



Committee Report

To:	Deputy Warden McQueen and Members of Grey County Council
Committee Date:	May 26, 2022
Subject / Report No:	LSR-CW-01-22
Title:	Expropriation Processes
Prepared by:	Michael Letourneau, Director of Legal Services – County Solicitor Lacey Thompson, Contract and Real Estate Coordinator
Reviewed by:	Kim Wingrove, CAO Randy Scherzer, Deputy CAO
Lower Tier(s) Affected:	
Status:	Recommendation adopted by Committee as presented per Resolution CW80-22;

Recommendation

1. That report LSR-CW-01-22 outlining an expropriation process be received; and
2. That staff be authorized to seek the direction of County Council to commence and proceed with expropriation proceedings for land identified as necessary for County projects; and
3. That where County Council gives such direction, staff be authorized to proceed under the Expropriations Act to acquire ownership of such land, which shall include the authority to:
 - a) commence, pursue, settle, and discontinue any such expropriation proceedings in accordance with the direction of County Council, and
 - b) enter into agreements and take steps necessary to give effect to County Council's direction in respect of the expropriation proceedings; and
4. That any such expropriation proceedings be subject to the oversight of the Chief Administrative Officer and the Director of Legal Services – County Solicitor or their authorized delegates.

Executive Summary

This report discusses circumstances where County Council may deem it necessary to acquire land by expropriation. It does not identify any specific land to be acquired by expropriation.

Expropriation is a process by which the County can obtain ownership of land necessary for capital projects. It is governed by the provincial Expropriations Act. When land is expropriated, compensation is payable to any affected landowner based on fair market value. The value of compensation may be agreed between the County and the landowners, or the landowner may seek to have the amount of compensation determined by the Ontario Land Tribunal (OLT), which may occur through a mediated process or arbitration.

Although purchasing property by agreement is always preferable, there are circumstances where it may be necessary for the County to expropriate land to pursue capital projects. This report proposes a process for the County to pursue expropriation of necessary land. Any expropriation would require specific direction from County Council prior to the initiation of expropriation proceedings and would only be pursued where staff have identified that an agreement cannot be reached for purchase of a property at fair market value.

Background and Discussion

Staff engaged in negotiating the purchase of land for County capital projects are encountering increasing difficulty in successfully negotiating purchase agreements. In many cases, agreements cannot be reached for one or more of the following reasons:

1. the landowner seeks a price for the land in excess of fair market value
2. the landowner seeks additional consideration in the purchase process that is beyond what can be provided by the County
3. the landowner is simply unwilling to discuss selling property to the County.

In general, the County is required to pay no more than fair market value to acquire ownership of a property. This is reflected in the County's Sale and Acquisition of Land Policy (G-Gen-003) and its Acquisition of Land Procedure (G-GEN-003-002).

Under section 106(2) of the Municipal Act, 2001, the County is legally prohibited from granting bonuses to "any manufacturing business or other industrial or commercial enterprise", which is a broad category of landowners. Payment of a purchase price for land over its fair market value may constitute prohibited bonusing.

In general, staff are of the view that any land purchase should be made on the principle of paying a fair market value purchase price, together with compensation for any significant negative impacts resulting from the sale.

Difficulties for staff arise when the landowner seeks more for their land than the County can provide, or where the landowner will not enter negotiations for a sale. The land staff seek to purchase is integral to the completion of an approved capital project; and without it, the project cannot proceed based on the design or plans established for it.

Staff have identified that in cases such as these, it may be necessary to proceed under Section 2 of the Acquisition of Land Procedure (G-GEN-003-002), which provides for land acquisition by expropriation where it is deemed necessary. That Procedure was approved in 2012 as part of the Sale and Acquisition of Land Policy (G-GEN-003), but did not provide for a particular process to proceed with expropriation. Staff are reviewing that policy in order to bring an update forward for Council's consideration; expanded details regarding expropriation processes are expected to be included.

Expropriation process under the Expropriations Act

The expropriation process itself is governed by the provincial Expropriations Act, R.S.O. 1990 c. E.26.

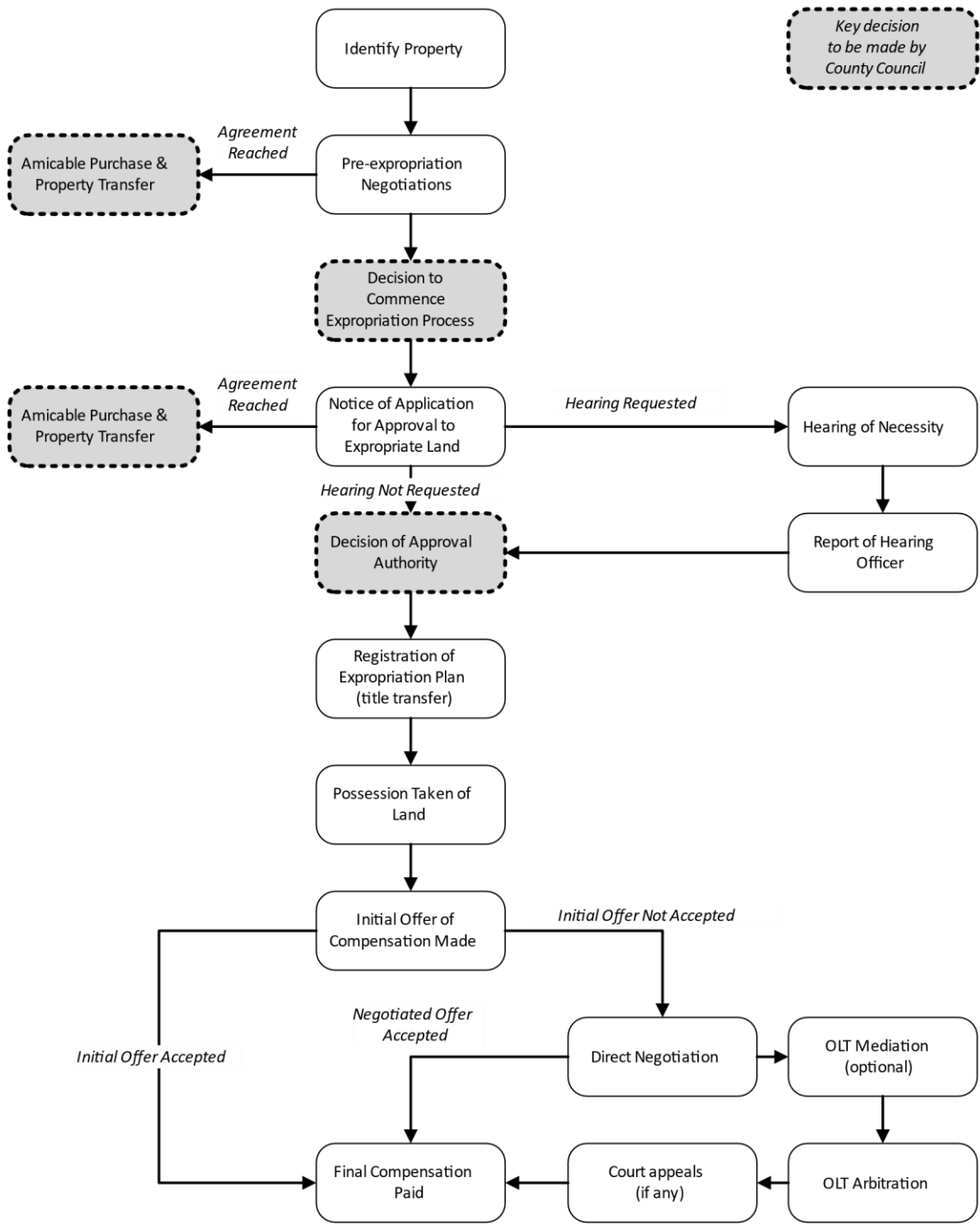
At a high level, the Act provides for:

- A process by which an “expropriating authority” such as a municipality may obtain ownership of land by expropriation
- A process by which owners of land are compensated for the fair market value of the land expropriated and other losses arising from the expropriation
- Dispute resolution mechanisms for those processes

The process for obtaining ownership of land by expropriation follows these basic steps:

1. Land is identified for expropriation – this may also include rights that are “less” than full ownership, such as easements or time-limited rights that may be used only to facilitate construction
2. A formal notice is issued to the landowner(s) and to the general public to apply to start the expropriation process
3. Within 30 days of the notice being issued, the landowner or other interested parties (e.g. tenants) may request a “hearing of necessity” where a hearing officer from the Ontario Land Tribunal (OLT) reviews the proposed expropriation and issues a non-binding report
4. The relevant “approval authority” considers the expropriation application and, if a hearing was conducted, the report from the hearing officer
 - a. Note: County Council is its own “approval authority” under the Act
5. The approval authority may approve the expropriation application as it was submitted, approve it with (limited) modifications, or reject it
6. If approved, a survey of the expropriated land called an “expropriation plan” must be registered on title to the property within 3 months of approval; ownership of the property is automatically transferred to the expropriation authority when the plan is registered
7. Within 3 months of registration of the expropriation plan, an offer of compensation must be made to the owner
8. If the owner does not accept the compensation offered, the amount may be settled via the OLT through negotiation and then arbitration, if necessary. The amount of compensation is generally determined on the value of appraisals obtained by the parties.

More detail on the process is in the diagram below:



Key decision to be made by County Council

Adapted from *Expropriation Law in Ontario*; Williams, Skinner, Helfland; LexisNexis, 2021

At any point prior to registering the expropriation on title (point #6 in the list above), the expropriating authority may stop pursuing the expropriation process and no compensation is payable to the landowner. After registration, compensation for the value of the land, impacts related to the expropriation, and the owner's reasonable costs in pursuing compensation (generally legal and appraisal costs) is payable.

Similarly, the expropriating authority and the landowner may come to a voluntary agreement for the purchase and sale of the lands at any time before the expropriation is registered on title. After registration, they may still come to voluntary agreement on the amount of compensation to be paid.

Proposed process for County acquisition of land by expropriation

In general, staff intend to continue to follow established processes to purchase land through negotiation and voluntary agreements. These are the procedures described in the Acquisition of Land Procedure outside of Section 2.

Staff have identified two types of scenarios where those processes would not have succeeded, and where they would want to bring to Council's attention a potential expropriation of land necessary for a County project:

1. The owner has demonstrated that they are not willing to engage in negotiations to sell the land to the County
2. Where the owner has engaged in negotiations to sell the land to the County, but a price cannot be agreed on that staff feel reflects a fair market value that can be recommended to County Council as a voluntary purchase.

In these circumstances, staff would intend to bring a report for the consideration of County Council requesting direction to commence formal expropriation proceedings under the Act. Such a report would generally include the following:

- The specific land identified for expropriation, including any lesser rights such as easements or time-limited occupation rights
- The reasons why this land is necessary for a capital project approved by County Council
- The reasons staff have determined that the land cannot be purchased by voluntary agreement
- An estimate of the value of the land involved and of possible costs for expropriation

The actions of staff in pursuing any expropriation process authorized by County Council would be subject to any conditions Council chose to establish. The expropriation process would be overseen internally by the Chief Administrative Officer and by the Legal Services department.

Legal and Legislated Requirements

Section 6 of the Municipal Act, 2001 authorizes the County to acquire land by expropriation.

Financial and Resource Implications

There are no specific costs with respect to this report.

Any possible expropriation may have costs related to fair market value compensation to be paid, as well as costs such as legal; appraiser, and surveyor fees for both the County and the landowner. Those would be brought forward with a specific request to proceed with expropriation proceedings.

Relevant Consultation

- Internal (list)
- External (list)

Appendices and Attachments

Policy G-GEN-003 and procedure G-GEN-003-002



Corporate Policy

Sale and Acquisition of Land Policy

Approved by: County Council
Date Approved: June 5, 2012
Replaces: ADM-10-08

Endorsed By: By-law 4765-12
Last Revision Date: May 6, 2008
Scheduled for Review by: 2017

Policy Number: G-GEN-003
Section: Governance

Sub Section: General

References and Related Documents

Municipal Act, 2001, S.O. 2001, c.25, *Section 270*

[Sale of Land Procedure](#)

[Acquisition of Land Procedure](#)

Policy Statement

The County of Grey is accountable for its land holdings including the sale of any such Real Property and the acquisition of new Real Property.

Purpose

The Municipal Act, 2001 requires that all municipalities adopt and maintain a policy with respect to the sale of Real Property. The County of Grey also desires a policy to provide fairness and transparency in the acquisition of Real Property. The purpose of this policy is to set out the procedures to be followed for either the sale or acquisition of Real Property by the County of Grey.

Scope

This policy applies to all sales and acquisitions of Real Property by the County of Grey.

Grey County Council may declare any Real Property surplus and in the same or subsequent resolution or may proceed to sell such Real Property in accordance with the procedures set out in this policy and associated procedures, as applicable.

Definitions

For the purpose of this policy and associated procedures, the following words shall have the meaning ascribed herein, unless the context otherwise requires:

"Acquisition" shall include all acquisitions of Real Property by the County of Grey.

"Clerk" means the Clerk of the Corporation of the County of Grey.

"County Council" means the Council of the County of Grey.

"County" means the Corporation of the County of Grey.

"County Road" means a highway over which the County has jurisdiction.

"Damages for Injurious Affection" means the reduction in the market value of the remaining property, where only part of the property is acquired rather than the entire parcel."

"Director of Transportation Services" means the Director of Transportation Services of the County of Grey.

"Expropriations Act" means the Expropriation Act, R.S.O. 1990, c. E26, as amended or any successor legislation.

"Good Condition Farm Fence" means a fence that, as determined by County staff, is capable of holding livestock.

"Local Board" means a municipal service board, transportation commission, public library board, board of health, police services board, planning board or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding school boards and conservation authorities.

"Meeting" means any regular, special committee or other meeting of County Council or its Standing Committees.

"Municipal Act, 2001" means Municipal Act, 2001, S.O. 2001, c25, as amended or any successor legislation.

"Person" includes an individual and a corporation and the successors, assigns, heirs, executors, administrators, or any other legal representatives of a Person to whom the context may apply according to law.

"Purchase" means any transaction whereby an interest in Real Property is transferred to or from the County with or without consideration.

"Real Property" means any interest in lands held or owned by the County, whether such lands are vacant or not, and without limiting the generality of the foregoing includes easements, rights-of-ways and leaseholds of 21 years or more and in the case of a proposed purchase, means the interest that the County proposes to obtain in lands.

"Sale", "sell", "selling" and "sold" means any transaction whereby an interest in Real Property is transferred or disposed of with or without consideration.

"Standing Committee" means a standing committee of County Council as established from time to time by County Council.

"Value" and "valuation" means in the valuation of the fair market value of the Real Property in accordance with Section 2.



Corporate Procedure

Acquisition of Land Procedure

Approved by: County Council

Endorsed By: By-law 4866-14

Date Approved: September 2, 2014
2012

Last Modified Date: May 6, 2008; June 5,

Replaces: ADM-10-08

Scheduled for Review by: 2017

Procedure Number: G-GEN-003-002

Parent Policy: G-GEN-003

Section: Governance

Sub Section: General

References and Related Documents

Municipal Act 2001, *Section 270*

[Sale and Acquisition of Land Policy](#)

[Sale of Land Procedure](#)

Purpose

To define the procedures to be followed for all acquisitions of Real Property by the County of Grey.

Scope

This procedure covers all acquisitions of Real Property by the County of Grey.

Procedure

1) General Real Property Purchases

- a) County Council approval must be sought before County staff negotiates the purchase of any Real Property. The authority to negotiate as an agent for County Council must first be provided. County Council may delegate the authority to the Chief Administrative Officer or a relevant department Director.
- b) Staff who are delegated the authority to negotiate the purchase of Real Property are entitled to rely on additional County staff to assist with the negotiations; however, the staff member who is the person in the office that is delegated the authority is responsible for ensuring the negotiations are carried out in compliance with the delegation granted.

- c) The authority granted will be limited to the negotiation of an agreement of purchase sale as an agent for County Council which will not be binding until approved by County Council and executed by the Warden and Clerk.
- d) The final agreement of purchase and sale will be ratified by by-law of County Council.
- e) The responsibility for receiving staff reports and making recommendations for the acquisition of Real Property under this policy for County Council approval is the appropriate Standing Committee.

2) Real Property Purchases by Expropriation

- a) Where it is deemed necessary, expropriation may be authorized by County Council. In these circumstances the requirements of the Expropriation Act will be followed.

3) Road Purposes Purchases

- a) The Director of Transportation Services or his/her designate is authorized to negotiate in accordance with this procedure the purchase of Real Property that is in his opinion required for road purposes. For negotiations beyond the scope of this procedure all offers will be without prejudice to the County of Grey until endorsed by County Council.
- b) In the event that it appears to County Council that a larger amount of Real Property can be acquired from any particular owner at a more reasonable price and on terms more advantageous than those upon which the immediately required Real Property can be acquired, County Council may direct that such larger amount be acquired.
- c) Recommendations to purchase property for road purposes shall be presented to the Standing Committee and recommended to County Council.
- d) With the exception of 3(b), the Warden and Clerk are authorized to execute all necessary documents related to Real Property acquisitions for road purposes once approved by County Council and is exempt from the requirement of a by-law in Section 1(d).

4) Real Property Acquired as a Result of a Land Severance

- a) For severances of properties on County roads:
 - i. a road widening of 5.2 metres (17 feet) is to be conveyed in support of the County's long term goal of acquiring 30.5 metres (100 feet) right of way widths throughout its road system. For severances, road widening will be conveyed to the County on both the severed and retained parcels which will be added as a condition of consent. For properties located within settlement areas the required road widening will be determined by the Director of Transportation Services or his/her designate;

- ii. a road widening of greater than five (5) metres will be conveyed if in the County's sole opinion future right-of way requirements will exceed 30 metres. For severances, road widening will be conveyed to the County on both the severed and retained parcels which will be added as a condition of consent;
 - iii. geometric considerations will meet the current standards as outlined in the Geometric Design Standards for Ontario Highways;
 - iv. the landowner shall bear all the costs of the conveyance.
- b) Acquisitions under Section 4 are exempt from requirements of 1(a), 1(c), 1(d) and 3(c) and the Warden and Clerk are authorized to execute all necessary documents to acquire Real Property as a result of a land severance.
 - c) Any exceptions to the requirements of 4(a)(i) and 4(a)(ii) would need to be considered and approved by County Council.

5) Approved Guidelines for Purchasing Property for Roads' Purposes

The value of Real Property being purchased for road strip widening is dependent of several factors including:

- Usage of the existing property
- Size of the existing parcel of land
- Residential setback
- Damages for Injurious Affection

6) Determination of Level of Compensation

- a) Compensation paid to a Person for Real Property acquired by the County for roads related purposes shall be as set out in Schedule "A" attached hereto.
- b) Where deemed appropriate the Director of Transportation or his designate is hereby authorized to negotiate beyond the approved schedule, without prejudice, on an individual basis and no negotiation shall be binding on the County until reported to the Standing Committee for its consideration and endorsement by County Council.

Schedule "A" to Acquisition of Land Procedure G-GEN-003-002

Type of Compensation	Compensation		Comments
	All municipalities except Town of Blue Mountains	Town of Blue Mountains	
Road Widening as a condition of severance	\$2.00	\$2.00	Condition of severance
Road widening – standard 5 met res (17 foot) parcel – 0.08 hectares (0.2 acres) of frontage and greater	\$ 12,600/hectare (\$5,100.00/acre) or \$6.50 per running metre	\$ 18,525/hectare (\$7,500.00/acre) or \$9.50 per running metre	
Road widening – standard 5 metre (17 foot parcel – less than 0.08 hectares (less than 0.2 acres) of frontage	\$1,000	\$1,000	
Fence Allowance	\$12.00 per metre	\$12.00 per metre	To be provided for relocation of an existing "good condition" farm fence. A "good condition" fence is defined as one that is capable of holding livestock and will be at the discretion of County staff
Daylight Corners – measurement of 15 metres (50 feet) adjacent to an intersecting road	\$200.00	\$200.00	The \$200 flat rate is in addition to the road widening paid per metre noted above.
Tree Compensation	Tree planting to maximum of \$1,500	Tree planting to maximum of \$1,500	To be negotiated by the Director of Transportation Services and his/her designate.