



Bridging the past, present and future

Proposed Expropriation – 349 Ridge Road & 712 Reaker Road

1. Council Strategic Priorities
2. Ontario Municipal Act – Role of Council
3. Overview of Subject Lands
4. General Employment Policies
5. Overview of Employment Land Supply in Welland
6. Land Development Process
7. Expropriation Process – Previous Presentation By Aird & Berlis
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9. Conclusion

Council Strategic Priorities



Seated left to right are Councillors: Mary Ann Grimaldi, Leo Van Vliet, Tony DiMarco, Bonnie Fokkens, John Chiochio. Standing left to right are Councillors: Adam Mooto, David McLeod, Graham Speck, Claudette Richard, Bryan Green, Mayor Frank Champion, Jim Larouche, Lucas Spinosa.

Council's 2019/2022 Strategic Priorities

Welland is maturing into a smarter and adaptable city; therefore, strategic priorities are paramount to help guide City Council with clear and focused decision making. City Council's 2019/2022 Strategic Priorities take a holistic approach to improving lives by investing in social infrastructure. The following 2019/2022 Strategic Priorities are the pillars of Council's 2019-2022 vision.

- Canal Lands and Waterway Redevelopment
- Financial Management and Sustainability
- City Infrastructure
- Business Development and Job Creation
- Communications, Community Engagement, and Organizational Culture
- Health & Well-being

Ontario Municipal Act – Role of Council

Role of council

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act. 2001, c. 25, s. 224; 2006, c. 32, Sched. A, s. 99.

Municipal administration

Section 227 It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality. 2001, c. 25, s. 227.

Location Advantages of Subject Lands

- Immediately adjacent to major transportation infrastructure including Highway #140 to the west, CN Rail Line to the east and south
- Close proximity to Canada/US Border, Welland Shipping Canal, Highway 406, Highway 58A, QEW, existing industrial development.
- Water and sewer mains available on Ridge Road immediately adjacent to the subject lands.
- Immediately south of existing City developed Enterprise Drive industrial subdivision and in close proximity to the Harry Diffin Industrial Subdivision (Innio).
- Land is suited to create an industrial subdivision with a double loaded road and a range of 2 acre to 6 acres lots which is where most of the industrial demand is while allowing the potential for larger development parcels if needed.
- Does not abut and is not near significant residential development.

Planning Policy Context for Subject Lands

- Located within the Urban Boundary of the City.
- Located within the Gateway CIP Area and is identified within a Strategic Location for Investment
- Designated Gateway Economic Centre in the Region and City Official Plans.
- Zoned – GEC – Gateway Economic Centre in Zoning By-law 2017-117.

General Employment Policies

- The Council approved an employment need projection of 11,050 additional jobs between 2016-2041. Employment needs may increase as residential growth increases beyond current projects.
- The City has been aggressive in developing incentives to transform employment lands to “Shovel Ready” sites. These sites send a strong message to both prospective businesses and local residents – it says that your community is serious about economic development.
- City Official Plan
 - Section 2.4 – An Economic Gateway
 - v. Welland will work, in partnership with all levels of government, to ensure that attractive employment lands are provided and protected in Welland which create job opportunities and economic diversity, allowing growth in key sectors such as advanced manufacturing, tourism, aerospace, logistics, food processing, health, biosciences, green technologies and interactive media.
 - ix. Welland will support and promote the growth of transportation and logistics and the advanced manufacturing sector by strategically locating employment lands in close proximity to the Highway 406 and Highway 140 corridors.
 - Section 3.2 – Planning Objectives
 - viii. To ensure the availability of a sufficient supply of designated employment and residential land to meet the City’s projected long term growth.

General Employment Policies

- Other Policies in OP

- 4.3.1.1 Provide for the Orderly Growth and Distribution of Employment Areas**

- The City will ensure there is an appropriate supply and distribution of Employment lands provided throughout the City and that future development occurs in an orderly manner.

- 4.3.1.9 Minimize Adverse Impacts Associated with Industrial Uses**

- The City will attempt to minimize adverse impacts associated with industrial uses by ensuring that industrial uses occur on designated lands and that issues related to impacts of air, noise, vibration and odour are addressed in a manner which is consistent with City and Provincial standards.

- 4.3.3.6 Industrial Traffic**

- Industrial traffic should be directed away from, and not through, residential areas. Generally, the number of access points from employment areas to arterial and collector roads should be limited to minimize potential disruptions to traffic flow.

- 4.3.3.4 Balancing Demand and Supply**

- The City will support and promote existing vacant Employment Areas by monitoring the inventory of vacant employment land and designating new employment lands only where there is appropriate planning merit as demonstrated through a comprehensive review.

General Employment Policies

- Welland Economic Development Strategy and Action Plan 2019-2024

- 8 Key Strategic Areas

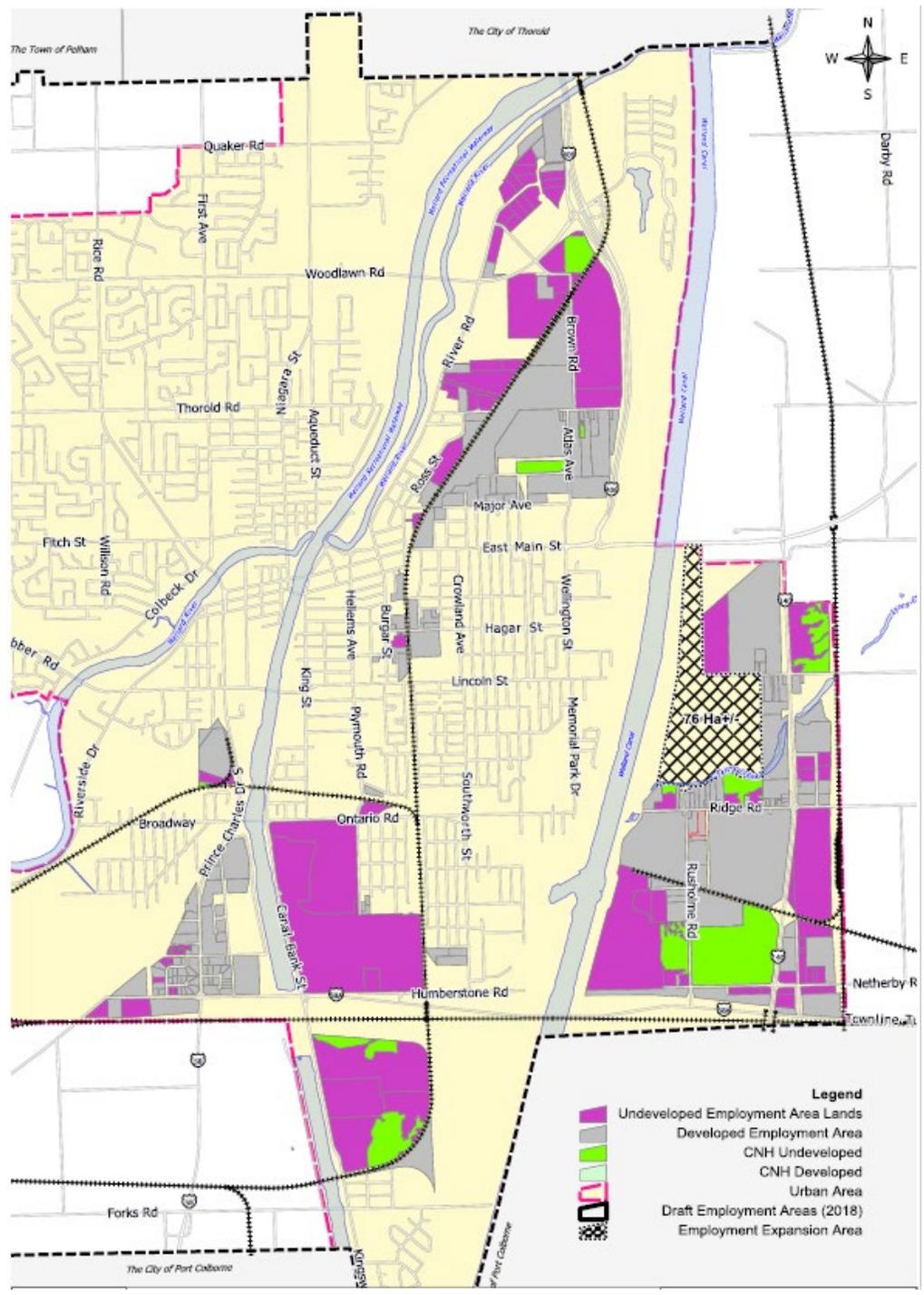
- A. Business Retention
 - B. Innovation, Entrepreneurship & Start-Ups
 - C. Investment Attraction
 - D. Workforce Development
 - E. Marketing
 - F. Sectors of Focus
 - G. Employment Lands
 - H. Resourcing

- G. Employment Lands

- Success in commercial real estate and development requires a formalized approach. Key components include:

- Concierge service led by the Economic Development Department to guide prospective investors through the development process with all city departments
 - Aggressive incentive programs for downtown, health and wellness, residential, brownfield and Gateway jurisdictions coupled with Application fee and Environmental Grant programs. (see Appendix E.3)
 - Competitively priced and shovel ready land
 - Competitive tax rates
 - Infrastructure improvements

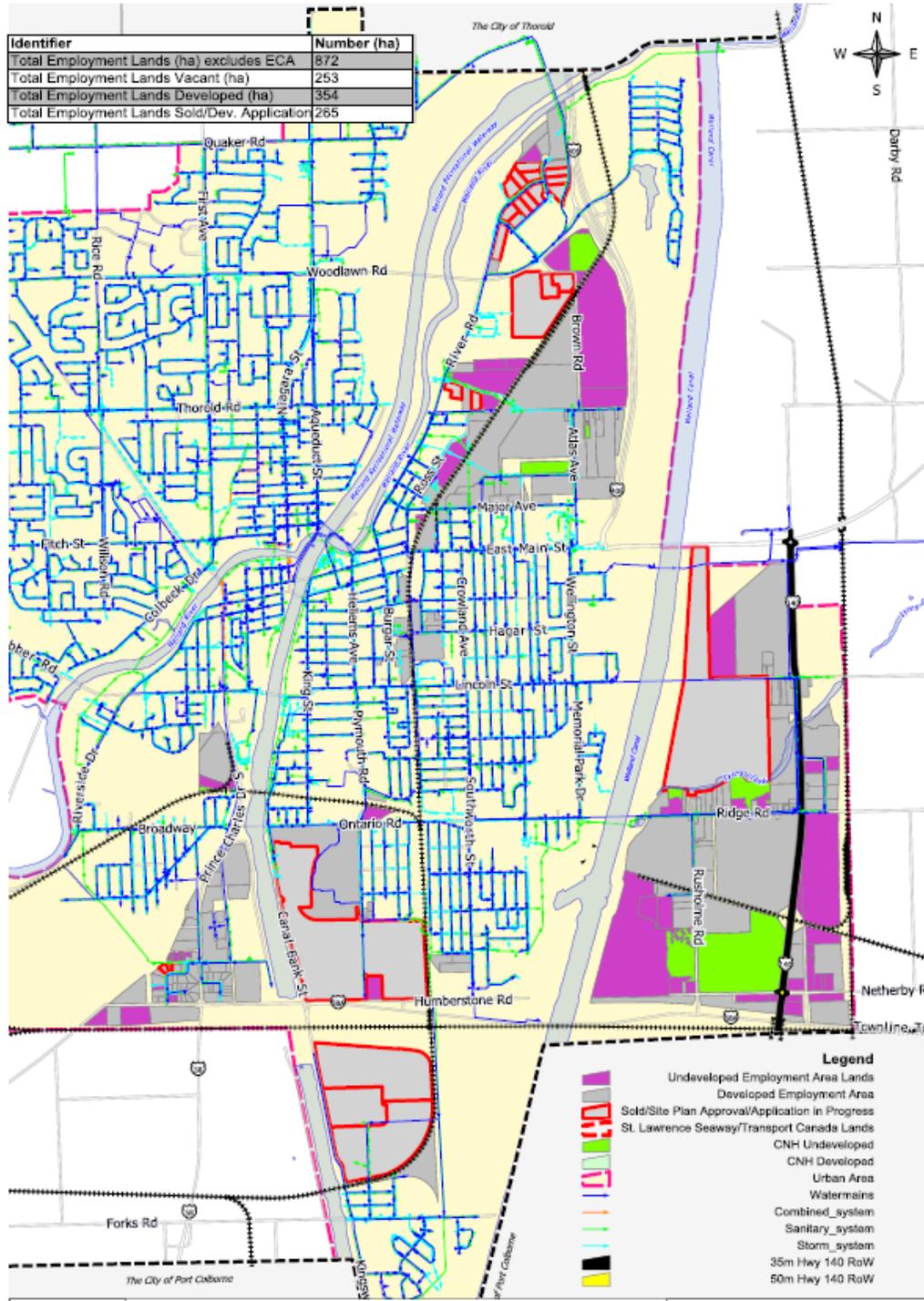
Welland Employment Land Supply



Employment Lands Supply – Reality Check

- At first glance it appears that there is a significant amount of land available for employment uses to develop, however the following has to be factored in:
 - There are a number of vacant industrial properties that have recently sold to various companies looking to build facilities in Welland (e.g. Primeway Industrial Park is almost completely sold out with only one lot left.)
 - Many properties are in the various stages of the development pipeline (Pre-Consultation, Site Plan Approval, Building Permit Review)
 - Brownfields are not particularly attractive to industries as they want to spend resources on developing a facility and purchasing equipment so they may start doing their business.
 - Some properties do not have immediate access to City water and sewer services.

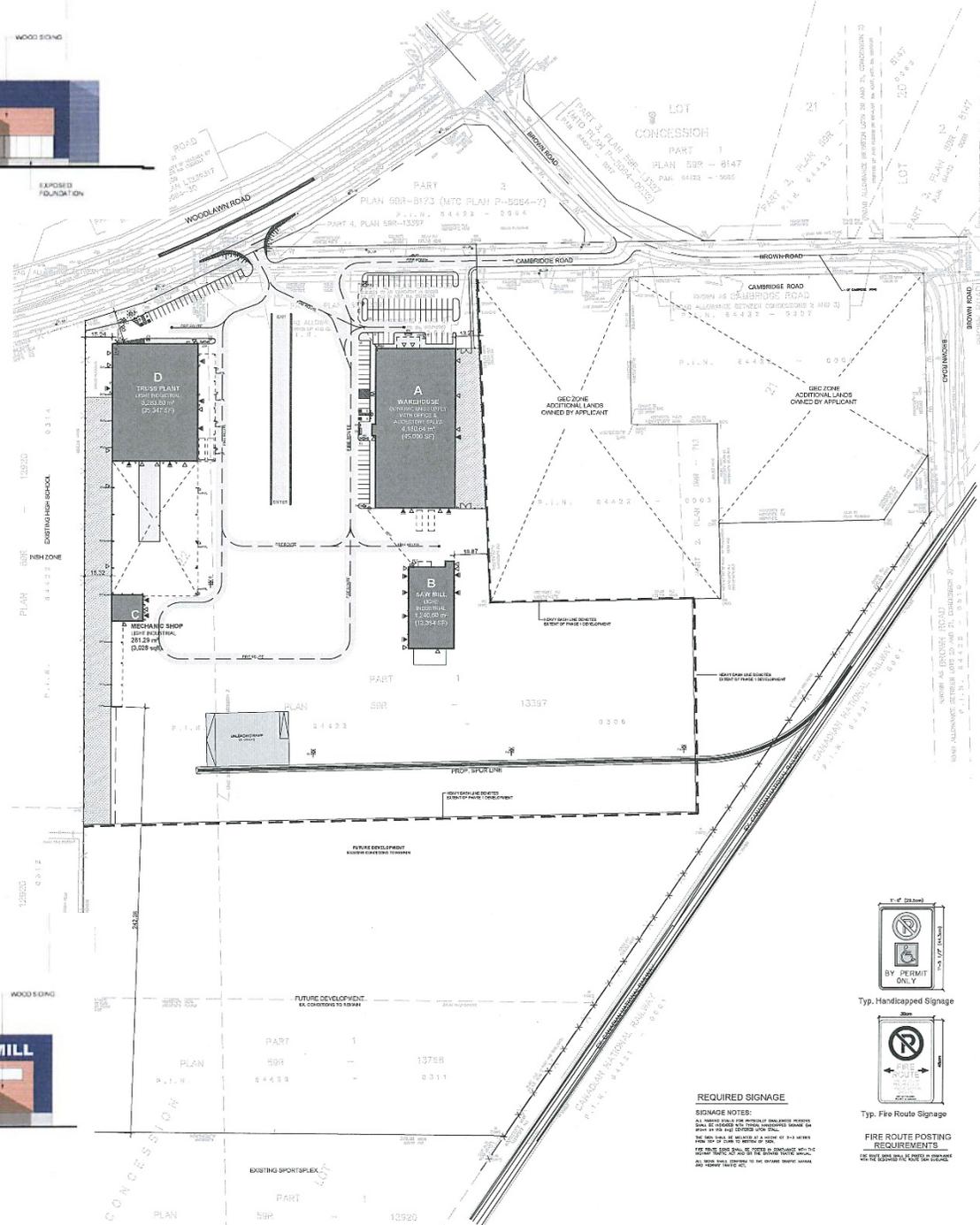
Identifier	Number (ha)
Total Employment Lands (ha) excludes ECA	872
Total Employment Lands Vacant (ha)	253
Total Employment Lands Developed (ha)	354
Total Employment Lands Sold/Dev. Application	265



Welland Employment Land Supply with Current Land Sales/Development Applications Factored in

Tamarack Lumber (7 Woodlawn Avenue) as an Example of a Development Timeline

- City Staff contact Tamarack Lumber - July 2016
- Land Purchase - September 29, 2017
- Gateway CIP Application – December 9, 2019
- Gateway CIP Approval Letter – December 23, 2019
- Site Plan Control Application Submission – July 23, 2019
- Site Plan Approval – Final Agreement In Process
- Building Permit Submission – December 21, 2020

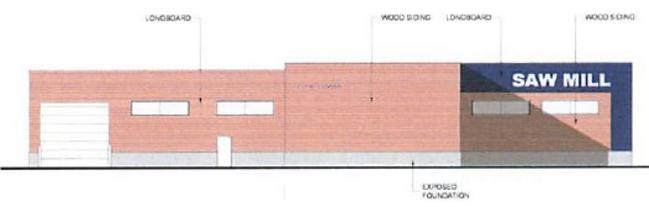


Tamarack Lumber Proposed Site Plan

Warehouse =	45,000 ft ²
Trussplant =	35,347 ft ²
Sawmill =	13,354 ft ²
Mechanic Shop =	3,028 ft ²
Total =	96,728 ft²

Lot Areas

- 7 Woodlawn Road = 37.7 acres
- 3-15 Cambridge Road = 5.06 acres
- SW Corner of Cambridge & Brown Road = 5.02 acres



REQUIRED SIGNAGE

SIGNAGE NOTES:
 ALL SIGNAGE SHALL BE PERMITTED TO BE PLACED IN ANY LOCATION AS LONG AS IT IS NOT OBSTRUCTED BY ANY OTHER SIGNAGE.
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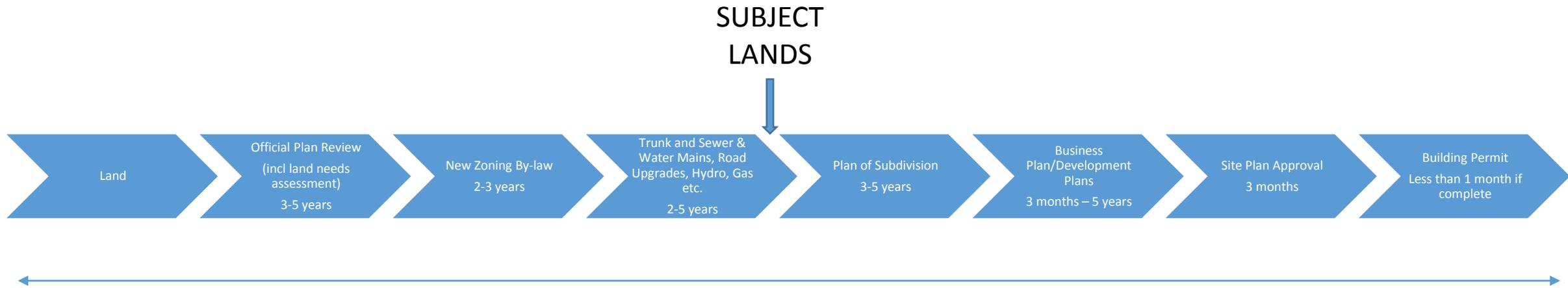
Former John Deere Lands & Former Union Carbide Lands

- Not suited to industrial as most do not want to clean-up or inherit other companies environmental problems/liabilities. They want to focus their investment on buildings and technology to get up and running.
- Clean-up costs are significant.
 - Former Union Carbide = \$180 million
 - Former John Deere Lands = \$51 million
 - 401 Canal Bank (Dain City East Subdivision) = \$11 million
 - Former Stelco/Energex = Unknown
- Significant ground contamination poses a risk to water quality of the Recreational Canal
- Residential development with mixed use is more appropriate in these areas given proximity to the Welland Recreational Canal and the prospect of having the lands remediated are ideal outcomes for the City.

Success Factors in Attracting New Employment/Industrial Uses

- There is a need to plan ahead as developing an Industrial subdivision from start to finish is a 3-5 year process.
- Having shovel ready land is key to attracting new jobs to the City. (OP and Zoning Designation in place, required studies completed, water and sewer available at lot line or withing road)
- New City developed industrial parks ensure the City has land immediately available for development with reasonable pricing. The River-Downs Industrial Subdivision is the City's 6th industrial subdivision.
- Land must be strategically located (near rail, Provincial Highways, water and sewer is available and away from residential areas)
- Streamlined development approvals and permit processes are attractive for this type of development.

Employment Land Development Process



Process Relies on Lands Being Available For Sale at a Reasonable Price

Shovel Ready refers to sites which are pre-qualified with proper land use designation, utilities, transportation improvements, availability and pricing and in some cases, incentives.

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2. Why expropriate land?
3. How does expropriation occur?
4. How much does it cost to expropriate land?
5. How is compensation determined?
6. What is the timeline?

What is expropriation?

- Expropriation is defined in the *Expropriation Act* as:
 - “the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers”
- Municipal council is an “expropriating authority”
- Expropriation can be either full, partial, or temporary

What is Expropriation? – Legal Authority

- A municipality's legal authority to expropriate land comes from section 6 of the *Municipal Act, 2001*
 - 6 (1) "The power of a municipality to acquire land under this or any other Act includes the power to expropriate land in accordance with the *Expropriations Act*"
- The process governing expropriation comes from the *Expropriations Act*

Why Expropriate Land?

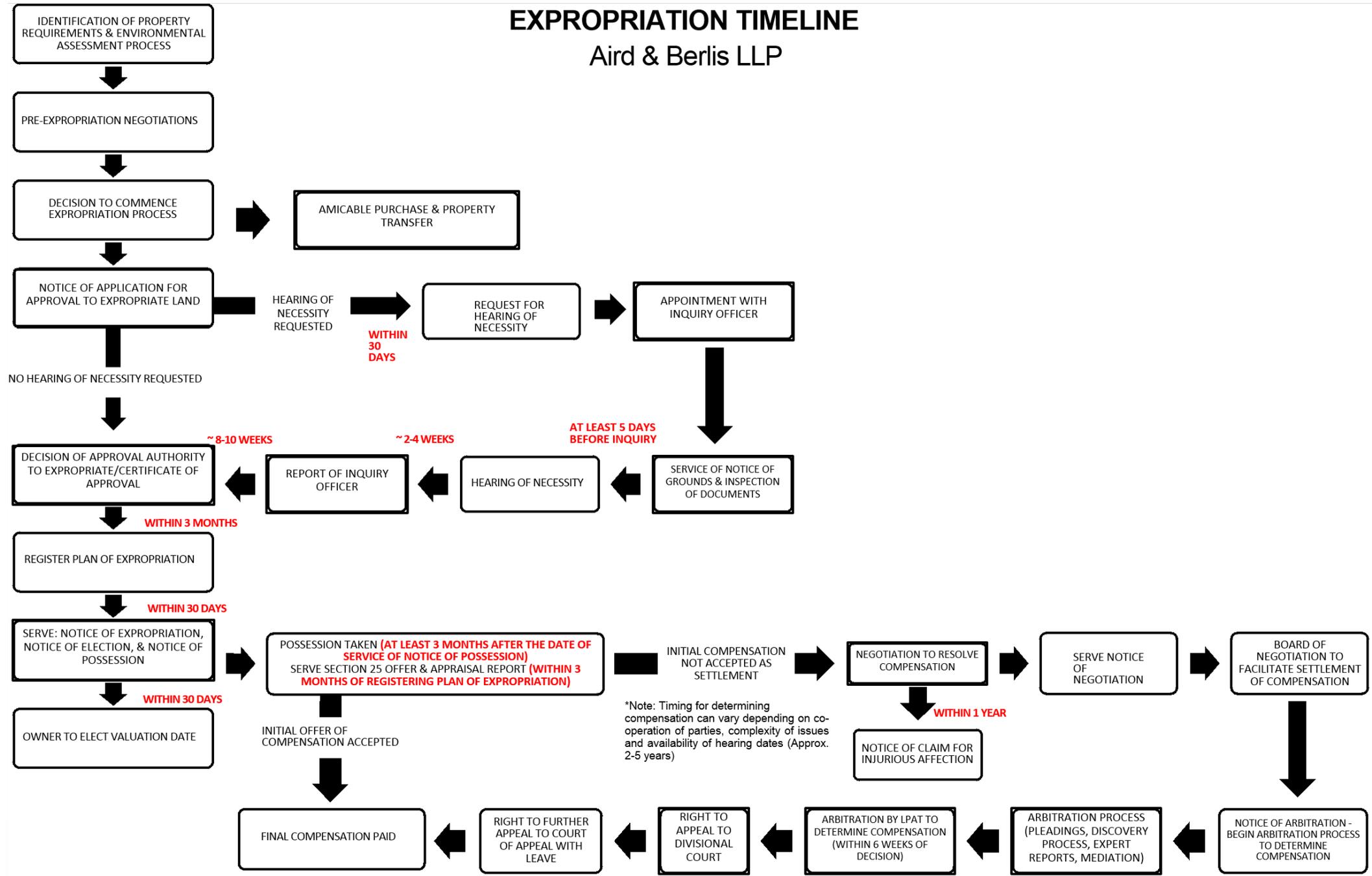
- In some situations a municipal undertaking will require the use or acquisition of land that does not belong to the municipality
- E.g.: widening roads, creating easements, building transit stops, building parks
- Expropriation is a commonly used tool available to municipalities when a private party is unwilling to amicably sell their land to the municipality
- A municipality has very broad authority to expropriate land in pursuit of valid objectives (*Vincorp Financial v Oxford*, 2014 ONSC 2580)

Protecting the Landowner

- “The expropriation of property is one of the ultimate exercises of governmental authority. To take all or part of a person’s property constitutes a severe loss and a very significant interference with a citizen’s private property rights.” (*Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, 1997] 1 SCR 32)
- The *Expropriations Act* was drafted as a remedial statute with its purpose to adequately compensate those whose lands are taken to serve the public interest
- The Courts in Canada have consistently applied a broad interpretation of the *Expropriations Act* to ensure that whenever land is expropriated, compensation will be paid

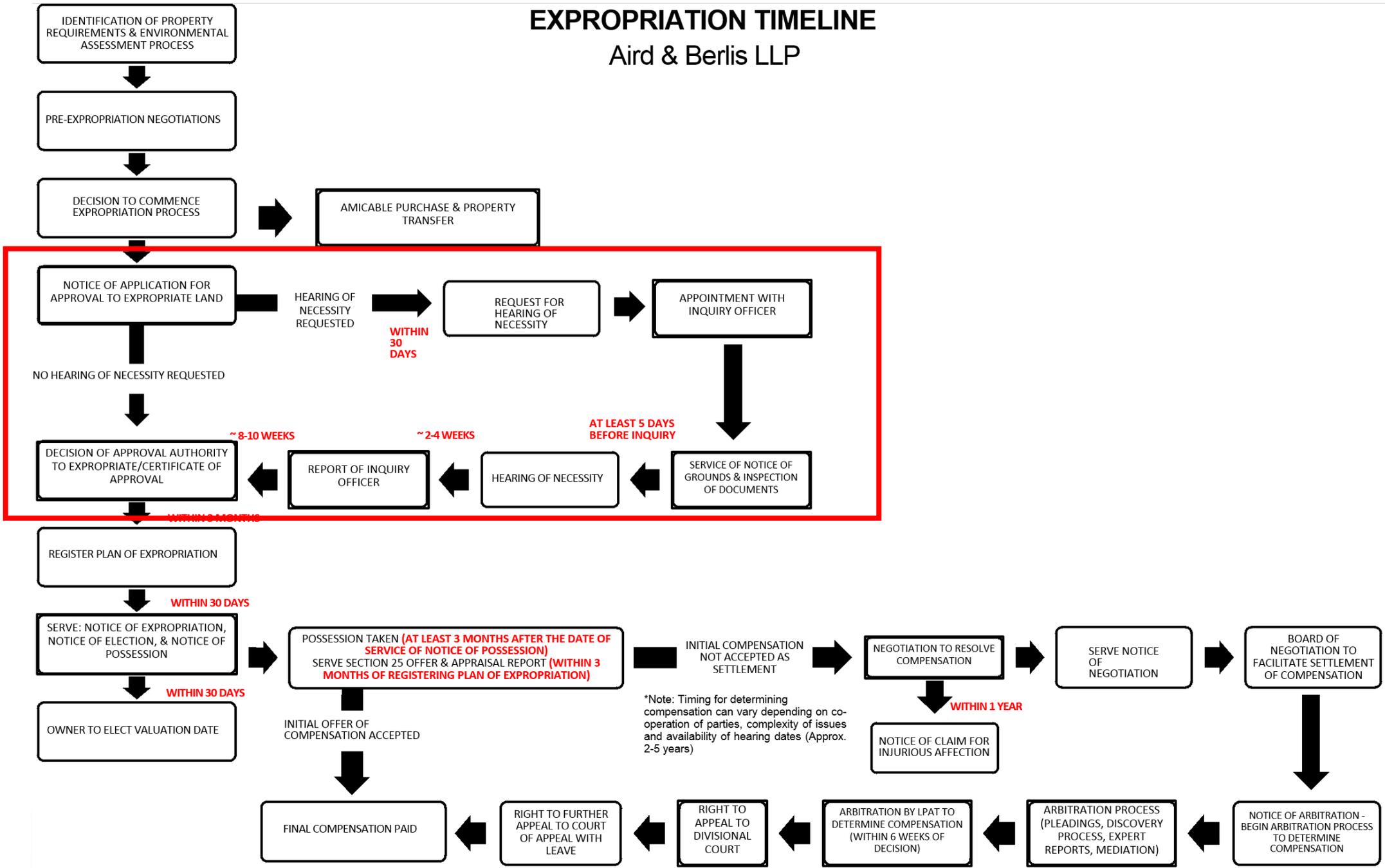
EXPROPRIATION TIMELINE

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EXPROPRIATION TIMELINE

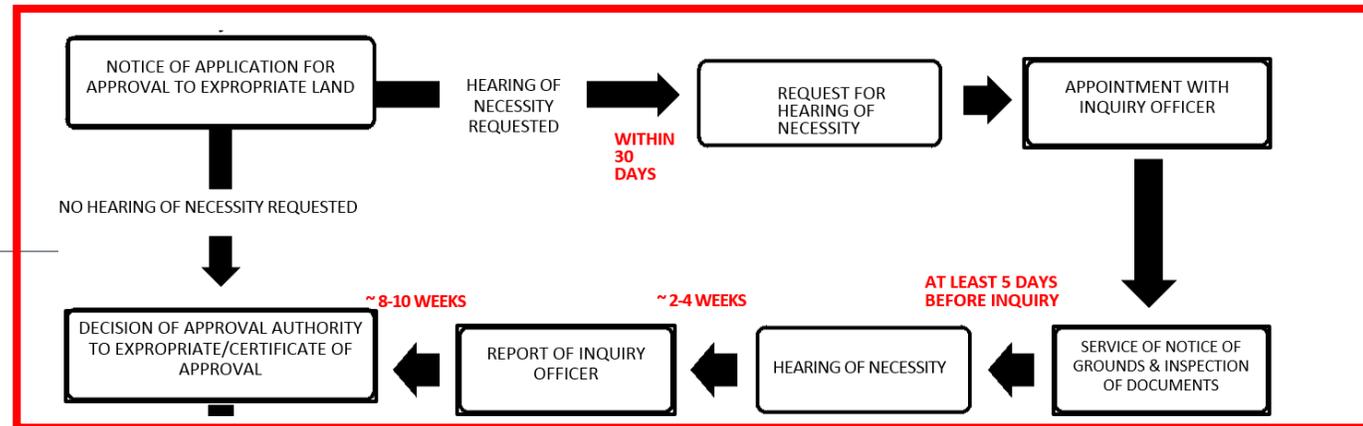
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Application for Approval and Providing Notice

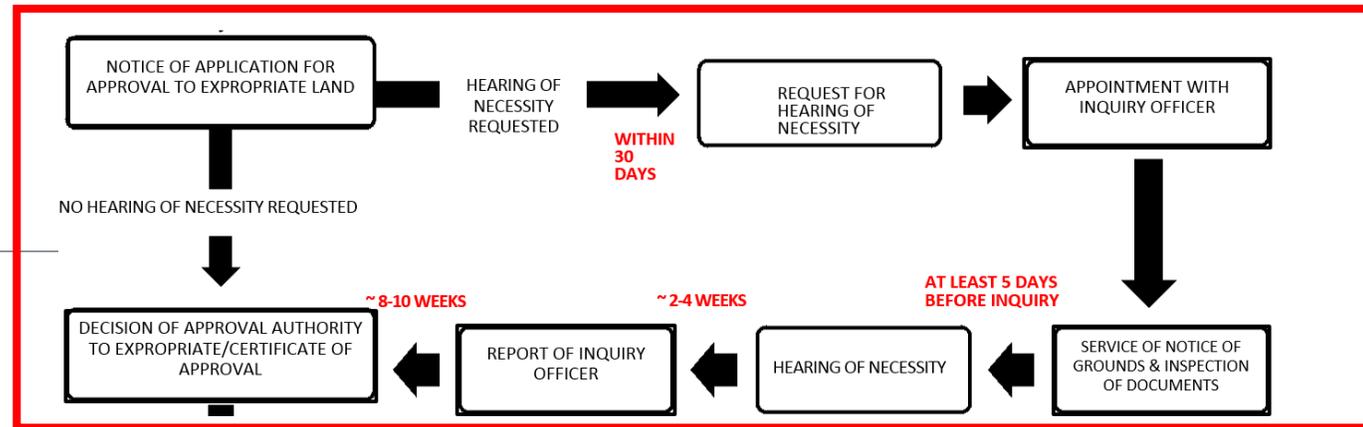
- The expropriation process starts with a decision of council, usually when an amicable transfer of land is not possible
- The first formal step is to apply for approval from the expropriating authority (in this case, municipal council itself)
- Application is approved by resolution of council
- Upon applying for approval, council is required to:
 1. Serve Notice of Application upon each **registered owner** of the lands to be expropriated
 2. Publish the Notice of Application once a week for three consecutive weeks in a newspaper having a general circulation in the area

Hearing of Necessity



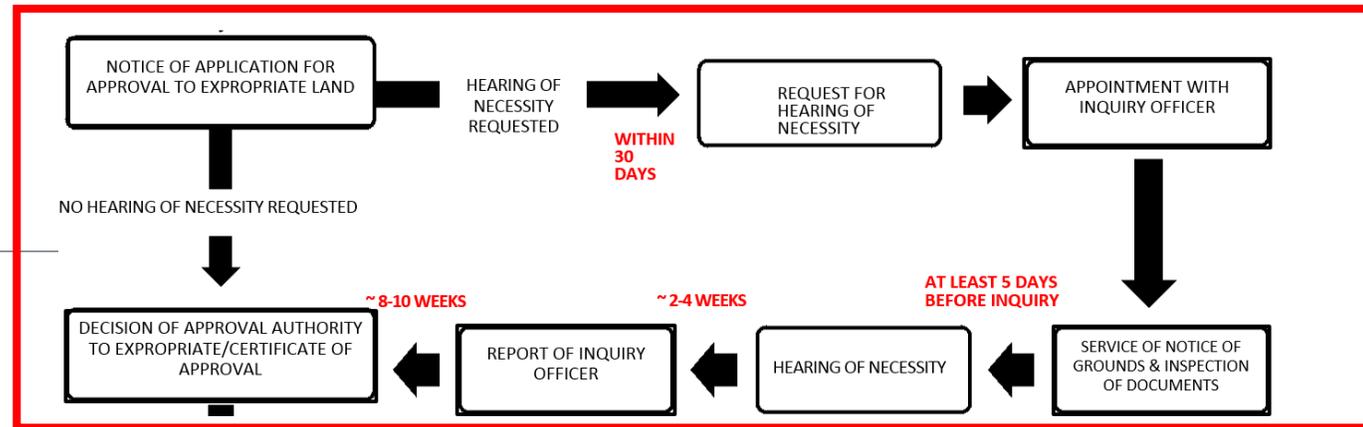
- Once Notice of Application to Expropriate has been served and published, an owner may request a hearing
- Both **registered owners** and **non-registered owners** may request a hearing
- Request for hearing must be made within 30 days of receiving the Notice of Application to Expropriate

Hearing of Necessity



- If a request for a hearing is made, the Attorney General will appoint a chief inquiry officer and other officers
- The expropriating authority must demonstrate, to the satisfaction of the inquiry officer, that the proposed taking “**fair, sound, and reasonably necessary**” to achieve council’s objectives
- The inquiry officer(s) will not consider the merits and demerits of council’s objectives, but instead will focus on whether the proposed expropriation is “reasonably defensible” in the circumstances

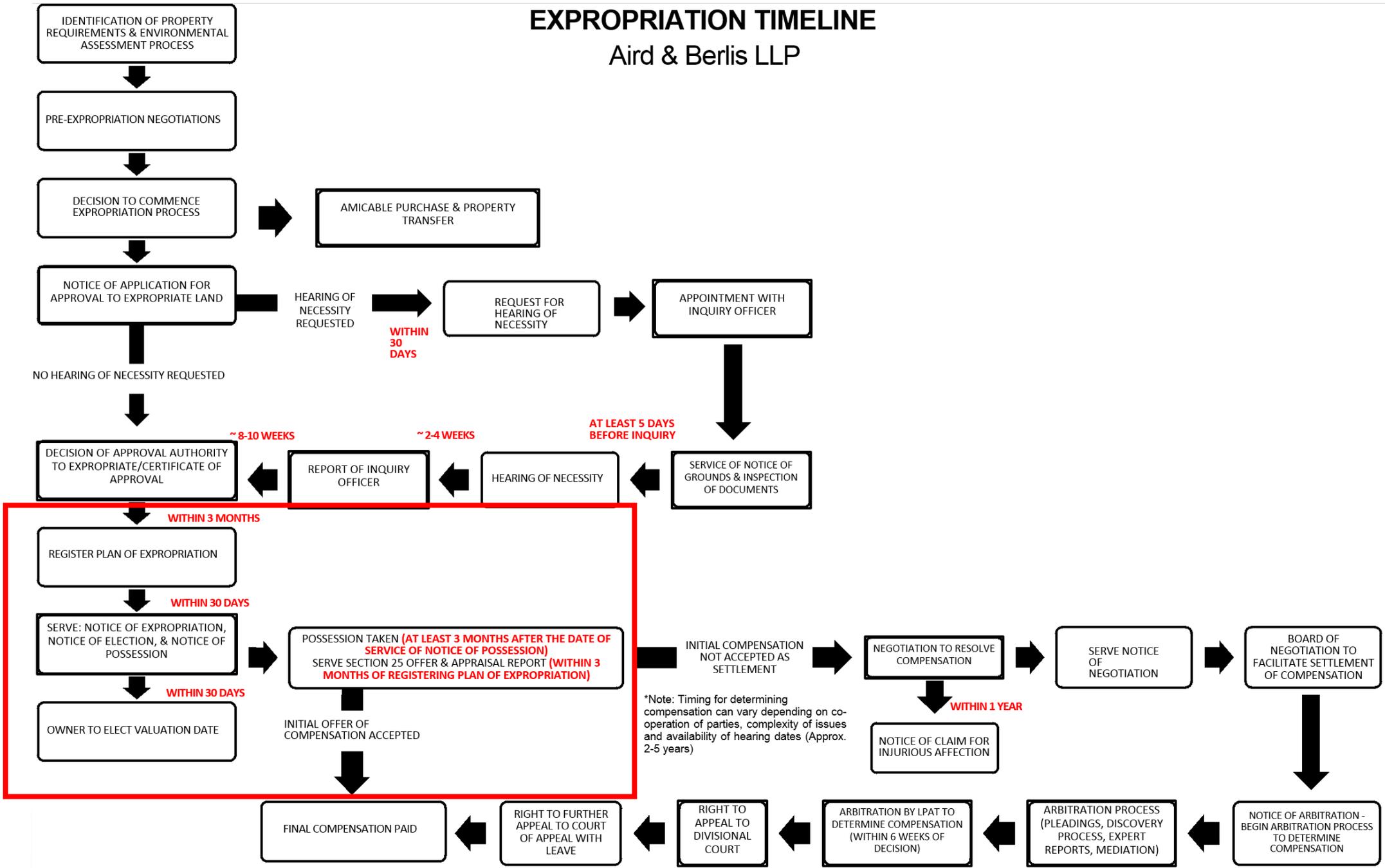
Hearing of Necessity



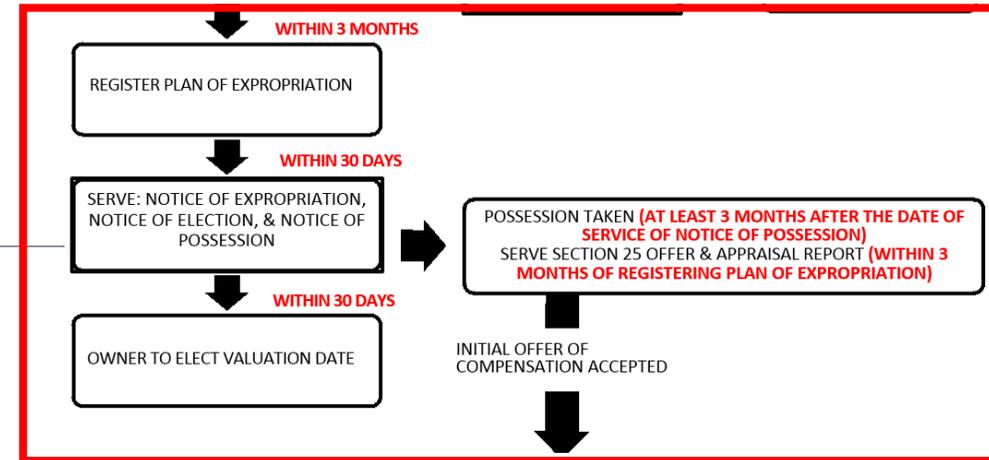
- The inquiry officer will prepare a *non-binding* report containing recommendations to be considered by Council
- Council must consider the report of the inquiry officer and render a decision to approve or disapprove within 90 days
- Council shall provide written reasons for its decision
- If there is no inquiry, Council is permitted to approve the expropriation proposal immediately

EXPROPRIATION TIMELINE

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Registration of Plan of Expropriation

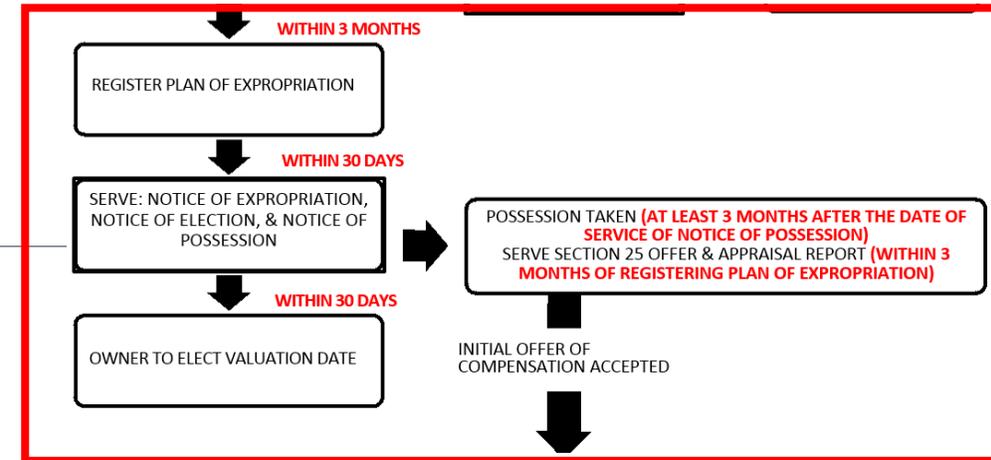


- Once a proposed expropriation has been approved, the expropriation plan must be registered with the proper land registry office
- Registration must occur within three months of the approval
- Once the expropriation plan is registered the land **vests** with the expropriating authority – all other interests in the land are converted to claims for compensation and no longer affect the land (e.g. mortgages are released from title; leases are frustrated)

Notices of Expropriation, Election and Possession

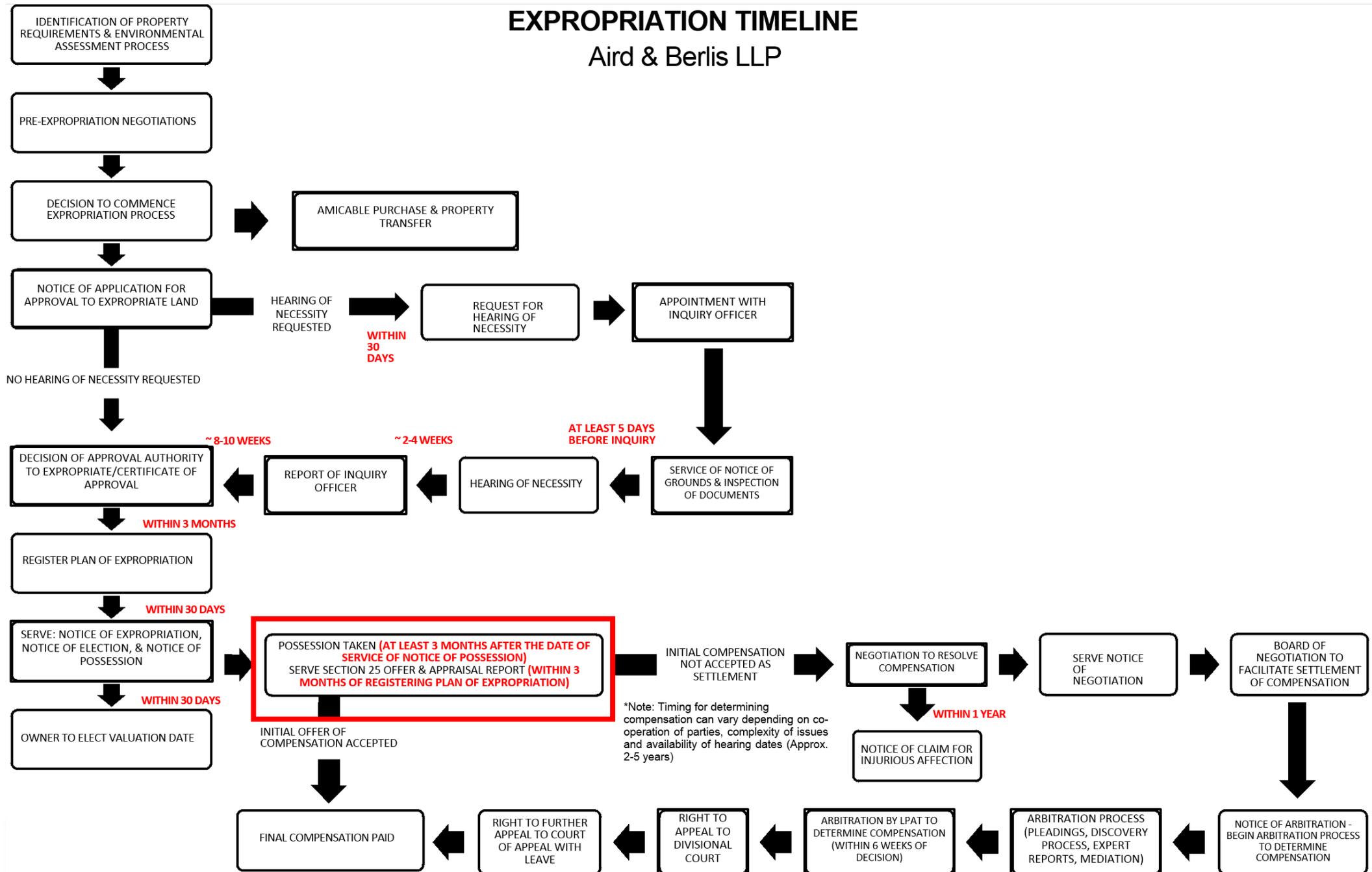
- Within 30 days of plan registration, the expropriating authority must provide the owner with:

1. **Notice of Expropriation** – must be served on both the **owner** and **registered owner**
2. **Notice of Election** - allows the owner three choices as to the date of property valuation: (i) date of Notice of Hearing of Necessity; (ii) date plan was registered; or (iii) date of Notice of Expropriation
3. **Notice of Possession** - must indicate a date where possession will be taken, no sooner than 3 months from the date this notice is delivered



EXPROPRIATION TIMELINE

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Section 25 Offer of Compensation

POSSESSION TAKEN (AT LEAST 3 MONTHS AFTER THE DATE OF SERVICE OF NOTICE OF POSSESSION)
SERVE SECTION 25 OFFER & APPRAISAL REPORT (WITHIN 3 MONTHS OF REGISTERING PLAN OF EXPROPRIATION)

- The owner of expropriated land shall be compensated by the expropriating authority for the **market value** of the land
 - “the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer”
- An Offer of Compensation must be made within 3 months of registration of plan
- The Offer of Compensation must be accompanied by an appraisal document
- Offers must be made to all **registered owners** of the property (including mortgagees, tenants if registered etc.)
- The Offer of Compensation must be made before the expropriating authority takes possession

Section 25 Offer of Compensation

POSSESSION TAKEN (AT LEAST 3 MONTHS AFTER THE DATE OF SERVICE OF NOTICE OF POSSESSION)
SERVE SECTION 25 OFFER & APPRAISAL REPORT (WITHIN 3 MONTHS OF REGISTERING PLAN OF EXPROPRIATION)

- 2 offers must be made to a property owner
 - Offer "A" – owners can choose to accept the amount as full & final compensation (and payment made immediately, owner signs release, matter is over)
 - Offer "B" – owners can choose to accept the amount without prejudice to right to seek **additional compensation** (most commonly accepted)

Claim for Additional Compensation

POSSESSION TAKEN (AT LEAST 3 MONTHS AFTER THE DATE OF SERVICE OF NOTICE OF POSSESSION)
SERVE SECTION 25 OFFER & APPRAISAL REPORT (WITHIN 3 MONTHS OF REGISTERING PLAN OF EXPROPRIATION)

- If an owner elects Offer "B" the owner may seek the following types of additional compensation
 1. Additional market value compensation (ie: appraised value was too low)
 2. Disturbance damages (ie: business loss, replacement costs, storage costs, relocation costs, moving costs)
 3. Injurious Affection (where partial expropriation occurs, the reduction in value caused to the remaining land of the owner)

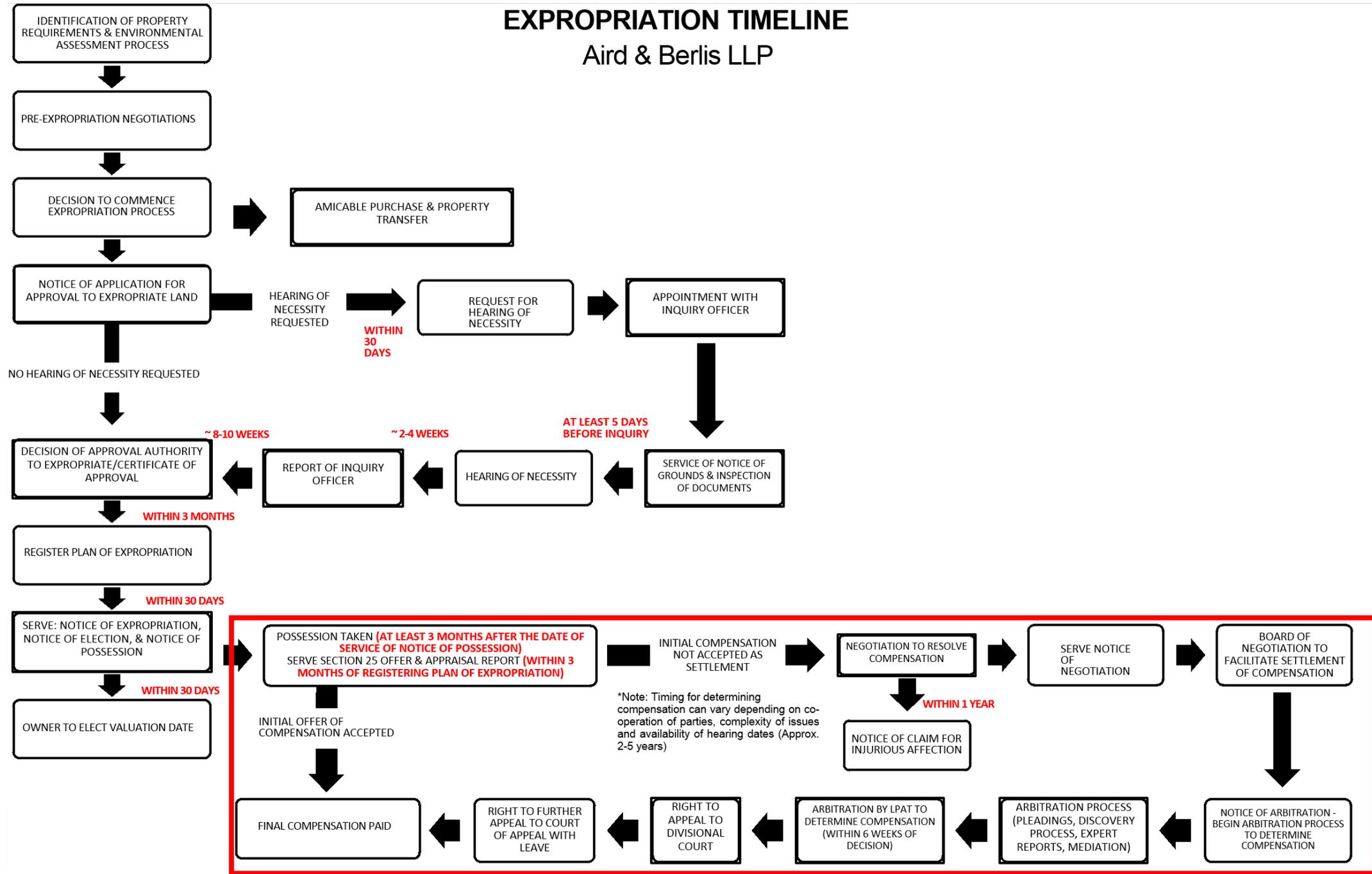
Additional Costs

POSSESSION TAKEN (AT LEAST 3 MONTHS AFTER THE DATE OF SERVICE OF NOTICE OF POSSESSION)
SERVE SECTION 25 OFFER & APPRAISAL REPORT (WITHIN 3 MONTHS OF REGISTERING PLAN OF EXPROPRIATION)

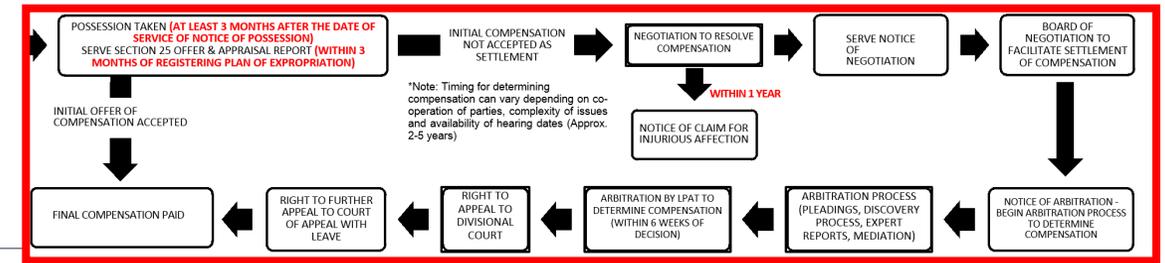
- In most cases the expropriating authority will be required to pay the owners' reasonable legal, appraisal and other consulting costs in determining the compensation claim
 - These costs are payable when the final compensation is determined to be at least 85% of the compensation offer
- The owner is also entitled to be paid interest on outstanding market value or injurious affection at the rate of **6 per cent a year** calculated from the date the owner ceases to reside on or make productive use of the lands

EXPROPRIATION TIMELINE

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Compensation Claim Process



- Most often, claims for compensation are resolved by the parties through negotiation and settlement
- Where the parties are unable to resolve the matter on their own, they may proceed to the Board of Negotiation to facilitate settlement discussions
- If negotiation does not resolve a claim, arbitration may proceed before the Local Planning Appeal Tribunal (LPAT) to determine compensation
 - The arbitration process includes pleadings, discovery, expert reports, mediation, and ultimately a formal hearing
- Appeals of LPAT decisions lie with the Divisional Court
- Appeals of Divisional Court decisions lie with Court of Appeal (with leave)

Timeline

- The timeline for an expropriation process can range from several months to several years;
- At minimum, from Council's decision to expropriate to actual possession of the land, the process requires at least 4 months, usually much longer;
- Claims for compensation are typically resolved in 1-2 years, but can take decades

Ontario Heritage Act Designated

- The property is not currently designated under the Ontario Heritage Act and not recommended for consideration by the Welland Heritage Committee.
- Does not prevent the City from expropriating.
- City could have its worthiness to be designated as part of the range of studies that would be required to develop the site (archaeological, geotechnical, traffic impact study etc.)
- House and Buildings could be retained on a separate parcel if it were to be designated.

Conclusion

- Planning for employment land is a purposeful exercise of the City. We need to be strategic in our approach and plan for the short, medium and long term.
- City owned “shovel ready” employment lands have a proven track record of success (e.g. Innio, Northern Gold Foods, Devron Sales etc.)
- The City is running out of “shovel ready” employment lands to meet it’s needs. This will severely limit the ability of the City to attract needed jobs for residents and the Region.
- The Expropriation Act is intended to allow a municipality to purchase needed land where a property owner is unwilling to sell. Property owners are fairly compensated through this process.
- The City Council will have another opportunity to consider this expropriation after the decision is rendered after the Hearing of Necessity.