



September 27, 2010

Mr. Jim Baird
Commissioner, Development Services
Town of Markham,
101 Town Centre Boulevard,
Markham, Ontario L3R 9W3

Dear Jim,

Subject: 407 Transitway – Assessment Process

I understand your staff are reviewing the proposed MTO Transitway alignment in preparation for a formal submission to the Assessment Process. MDE's Board has asked that we communicate our concerns to be included in the Town's formal comments to the Province.

By way of background, and as you know, MDE commenced a process in the fall of 2004 with Municipal Affairs and Housing (MMAH) to amend the Parkway Belt West Plan to accommodate the Birchmount Energy Centre. This involved a re-alignment of the 30 metre wide utility corridor. This lengthy process resulted in a Minister's order on December 6, 2007 after securing endorsement and approval from a long list of agencies including MTO.

Following MMAH approval, MDE embarked on the next phase to purchase a 3.255 acre permanent easement from ORC for \$1.455 million which closed on March 31, 2009. Days before the closing, MTO provided email confirmation to ORC stating *"upon review of the most recent submission (site plan dated January 16, 2009) which was received on March 17, 2009, the Ministry finds it now satisfactory as a site plan for the purposes for ORC to proceed with the property arrangement with MDE"*.

MDE was more than a little surprised when MTO, several months later, presented a Transitway alignment that cuts the MDE property in half. In the event that MTO maintains the proposed new alignment and MDE is unable to negotiate a satisfactory alternate arrangement with MTO, MMAH and ORC for a new property boundary, MDE would have a legitimate and substantial claim against MTO for injurious infection, disturbance damages, business loss, and for the value of any land taken by MTO.

Therefore, MDE's position is as follows:

1. Proposed Transitway Alignment:

Conditional on points 2 & 3, MDE does not object to the proposed Transitway alignment.

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2. New MDE Property Alignment:

MTO has proposed that MDE and MTO negotiate a "land swap". The MTO alignment frees up land to the north of the MDE property immediately west of Birchmount Road. As MTO takes the western half of the MDE property for the Transitway, MDE would assume the land to the north resulting in a new property configuration for MDE. MDE does not object to this concept subject to point 3.

3. Compensation:

MDE will actively explore the concept of a land swap with MTO on the firm condition that MTO will cover the following costs:

- a. All MDE engineering costs to review and re-engineer an alternate site and plant configuration.
- b. Justifiable changes to MDE infrastructure costs to accommodate the revised land configuration.
- c. All surveying, permitting and legal costs to work with MMAH, ORC, Hydro One and other agencies to re-configure the MDE easement lands.
- d. MDE Management time to work with MMAH and ORC to re-configure the MDE easement lands.
- e. Any costs imposed by Powerstream to move a portion of their distribution assets (the pole-line) that would not have been necessary had the parties being given adequate notice of the new Transitway boundary; and any costs charged by Powerstream to undo any of their re-location work recently completed.

In summary, MDE is supportive of MTO's proposed Transitway alignment. Further, MDE is receptive to MTO's concept of a "land swap" for the benefit of both parties. However, MDE's support is conditional on MTO's commitment to providing compensation for any reasonable costs that result from this final alignment proposal.

Best regards

Markham District Energy Inc.



Bruce Ander, P.Eng.
President

c.c. Mr. Alan Brown, Town of Markham
Mr. Jack Heath, Deputy Mayor, Chair Markham District Energy