

REPORT OF THE INQUIRY OFFICER – April 3, 2000

IN THE MATTER of the *Expropriation Act*, being Chapter E-16 of the Revised Statutes of Alberta, 1980, and amendments thereto;

AND IN THE MATTER OF the intended expropriation by the City of Edmonton of a fee simple interest in a portion (containing 3.433 hectares, more or less) in those lands described as:

PLAN 922 1245

LOTS

CONTAINING 14.75 HECTARES (36.45 ACRES) MORE OR LESS

EXCEPTING THEREOUT:

HECTARES (ACRES) MORE OR LESS

1.22 3.01

A) PLAN 9320390 – SUBDIVISION

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Guaranty Properties Land");

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed by Clareview Estates Inc., Guaranty Properties Limited and MICC Properties Inc., by their solicitors, Prowse & Chowne;

AND IN THE MATTER OF an Inquiry in respect thereof pursuant to the provisions of the said *Act* by Graham McLennan as Inquiry Officer appointed by the Minister of Justice and Deputy Attorney General to conduct the said Inquiry;

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INTRODUCTION

The hearing was held on Friday, March 24, 2000, at a boardroom of McLennan Ross, 600, 12220 Stony Plain Road, Edmonton, Alberta. The City of Edmonton (the "City") was represented by Darren Moroz. The Objector (referred to herein as "Guaranty Properties" or the "Objector") was represented by Donald Mallon.

This Inquiry concerns the intended expropriation by the City for the purpose of upgrading the Clareview Transit Centre and for a roadway connected therewith (the "Project").

Counsel for the City and counsel for the Objector agreed that all appointments, notices, filings, and registrations with respect to the intended expropriation, the objection, and this Inquiry have been properly performed. Further, all such documents need not be made exhibits at this Inquiry.

Written submissions were provided to the Inquiry Officer prior to the Inquiry by counsel for the City and counsel for the Objector.

Counsel for the City and counsel for the Objector advised that there were no preliminary objections to commencement of the hearing by the Inquiry Officer, which then proceeded at the appointed time and place on March 24, 2000. At the request of counsel for the City and counsel for the Objector, evidence was given under oath and a court reporter was present.

The parties did not request the Inquiry Officer to inspect the Guaranty Properties Land or the adjacent lands affected by the Project.

SUMMARY OF EVIDENCE

EXHIBITS

All exhibits were entered by consent of the parties through their counsel. A list of the exhibits is attached to this report as Appendix 1.

All of the exhibits are attached to the Inquiry Officer's Report provided to the approving authority. With the consent of all parties, the exhibits are not attached to copies of this Report provided to the Objector.

EVIDENCE OF THE CITY OF EDMONTON

MR. MENZIES

Mr. Menzies advised that he is the general supervisor in the Transportation Planning branch of the City. He has many years of experience in the field of transportation engineering.

Mr. Menzies described the history leading up to the Project which is being proposed by the City, and for which the intended expropriation of the Guaranty Properties Land is sought.

Mr. Menzies advised that the Clareview Transit Centre has been operating for almost 19 years and that it was originally built as a temporary station. There are a number of improvements required to bring the Clareview Transit Station up to standard, as well as increasing its capacity. Problems with the existing Clareview Transit Centre included:

- (a) lack of roof or cover for the waiting area
- (b) deterioration of concrete at the existing platform
- (c) lack of parking
- (d) the six-bay bus facility is at capacity
- (e) increased demand from patrons who are coming from the west side of the CNR tracks in the Clareview area

- (f) lack of direct access to the Transit Centre from the west.

Mr. Menzies reviewed the history of the proposed upgrade of the Clareview Transit Centre. He referred to an initial study done in 1995 and 1996 (Exhibit 1), (the "Study").

Mr. Menzies advised that the proposed improvement to the Clareview Transit Centre contemplates approximately 1400 parking stalls and a facility that could contain up to 16 bus bays. This criteria was generated by a computer model used by the City, and this proposed facility is to accommodate projections for growth in the northeast area of Edmonton for the next 20 years.

Mr. Menzies noted that there has been continued residential growth in the northeast area of the city and continued growth is projected. However, more growth is expected west of the Clareview Transit Centre than to the east.

Cross-examination of Mr. Menzies

Mr. Menzies was cross-examined by Mr. Mallon, counsel for the Objector. During cross-examination, Mr. Menzies acknowledged that the Clareview Neighborhood Area Plan was not specifically referenced in the Clareview Transit Centre, Facility Planning Study (Exhibit 1).

MR. CLAYTON

Mr. Clayton advised that he is employed with Stantec and has been a principal in the Transportation Group with Stantec or its predecessor companies for many years. Mr. Clayton has a Bachelor of Science in Civil Engineering and has worked in the transportation engineering field for approximately 15 years.

Mr. Clayton was the project manager responsible for the Clareview Transit Centre Facility Planning Study (Exhibit 1). He reviewed the steps which were taken in the development of the Study.

Mr. Clayton described the public consultation and investigations that went into the Study. He further advised that four basic alternative designs for the Project were identified.

The preferred alternative was selected and subsequently modified to address some additional concerns raised. Ultimately, the recommended plan evolved from this process and was provided by Stantec to the City.

Mr. Clayton advises that he is still involved in the Project in providing engineering services for the municipal site service, design, and, ultimately, construction supervision.

Mr. Clayton reviewed four alternatives which were developed early on in the planning study process. He described the alternatives and the criteria for evaluating the four alternatives. In this regard, he referred to Figure 4.5 of Exhibit 1. He explained why the alternative depicted in Figure 5.1 of the Study became the recommended alternative.

Mr. Clayton described the land which would be required to develop the proposed Clareview Transit Centre facility.

Mr. Clayton discussed the roadways adjacent to the Clareview Transit Centre Land. He noted the City needed to provide access to the Transit Centre from Manning Drive northbound and southbound. Referring to Exhibit 4, he also advised that access from 144th Avenue northbound and southbound will be accommodated and noted in Figure 1.3 of the Study.

In November of 1999, the City asked Mr. Clayton to consider the option of moving some of the west side parking stalls from the south to the north end of the Project. This was the option favoured by Guaranty Properties.

Next, Mr. Clayton reviewed the various walking distances from proposed parking facilities for the Project, which is graphically set forth in Exhibit 6. He noted that, if some of the proposed parking on the west side was moved from the south to the north of the Project, then the walking distance for some of the patrons would exceed 200 meters. He further advised that, in his experience, 200 meters is the maximum distance people would want to walk and the City would like to maintain most, if not all, of the parking within a 200-meter radius of the transit station. Further, in his view, there would be no benefit from a transit usage perspective in making such a change to the proposed parking area on the west side of the Project.

Mr. Clayton advised that he did have a meeting with Mr. Woo, the representative for Guaranty Properties. Mr. Woo suggested that land between the Superstore and the existing parking, which is apparently owned by Guaranty Properties, would be a more appropriate area to expand parking for the transit centre. Mr. Clayton advised that this was not, in his view, viable because the demand for parking did not address the west side parking issues.

Mr. Clayton advised that he did receive a letter from Mr. Woo dated October 10, 1996 (Exhibit 11). Further, Mr. Woo and another representative were in attendance at the open house for the Project held in September of 1996.

Finally, Mr. Clayton advised that the proposed plan for the Project, in his opinion, accommodates existing and future anticipated traffic and accommodates access to the Transit Centre from the west side of the CNR tracks.

Cross-examination of Mr. Clayton

Under cross-examination by Mr. Mallon, Mr. Clayton agreed that the Clareview study was a fairly significant study and that Stantec was paid fees of approximately \$75,000. He further advised that, although there was a technical steering committee for this proposed Project, neither Mr. Woo nor Guaranty Properties was invited to be on the technical steering committee. Mr. Clayton did advise that, in addition to attending the open house, he met with Mr. Woo to discuss the proposed Project with him.

Mr. Clayton acknowledged that Guaranty Properties was a significant property owner and developer in the Clareview area.

Mr. Clayton noted that one of the reasons for considering the Project were existing problems, such as lack of parking, as well as anticipated future needs of public transit facilities in northeast Edmonton. He agreed that presently public transit patrons are parking on adjacent roadways and parking lots for adjacent business, and that such parking may be in the range of 30 to 100 cars a day. There are currently 640 parking stalls at the Clareview LRT station. Further, 20% to 25% of existing park-and-ride demand comes from west of Manning Drive. The 75% to 80% of park-and-ride patrons coming from west of Manning Drive will not be a static number and some increase in patrons coming from the east is to be expected.

Reference was made by Mr. Clayton to Figure 3.1 of Exhibit 1. He did note, however, that it is anticipated that a minor amount of growth east of Manning Drive would occur compared to much more significant growth anticipated from residential development west of Manning Drive.

Mr. Clayton advised that, during the course of development of the Study (Exhibit 1), he had discussions with Mr. Watkins and likely Mr. Newton with respect to planning or land use issues in connection with the Project, for an estimated one or two hours.

Mr. Mallon cross-examined Mr. Clayton with respect to the Clareview Area Structure Plan. Mr. Clayton agreed that there is not reference to the Clareview Area Structure Plan in the Study, other than Figure 1.3, which is an illustration of the Area Structure Plan. Mr. Clayton reviewed the roadways proposed for the Project on Exhibit 6. There was a comparison between the Clareview Area Structure Plan proposed roadways, Figure 1.3 of Exhibit 1, and the roadways proposed for the Project, Exhibit 6. There were clearly differences with respect to access to Manning Drive and with respect to the configuration of what was referred to as the "spinal road," which was to run through the middle of the commercial lands of Guaranty Properties west of the CNR tracks.

Mr. Clayton agreed, generally speaking, the fewer intersections and fewer corners on a roadway, the more desirable the roadway plan. Mr. Clayton also noted that the roadway plan provides a standard level of service for the Transit Centre and does provide for some excess capacity for other commercial development of adjacent Guaranty Properties commercial land. However, as future commercial development is an unknown at the present time, it is difficult to plan roadways to take into account this possible future development. Nonetheless, Mr. Clayton advised that they did a conceptual analysis of traffic volumes, assuming some sort of development of the Guaranty Properties commercial lands between the Transit Centre and Manning Drive. It was Mr. Clayton's view that the roadway proposed for the Project would provide an adequate level of service, even assuming traffic flow from future development of the commercial land owned by Guaranty Properties west of the Project (hereinafter referred to as the "Residual Land").

Mr. Mallon referred Mr. Clayton to Appendix A of Exhibit 1, which was a list of some complaints or concerns expressed at a public meeting conducted as part of the Study.

Mr. Clayton agreed that a number of these complaints would be addressed in making the Transit Centre more attractive as part of the proposed Project. He further agreed that, once the Transit Centre was made more attractive, one could expect an increase in ridership, for that reason alone.

Mr. Clayton was cross-examined with respect to moving some of the parking west of the tracks from the south to the north. Mr. Clayton advised that, in his view, there would be more people parking outside the 200-meter walking distance line with that configuration of the parking stalls. Mr. Clayton did not agree that there would be any conflicting traffic pattern between the buses turning into the proposed terminal and vehicles entering or exiting the southern portion of the west parking lot, because they would be in different traffic lanes.

Mr. Clayton acknowledged that Guaranty Properties preferred the configuration which moved some of the parking stalls from the south to the north. He advised that this is what led to his looking at that particular alternative. He reiterated that his conclusion was that it was a less attractive design.

Mr. Clayton was cross-examined with respect to infrastructure costs that have already been incurred by Guaranty Properties and whether the Project would affect expected contributions thereto. Mr. Clayton advised that he does not know the details of contributions to infrastructure costs incurred by Guaranty Properties with future development of the adjacent lands, including development of the Project. Mr. Clayton did note that, as part of the Project, the plan incorporates oversizing of certain sanitary sewer services so that those services may be accessed by future development of land west of the LRT tracks, owned by Guaranty Properties.

Re-examination of Mr. Clayton

Mr. Clayton agreed with Mr. Moroz that establishment of parking on the west side of the CNR track would have the effect of freeing up parking for those coming to the Clareview LRT station from the east. In general numbers, Mr. Clayton anticipated the development of parking on the west side would free up approximately 100 parking stalls on the east side.

MR. NEWTON

Mr. Newton advised that he was a professional planner, with a Masters degree in planning. Further, his company L.D. Newton and Associates, has some type of affiliation with Stantec. Mr. Newton was asked to look at development possibilities for the Residual Land. The Residual Land was identified as the parcel outlined in red on Exhibit 4.

Mr. Moroz asked Mr. Newton to review Exhibits 5a-5e. These provide various possibilities for development of the Residual Land, consistent with the Neighbourhood Structure Plan. Mr. Newton expressed the opinion that the options he considered for development of the Residual Land were feasible, viable and productive. He did note that all of his options were "conceptual." Mr. Newton did advise that the option depicted in Exhibit 5c, an apartment development, was a remote conceptual option which he "wouldn't give a lot of attention to."

Mr. Newton next discussed other commercial developments, one on 75th Street, and another at Oliver Square (Exhibits 12 and 13 respectively). Mr. Newton discussed the depth of the commercial developments at these two sites in support of his opinion that the Residual Land could support similar types of commercial development.

Cross-examination of Mr. Newton

In cross-examination by Mr. Mallon, Mr. Newton advised that he was consulted approximately three weeks ago to consider what development options there may be for the Residual Land.

Mr. Newton advised that none of his options consider a ride in-ride out access and that, in his view, this would not be necessary.

Mr. Newton expressed the view that industrial business development on the Residual Land would be consistent with existing land use bylaw and the Neighbourhood Area Structure Plan.

Mr. Newton acknowledged that the options depicted in Exhibits 5a, b, d and e provide access only to the front of the conceptual building, not to the rear. Further, this may be

less attractive for industrial use than if there was also access to the rear of the proposed industrial structure.

Mr. Mallon cross-examined Mr. Newton on the developments which are depicted in Exhibits 12 and 13. Mr. Mallon suggested that the sites are, in fact, much deeper than depicted in red on Exhibits 12 and 13. Mr. Newton remained of the view that that portion of the site relating to the buildings was appropriately defined by the red lines on Exhibits 12 and 13.

Mr. Mallon then cross-examined Mr. Newton with respect to steps that are required to effect an amendment to a Neighbourhood Area Structure Plan ("NASP"). Mr. Newton outlined the various steps required to effect an amendment to a NASP. These would include public hearings, City Council hearings, submission of detailed plans including conceptual roadway design and servicing proposals. He further agreed that the proposal presented by the City, Figure 1.3 of Exhibit 1, represented a departure from the existing NASP. Mr. Newton acknowledged that the proposal by the City may require an amendment to the Clareview Town Centre NASP.

Inquiry Officer Questions

The Inquiry Officer asked Mr. Newton to clarify a reference he made to the Clareview Town Centre NASP, Tab 1 of Exhibit 14. Mr. Newton referred to pages 14 and 15 of this document, where there is a reference to future development or improvement of the LRT station and a comment that "no Neighbourhood Area Structure Plan amendment will be necessary to undertake this second phase of the reduction and land exchange." Under further cross-examination by Mr. Mallon, Mr. Newton advised that the land exchange being referred to on pages 14 and 15 of the NASP was a slight adjustment of boundary lines that were contemplated. This reference at pages 14-15 of the NASP did not appear to refer to the intended expropriation and the Project which is the subject matter of this hearing.

MR. SANDE

Mr. Sande testified that he is with the Property Acquisition branch of the City. In reference to Exhibit 7, Mr. Sande advised that he is familiar with the Project and that City

Council had authorized City Administration to take the necessary steps to acquire by expropriation the Guaranty Properties Land.

Mr. Sande confirmed the service, registration and publication of the Notice of Intention to Expropriate.

Mr. Sande advised that Les Edwards is a property agent reporting to him and is an authorized representative of the City to negotiate with property owners such as Guaranty Properties. Mr. Sande stated that Mr. Edwards, to his knowledge, never made a statement to Mr. Woo that the City was going to provide him with a "low ball offer," and proceed to expropriate. Certainly, Mr. Sande did not provide any such direction to Mr. Edwards to make any such statement to Mr. Woo, a representative of Guaranty Properties.

Mr. Sande was not cross-examined by Mr. Mallon.

EVIDENCE OF THE OBJECTOR

MR. WOO

Mr. Woo testified that he is employed by MICC Properties and that Guaranty Properties has an interest in the properties which are the subject matter of this intended expropriation.

Mr. Woo explained Guaranty Properties (or affiliated companies collectively hereinafter referred to as "Guaranty Properties") has had a long involvement with land development in the Clareview area. He advised that he has had experience with both residential and commercial property development since the 1970s.

Mr. Woo testified that Guaranty Properties was involved in the initial development of the Clareview Town Centre Area Structure Plan and he further described the long process that was involved in preparation of the Area Structure Plan and the ultimate passage by City Council of the bylaw which is found at Tab 1 of Exhibit 14.

Mr. Woo stated that he is personally aware of some problems associated with the existing Clareview LRT Centre. These included:

- (a) serious lack of parking
- (b) parking on private lands
- (c) parking on lots that are intended for patrons of businesses operating in the Clareview Town Centre.

Mr. Woo advised that he had discussions with the City with respect to selling to the City a 2½-acre parcel of vacant land behind the existing Superstore on the east side of the CNR tracks. It was Mr. Woo's evidence that this land would be suitable to provide additional parking for LRT patrons.

Mr. Woo explained the concerns that Guaranty Properties has with respect to the proposed taking and the Project as presently envisioned by the City. These concerns were as follows:

- (a) Mr. Woo does not believe that creating parking on the west side of the CNR tracks will alleviate the parking shortage problem on the east side of the CNR tracks;
- (b) The proposed Project creates significant restrictions for the use of the remaining lands owned by Guaranty Properties;
- (c) The Project would adversely impact the use and the synergy envisioned for the balance of the commercial lands between 50 Street and 144 Avenue, west of the CNR tracks;
- (d) The configuration of the roadway proposed for the Project will limit and adversely affect the commercial development which can take place on the lands between 50 Street and 144 Avenue owned by Guaranty Properties;
- (e) The Project will adversely impact the anticipated recoveries of money spent on infrastructure development by Guaranty Properties.

Mr. Woo advised that he believes that there will be further residential development east of the CNR tracks and that the remaining parking stalls east of the CNR tracks will be insufficient to deal with future parking requirements.

Mr. Woo testified that Guaranty Properties was not invited to be part of the technical study committee which provided input into development of the Study. Further, Mr. Woo advised that he had discussions with Mr. Les Edwards of the City with respect to the City acquiring Guaranty Properties Land for this Project. He advised that Mr. Edwards initially suggested the City may purchase 33 acres of Guaranty Properties Land west of the CNR tracks. Thereafter, Mr. Edwards advised Mr. Woo that the City was only interested in purchasing the lands necessary to proceed with the Project. Mr. Woo also stated that there were without prejudice negotiations with the City with respect to acquiring the Guaranty Properties Land.

Mr. Woo stated that he had discussions with the City with respect to taking a portion of the proposed parking stalls from the south and moving them to the north so as to increase the size of the Residual Land. Mr. Woo advised that such a development of the Project would be advantageous to him as it would provide more options for development of the Residual Land. It was Mr. Woo's position with the City that the movement of certain parking stalls from the south to the north would make the Residual Land more marketable.

Cross-examination of Mr. Woo

Mr. Moroz suggested to Mr. Woo that one of his concerns, recovery of infrastructure costs, was a matter of compensation. Mr. Woo was not familiar with the details of what types of damage claims he can advance at the compensation stage of the expropriation process.

Mr. Woo advised that, of the alternatives set forth in the Study, Figure 4.2 of Exhibit 1 would be his preferred alternative with respect to development of the Project.

Mr. Woo advised that he had previous experience discussing with the City the design for the current LRT site and considering possible revisions to the original LRT site configuration.

Mr. Woo testified that he wrote the letter to Mr. Clayton in October of 1996 (Exhibit 11). Further, his company is in support of the Clareview LRT expansion and that the primary differences with the City involve the value of land and whether some of the parking should be relocated from the south end of the Project to the north end.

MR. MACKENZIE

Mr. MacKenzie advised that he was a professional planning consultant specializing in development use and planning development. He has been a professional planner for over 30 years and has testified before tribunals as an expert on numerous occasions.

Mr. MacKenzie described his historical involvement as a planner with respect to the Clareview area and adjacent areas in northeast Edmonton. He reviewed the areas he was involved with and referred to Exhibit 18. Mr. MacKenzie testified that he has been asked by Guaranty Properties to: consider the City's proposed development of the Project; comment on the proposed Project; and provide an opinion on whether the City's design could be modified to accommodate the concerns of Guaranty Properties, yet still achieve the objectives of the City.

In accordance with that mandate, Mr. MacKenzie stated that he developed various alternatives for parking configurations and Residual Land size. These alternatives are set forth in Exhibit 19.

In Mr. MacKenzie's opinion, the likelihood of obtaining access to the Residual Land directly from Manning Drive is very low. In his experience, the City minimizes the access from a major public road such as Manning Drive, especially if the access is close to an intersection, as is the case here with the Residual Land being in close proximity to the intersection of 50 Street and Manning Drive.

Mr. MacKenzie testified about the importance of Neighbourhood Area Structure Plans. In his view, they were very important development management documents which outline the future development of areas. He further described the public input involved in the creation of a NASP, as well as the amendments to any NASP. Mr. MacKenzie explained the development of the existing NASP and the importance of the designation of lands as industrial, commercial or residential, as well as the importance of the location of roadways and future

roadways to the use of the land parcels so designated. With respect to the Clareview Town Centre NASP, Mr. MacKenzie noted the importance to the development of Guaranty Properties' commercial lands of the access to Manning Drive and the design of the "spine road" through the land designated as commercial in the NASP. Mr. MacKenzie opined that it was very important to realize that this spine road is central to creating accessibility and commercial viability to the entire area designated as commercial lands west of the CNR tracks. Further, Mr. MacKenzie advised that the design for the Project proposed by the City would significantly impact the use and therefore the value of the commercial lands owned by Guaranty Properties and, in fact, may result in those lands being suitable only for industrial, as opposed to commercial, development. Further, industrial land is in tremendous oversupply and is much less valuable than commercial development land.

It was Mr. MacKenzie's view that, if a private owner was proposing to use the land as proposed by the City in the design of this Project, then an application would have to be made to amend the existing NASP. Further, Mr. MacKenzie is unaware of any application made by the City to so amend the NASP to enable development of the proposed Project. Mr. MacKenzie did refer to a proposed Area Structure Plan amendment, Exhibit 20. He advised that Exhibit 20 demonstrates that a relatively minor adjustment to a location of the boundary between a townhouse site and a low density site required an amendment to the Area Structure Plan. Therefore, the significant changes proposed by the City for this Project would require amendments to the NASP.

It was Mr. MacKenzie's opinion that the option designated as Residual Land C on Exhibit 19 would minimize the impact to the commercial lands owned by Guaranty Properties, would be consistent with the NASP, and would have no negative impact on the objectives of the City in developing the Project.

Mr. MacKenzie acknowledged that he was not a transportation expert. Nonetheless, he opined that the design of the roadway into the proposed LRT expansion Project would be detrimental to the future traffic flow into the commercial development lands owned by Guaranty Properties adjacent to the Project. Mr. MacKenzie testified that the perpendicular roadway proposed to go directly from Manning Freeway to the west LRT parking lot would

disrupt the flow of traffic to the commercial development land north of the roadway. This is because the traffic would have to make a left-hand turn at a right-angle intersection. He advised that this is much less desirable than the proposed roadway as outlined in the NASP.

Mr. MacKenzie then commented upon the conceptual development options provided by Mr. Newton. Although Mr. MacKenzie did not have the benefit of much time to review these conceptual options, he had the following comments:

- (a) Mr. Newton had ignored the roadways as set forth in the NASP;
- (b) The option set forth in Exhibit 5a would probably result in industrial use with very poor accessibility;
- (c) The Residual Land would have significantly less value as industrial land versus commercial land;
- (d) The comparisons to 75 Street and Oliver Square (Exhibits 12 and 13) by Mr. Newton are not helpful because of the significant differences between those sites and the Residual Land: namely, they are in fact deeper than the Residual Land and, with respect to Oliver Square, there is rear access to the commercial buildings, which is not the case with respect to the Residual Land in the City's design for the Project.

Cross-examination of Mr. MacKenzie

Mr. Moroz cross-examined Mr. MacKenzie with respect to the various points made by Mr. MacKenzie. Mr. Moroz suggested to Mr. MacKenzie that the concerns he raised are matters of compensation and not issues that go to whether the taking is fair, sound and reasonably necessary. Mr. MacKenzie stated that he is concerned about value impact issues. However, he does not accept that these are solely compensation issues. That is, if the City could accomplish its objectives, without adverse value impacts, that should be addressed at this stage, not at the compensation stage. Mr. MacKenzie is concerned that the City will develop this Project in a manner which will preclude the proper development of adjacent commercial lands. Further, in his view, minor changes to the design of the Project could alleviate most of the

serious negative impacts to the balance of the commercial development lands owned by Guaranty Properties. Mr. Moroz suggested that is simply a matter of compensation and Mr. MacKenzie replied that, in his view, such a design for the Project was unsound, from a taxpayer's perspective.

Mr. MacKenzie acknowledged, in response to Mr. Moroz's questioning, that development trends change over time. Further, from time to time, amendments to NASPs are made to accommodate changes in circumstances or changes in trends.

Mr. MacKenzie acknowledged that one must acquire land, or have an entitlement to acquire an interest in property, in order to commence the process with respect to amendment of a NASP. However, a developer may make it a condition of acquiring a specific piece of land that he will be able to obtain the necessary amendment to a NASP.

~~Re-examination of Mr. MacKenzie~~

In reply to a question from Mr. Mallon, Mr. MacKenzie advised that he was unaware of any application by the City to amend the NASP in relation to this intended expropriation. Further, he advised that an application to amend the NASP by the City, prior to expropriation, was feasible and more respectful of the City's established planning procedures, than the course taken by the City to first attempt to expropriate the Guaranty Properties Lands.

MR. MORASCH

Mr. Morasch stated that he was a professional engineer with extensive training and experience in the area of public transportation planning and design. Mr. Morasch had many years' experience in transportation planning activities while an employee of the City of Calgary. In recent years, Mr. Morasch has been the owner and president of Morasch Consultants Ltd.

~~Mr. Morasch was asked to analyze the proposed design of the Project, in particular the transportation aspects thereof, comment on the same, and consider various alternatives.~~

Mr. Morasch visited the site of the existing LRT Transit Centre, had discussions with representatives of the City, and reviewed various plans and information provided, at his request, by the City.

Mr. Morasch testified that he did not question the need to expropriate and simply assumed that it was appropriate for the City to build an upgrade to the Clareview Transit Centre, including additional facilities on the west side of the CNR tracks.

Mr. Morasch observed 2-3 acres of vacant land on the east side of the CNR tracks owned by Guaranty Properties. It occurred to him, as an interim measure, that this land should have been used for additional parking space.

Mr. Morasch then commented on the proposed roadways for the Project. In his view, there will be considerable traffic on the roadway connecting the Project to Manning Drive northbound and Manning Drive southbound. Further, as soon as development takes place on the commercial lands north or south of this road, the traffic flow will increase further. In Mr. Morasch's opinion, there has not been sufficient attention given to the transportation planning of this roadway.

Mr. Morasch also offered his view that the Kiss N'Ride should not be located north of the bus bay, for traffic flow reasons.

Mr. Morasch testified that, from a traffic engineer's perspective, the roadway plan set forth in Exhibit 19, Residual Land C, provides significant advantages in traffic management over the design proposed by the City for the Project. It would enable better access to adjacent commercial lands which may be developed in the future, as well as better access to the proposed Clareview Transit Centre Project.

Mr. Morasch also testified that one must consider the actual street patterns in the area to determine how patrons will access the LRT Transit Centre in their vehicles. It is Mr. Morasch's opinion that many of the patrons who live south and west of the Clareview LRT station will likely access the LRT station from the east, even after access from the west is constructed as part of the Project. This is because, in his view, it would be easier to access the

Transit Centre from the south than it would be to make a left turn onto Manning Freeway north to enable access to the west side parking for the proposed Project.

Mr. Morasch testified that he anticipated increased ridership at the Clareview LRT station for a number of reasons, including:

- (a) significant improvements to the station
- (b) continued improvement and extension of other LRT lines in the City of Edmonton.

Mr. Morasch gave evidence concerning the location of the Park N'Ride in relation to the Kiss N'Ride, and development of walkways in the parking lots to reduce walking distances from the parking stalls to the Transit Centre.

Mr. Moroz did not cross-examine Mr. Morasch.

SUMMARY OF ARGUMENT

CITY OF EDMONTON

Mr. Moroz noted that this Inquiry was pursuant to Section 15(8) of the *Expropriation Act*. The objective is to determine whether the expropriation of land identified in Exhibit 2 is fair, sound and reasonably necessary to achieve the objectives of the expropriating authority.

It was the submission of the City that the intended expropriation was in fact fair, sound and reasonably necessary to achieve the City's objectives.

Mr. Moroz referred to the decision of *Marie Parkins v. The Queen et al* (1978) 14 LCR 327 (Ont. C.A.). It was submitted that the *Re Parkins* decision stands for the proposition that the test to be considered by the expropriation officer amounts to whether or not the intended expropriation is "reasonably defensible." Further, Mr. Moroz made reference to the cases provided by Mr. Mallon, including the decision of *Walters et al v. Essex County Board of Education* [1971] 3 O.R. 346-355. Mr. Moroz submitted that, even if the tests in those cases are

appropriate (which was not admitted), the City has still met those tests as applied to the evidence heard in support of the intended expropriation of the Guaranty Properties Land.

Mr. Moroz summarized the evidence of Mr. Menzies, which established the need for the upgrading of the Clareview Transit Centre and the need for accommodating access and growth occurring on the west side of the CNR tracks. He further submitted that it is reasonable to anticipate significant growth occurring over the next several years to the west of the CNR tracks, which will, in turn, increase the usage of the Clareview Transit Centre from patrons residing west of the CNR tracks.

Mr. Moroz argued that extensive public consultation and planning were involved in the development of the proposed design for the Project. Four alternatives were considered by the City. Further, Mr. Moroz stated that Mr. Clayton's evidence was that the City met with Mr. Woo and considered his position. The City concluded that Mr. Woo's proposal to move certain parking stalls north would be less desirable from the City's perspective.

Mr. Moroz argued that, in summary, Mr. Woo's evidence was that he was in favour of the Project proposed by the City, but for two rows of parking and some road design. Mr. Moroz argued that the City, like most developers, proposes a road design based upon its present development. Future development of adjacent commercial or industrial sites is unknown and the road design typically does not attempt to anticipate future development.

Mr. Moroz submitted that the October 10, 1996, letter from Mr. Woo is an important exhibit. He submitted that this document illustrates that, if Guaranty Properties receives \$2.5 million, there would not be any opposition to the intended expropriation. Further, Mr. Moroz submitted that Mr. Woo's concerns expressed in evidence are concerns that go to compensation, not whether the intended expropriation is fair, sound or reasonably necessary to achieve the City's objectives.

Mr. Moroz commented on the evidence of Mr. MacKenzie. He submitted that the thrust of Mr. MacKenzie's evidence was that the proposed design of the Project was inconsistent with the existing Neighbourhood Area Structure Plan. Mr. Moroz stated that applications to amend the NASP are not necessary before the acquisition of land by a developer.

With respect to the evidence of Mr. Morasch, Mr. Moroz argued that Mr. Morosch agreed that the roadway proposed for the Project is appropriate for the City's use in connection with the Clareview Transit Centre. With respect to future development of adjacent lands, and whether the roadway is adequate, or how it may impact adjacent lands, those matters are speculative and go to the question of compensation.

OBJECTOR – GUARANTY PROPERTIES

Mr. Mallon argued that the City clearly had no intention of making any application to amend the Clareview Town Centre Neighbourhood Area Structure Plan. Further, he submitted that the effect of the expropriation is a subdivision of the property, and a change in use of the property which will change the roadways that are found on the NASP. Mr. Mallon submitted that this was not fair, sound or reasonably necessary to achieve the objectives of the City.

Mr. Mallon argued that the City's design for the Project did not take into account the impact on, and therefore the concerns of, adjacent landowners, including Guaranty Properties. He stated that the planning advice that went into the design of the Project, as opposed to the transportation advice, was very limited, one or two hours according to the evidence of Mr. Clayton.

Mr. Mallon submitted that all of the jurisprudence on what constitutes "fair, sound and reasonably necessary" is from the Province of Ontario. Mr. Mallon in his oral and written arguments made reference to the following cases:

Walters et al v. Essex County Board of Education [1971] 3 O.R. 346-355

Re Karn et al v. Ontario Hydro et al [1977] 79 D.L.R. (3d) 256

Newman v. City of Toronto [1997] O.M.B.D. No. 1314

Mr. Mallon submitted that the *Walters* case, *supra*, was helpful in that it indicated that the test could be reconstituted as to be whether the taking was reasonably defensible. Further, he submitted that the case was helpful in that it directed the inquiry officer to strike a balance between public interest advanced by the authority seeking the taking and the private interests of the landowner whose land was being taken or effected thereby. Mr. Mallon went on

to suggest that the reasonably defensible test is not the standard for the inquiry officer to apply in Alberta. Then he went on to submit that it does not really matter what test is chosen because the proposed taking is not fair, sound and reasonably necessary on any test recognized in the case law.

Mr. Mallon referred to *Driedger On the Construction of Statutes* (3rd ed.), page 159, for the proposition that each word in a statute is presumed to make sense and has a specific role to play in advancing the legislative purpose. Accordingly, I must consider each word: "fair," "sound" and "reasonably necessary" in applying the statutory test in s.15(8) of the *Expropriation Act*.

Mr. Mallon suggested that the proposed taking is not fair, sound and reasonably necessary because:

- (a) The City has not complied with its own bylaws and statutory plans, and has failed to follow the appropriate planning processes.
- (b) The City is not complying with the *Municipal Government Act*.
- (c) There are other alternatives to the design for the Project, which cause less harm to the adjacent landowners, yet meet all of the City's objectives for the Project.

Mr. Mallon also cited the text, *Planning Law and Practice in Alberta*, 2nd ed., F.A. Laux, Q.C., and the decision of *Dalhousie Station Ltd. v. The City of Calgary* (1991) 123 A.R. 203, in support of the proposition that the City must comply with the *Municipal Government Act* and its own bylaws and planning processes when engaged in activities that constitute development of land. He submitted that this intended expropriation constituted a land development which is inconsistent with the NASP.

Mr. Mallon submitted that the Inquiry Officer must consider alternatives presented in evidence in determining whether the proposed taking is fair, sound and reasonably necessary to achieve the objectives of the expropriating authority. In support of this proposition, he cited page 4 of the *Karn et al* decision, *supra*. He submitted that the alternatives provided by Mr. MacKenzie are clearly more advantageous to Guaranty Properties and still meet the

objectives of the City for the Project. Further, he submitted that Mr. Morasch's evidence supported the evidence of Mr. MacKenzie that the traffic flow for the future development of the adjacent lands would be better accommodated by a different roadway plan than the roadway proposed in the City's design for the Project.

Mr. Mallon also submitted that the evidence demonstrated that the remaining 630 parking stalls on the east side of the Transit Station will be insufficient to handle the volume of traffic anticipated in the future. Accordingly, the parking problem experienced by Guaranty Properties will continue, even after the Project is completed.

Mr. Mallon stated that an option for the Inquiry Officer's consideration is a recommendation that the City purchase the entire parcel of land owned by Guaranty Properties west and northwest of the proposed Project. In this regard, he referred to s. 15(2) of the *Municipal Government Act*, which states that the Land Compensation Board may direct a municipality to expropriate the whole of the parcel of land if, in the opinion of the Board, the expropriation of a part of the parcel is unfair to the owner of the parcel.

FINDINGS OF FACT

The Guaranty Properties Land the City intends to expropriate constitutes approximately 7.9 acres. The objectives of the City are to upgrade and construct the Clareview Transit Centre, and for the construction of a related roadway.

The City has demonstrated the need to upgrade the Clareview Transit Centre. Further, it has established a need for related parking improvements to the west of the CNR tracks and for the construction of a roadway from Manning Drive to the proposed upgraded Clareview Transit Centre.

The Objector agrees that an upgrading of the Clareview Transit Centre is desirable and that new parking facilities are required on the west side of the CNR tracks. The disagreement with the City centres around the layout of the roadway and the location of some of the parking stalls on the west side of the CNR tracks.

It is clear to me that the Objector's concerns with respect to the location of the parking stalls and the design of the roadway were communicated to the City, considered by the City, and not found to be an acceptable alternative design for the Project.

It is clear that the City conducted an extensive study which looked at various alternatives for the design of the Project. There was public input at this stage, which was considered by the City, before a final design recommendation was proposed (Exhibit 1).

The Objector established that the proposed design for the Project will likely adversely affect adjacent lands owned by the Objector, some of which are referred to as the Residual Land, throughout the course of the hearing. The Objector also established that there did not appear to have been any significant land use planning expertise resources used by the City in developing the proposed design for the Project. The City, however, did employ considerable transportation engineering expertise in developing the proposed design for the Project.

Further, I find that it is reasonable to expect continued growth in ridership at the Clareview Transit Centre in the foreseeable future. Witnesses for the City and for the Objector agreed that increase in ridership is likely and that an increase in ridership would be coming from residential areas east and west of the CNR tracks. The City did establish that significantly greater increase in ridership can be expected from patrons travelling from residential areas west of the CNR tracks, which will be developed in the foreseeable future.

Mr. Menzies and Mr. Clayton gave evidence on behalf of the City as experts in the area of transportation engineering. However, they did not specifically deal with the comments made by Mr. MacKenzie and Mr. Morasch concerning the design of the roadway that is proposed for the Project. Mr. MacKenzie and Mr. Morasch, on behalf of the Objector, persuasively noted that a redesign of the roadway would be of significant benefit to the adjacent commercial lands owned by Guaranty Properties, and would not present any hindrance to the design objectives of the City for the Project. Their evidence in this regard was not undermined by the City, either in direct evidence or in cross-examination.

Mr. Woo, on behalf of Guaranty Properties, was prepared in October of 1996 to allow 6.67 acres west of the CNR to be provided to the City for the Clareview Transit Centre

Project, on the understanding that the value of the land acquired would be \$2.5 million (Exhibit 11). This would have left Guaranty Properties with approximately the same Residual Land as the present design for the Project.

The evidence of Mr. MacKenzie was more persuasive than the evidence of Mr. Newton. Mr. Newton testified with respect to various "conceptual" options which may be available for the Residual Land. Clearly, without the movement of some parking stalls on the west side from the north to the east, the Residual Land is far less useful, as explained quite clearly by Mr. MacKenzie.

OPINION ON THE MERITS OF THE EXPROPRIATION AND REASONS THEREFOR

The scope of this Inquiry is set out in section 15(8) of the *Act*, which states:

The Inquiry Officer shall inquire into whether the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

In determining what exactly is required from the expropriation officer in applying these words, I have been referred to authorities by counsel for the City and counsel for the Objector. In addition, I have consulted the following further authorities:

Marisa Construction v. Toronto (City) [1998] O.J. No. 4069

Re Grey County Hydro Corridor Committee et al. v. Minister of Energy for Ontario et al. (1977) 18 O.R. (2d) 170

Re Kurpuweit v. St. Mary River Irrigation District 41 (1989) L.C.R. 264

The Law of Expropriation and Compensation in Canada (2nd ed.), Eric Todd

Squaw Point Ranching Co. v. Red Deer (City) [1989] A.J. No. 141

Re Valentini et al. v. Amerada Minerals Corp. of Canada Ltd. (1976) 70 D.L.R. (3d) 385

In my opinion, the expropriation of the Guaranty Properties Land is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

That is, I am persuaded that the intended expropriation of the Guaranty Properties Land meets the statutory test in section 15(8).

The parking stall and roadway suggestions of the Objector, as well as other design alternatives, were considered by the City in developing the recommended design for the Project. I do not consider it appropriate that an Inquiry Officer attempt to "micro-manage" the design of any given Project. Clearly, the City requires land to construct the Clareview LRT Centre Project and related roadway. The expropriating authority does not need to demonstrate that it has selected the best design for a Project to satisfy that the proposed taking is fair, sound and reasonably necessary.

Having reached this conclusion, I wish to note that the position advanced by the Objector appears sensible: namely, that the proposed design for the Project could be improved upon by adopting the suggestions presented by Mr. Morasch and Mr. MacKenzie. Specifically, the movement of parking stalls west of the CNR tracks from the south to the north and reconfiguration of the roadway appear to be sound suggestions.

I do not agree with the argument presented by the Objector that the City is acting illegally or contrary to the Neighborhood Area Structure Plans in seeking expropriation of the Guaranty Properties Land. Whether or not the City's design for the Project violates the NASP, the *Municipal Government Act*, or the *Planning Act* are issues which are not relevant and applicable to this Inquiry process. It may be that Guaranty Properties can advance these arguments in another forum.

The Objector argued that the Inquiry Officer can make a recommendation and referred to section 15(2) of the *Municipal Government Act*. This section applies to the Land Compensation Board and not to an Inquiry Officer acting pursuant to the *Expropriation Act*. Therefore, it would be inappropriate to make such a recommendation.

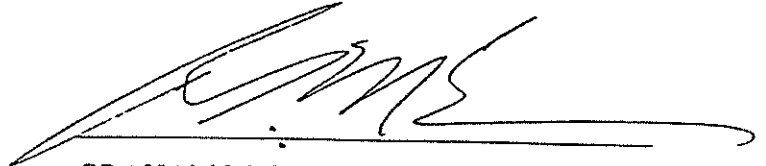
The Objector's arguments that the proposed design of the Project causes damages to adjacent land owned by Guaranty Properties is also an argument for another forum. Issues of compensation are generally not relevant to the task of an Inquiry Officer.

In conclusion, I find that the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority. However, I would urge the City to reconsider whether the proposed minor changes in design for the Project which

have been advanced by the Objector and which appear to have merit can be incorporated in the design.

Pursuant to section 15(10) of the *Act*, the reasonable costs of the Objector incurred in connection with this Inquiry shall be paid by the expropriating authority.

DATED at the City of Edmonton, this 3rd day of April, 2000.



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AND TO: Mr. Donald Mallon
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APPENDIX 1

1. Clareview Transit Centre, Facility Planning Study – Technical Report dated October 1996
2. Clareview plan showing survey for expropriation purposes
3. Overall Land plan Clareview Transit Centre - upgrade
4. Clareview Transit Centre location plan
5.
 - a. Drawing Manning Drive & 50th Street Option 1
 - b. Drawing Manning Drive & 50th Street Option 2
 - c. Drawing Manning Drive & 50th Street Option 3
 - d. Drawing Manning Drive & 50th Street Option 4
 - e. Drawing Manning Drive & 50th Street Option 5
6. Drawing walking distances from Transit Terminal NW Parking Option 2
7. City Council Meeting Minutes re expropriation of the Guaranty Properties Land
8. Notice of Intention to Expropriate dated December 19, 1999
9. Affidavit of Service of Notice of Intention to Expropriate sworn January 28, 2000
10. Affidavit of Publication of Notice of Intention to Expropriate sworn February 16, 2000
11. Letter Guaranty Properties to Mr. Clayton dated October 10, 1996
12. Drawing of property on Roper Road & 51st Avenue
13. Drawing Oliver Village Development
14. Brief of the Objector

15. City of Edmonton Bylaw No. 9841 (as amended)
16. Neighbourhood structure plans terms of reference
17. Arial photograph with overlay dated October 23, 1998
18. Map, City of Edmonton 1999 status of residential suburban neighbourhood development and planning
19. Various drawings setting forth alternative parking, residual land and building potential residual land
20. Proposed amendment to the Clareview Town Centre Neighbourhood Area Structure Plan