s evidence notes are set out in Exhibit 9

As part of the agreement with the Province, this project is one of four Highway 401 access points to be improved to support the long term economic development strategy and development and access to employment lands in the Highway 401 corridor.

The basis for the project stems from the City’s Economic Development Strategy, the Industrial Land Development Strategy Update (ILDS), the Transportation Master Plan and the City’s Official Plan Review. These documents were the basis for the Municipal Class EA and the Class EA for Provincial Transportation Facilities (2000). The consultation process is set out in Section 6 of the TESR (Exhibit 17). There were no requests for a Part 2 order during the 30 day period.





Operational concerns, safety considerations and impacts on adjacent properties were also considered. The design chosen is the design which has the least overall impact on the existing land owners in the area of the expressway and can be implemented in a manner consistent with engineering constraints and at a reasonable cost. The property requirements have been reduced to the minimum areas consistent with engineering constraints, the Official Plan requirements for an expressway and the requirement to ensure the safety of the traffic within the project.

As set out in the 2009 document Exhibit 12, The London Economic Development Corporation in furthering London developing and being recognized as a regional hub for Ontario is the following:

“Expand industrial development in the 401/Veteran’s Memorial Parkway area and extend the VMP to Wilton Grove Road”.

As one of the opportunities for immediate implementation for Gateway Phase 2 & 3 is

“additional serviced industrial land on either side the 401 and the VMP. These works generally consist of the purchase of approx. 100 ha. of land and the local servicing costs directly related to that land, additional water and wastewater treatment plant capacity and an interchange at Bradley and the **VMP**.

Furthering the Economic Gateways, the Industrial Lands Development Strategy (ILDS) 2012, identifies the extension of VMP to Wilton Grove Road and the interchange improvements as a 0-5 year improvement in the list of recommended road network improvements. It also recommends that the Urban Growth Area along the Highway 401 corridor be expanded.

Amendment 556 to the Official Plan, **unopposed**, and approved August 27, 2013, implements the extension of the VMP corridor from highway 401 south to Wilton Grove Rd. The lands surrounding the lands of the takings remain designated and zoned as agricultural.

The 2013 Transportation Master Plan (TMP) excerpts of which were filed as Exhibit 14 is a long-term transportation strategy for the City that will help guide the City’s transportation and land use decisions through to 2030 and beyond and contains the following specifics;

“Potential industrial growth to the south of Highway 401 in the area bounded by Highbury Avenue, Wilton Grove Road and Westchester Bourne Road .....has been proposed to accommodate a large industrial development. For the purpose of the TMP, a growth of 2,370 employees has been assumed to be located in the zones immediate to the south of Highway 401 by 2030 under the Scenario 2 land use.”

“The right turn volumes from Highbury Avenue to Wilton Grove Road will also result in additional capacity issues by 2030, which may impact the operation of the Highbury Avenue interchange at Highway 401. A new road link is recommended to extend the existing Veterans Memorial Parkway south of Highway 401 to Wilton Grove Road, to serve these new developments lands.”

Currently neither the lands for the VMP nor those adjoining are within the Urban Growth Boundary. The matter of the expansion of the Urban Growth Area along Highway 401 set out in the ILDS update was presented to the City Planning Committee on June 17, 2014.

During the TESR process the subject owners appeared at PIC #2 and raised the issue of drains and tile drainage, but raised no other issues. None of the details of the project, other than the Crinklaw Drain, were challenged either at the PIC or in cross examination.

In cross examination and argument Mr. Patton’s issues were that the Provincial Policy Statement policies addressing agricultural lands have not been considered. He also pointed out that no comments were received from either OMAFRA or MMA with respect to the loss of agricultural lands. He also pointed to the fact that the surrounding lands were not within the Urban Growth Boundary. He argued that the matter was premature until all of the planning issues related to the surrounding lands are settled. In that respect Urban Growth Boundary expansion, Official Plan amendments are already underway.

Mr. Patton also raised the issue that the Crinklaw Drain, as altered, will be moved further south but will remain on Brunyland and Cardigan lands, in the area of the temporary takings. In its current location the drain is on the requestor’s lands, but those become part of the bridge and overpass takings. As it is moved south and upgraded the lands in the new location those lands will be returned to the owners after construction.



## FINDINGS AND OPINION

Mr. Belch is correct in that the PPS has policies which may appear to conflict. In addition to the agricultural policies are the following:

As stated in the PPS and repeated in the Industrial Lands Study, municipalities are expected to promote economic development and competitiveness by providing suitable lands that can support a wide range of economic opportunities and contribute to a diversified economic base.

Amongst the recommendations in the ILDS are the following:

“Review the potential for Office Business Park designations in the Highway 401/402 corridors”

“Expand the Urban growth Area in the 401/402 corridor”

“Continue to pursue the extension of Veterans Memorial Parkway to Wilton Grove Road and add this link to Schedule “C” of the Official Plan”.

The Study goal set out in the TESR is;

“to create a transportation network that fully supports the future land use and economic growth opportunities along the Highway401 corridor and provides improved north south transportation capacity to accommodate projected future travel demand”

“A south extension of VMP will relieve the traffic congestion on Highbury Avenue south of the Highway 401 interchange and will provide an important part of a transportation network that supports future economic growth opportunities along the Highway 401 corridor. These improvements will also contribute to improved emergency access in the area. “

I do not see anything inconsistent with the PPS in the actions taken to improve the extension of VMP as it relates to the transportation issues raised in the Transportation Study unrelated to any influence of the lands adjoining the VMP extension being other than agricultural. The project is proposed to assist in a current situation in advance of any further consideration of the expansion of Office Business Park designations in the Highway corridors. For those reasons, I do not find any prematurity in the actions of the City on the VMP. In terms of agricultural lands the takings are modest, and that includes any “affect” on Part 9, itself a very minimal taking.

I am satisfied that the takings of Parts 4 & 8 are fair, sound and reasonable necessary in the achievement of the objective of the expropriating authority and are reasonably defensible.

DATED: November 21, 2014

Original signed

D.S. Colbourne

Inquiry Officer