January 30, 2015

George E. Ulyatt
Direct line: (204) 944-3247
E-mail: gulyatt@tappercuddy.com

Our File No. 141036

Via Courier

Aikins, MacAulay &
Thorvaldson LLP
30th Floor – 360 Main Street
Winnipeg, Manitoba
R3C 4G1

Attention: Robert Tyler

Fillmore Riley LLP
1700 – 360 Main Street
Winnipeg, Manitoba
R3C 3Z3

Attention: Mark Newman

City of Winnipeg Legal Services
3rd Floor – 185 King Street
Winnipeg, Manitoba
R3B 1J1

Attention: Denise Pambrun

Aikins, MacAulay &
Thorvaldson LLP
30th Floor – 360 Main Street
Winnipeg, Manitoba
R3C 4G1

Attention: James Mercury

Aikins, MacAulay &
Thorvaldson LLP
30th Floor – 360 Main Street
Winnipeg, Manitoba
R3C 4G1

Attention: Charles Chappell

Aikins, MacAulay &
Thorvaldson LLP
30th Floor – 360 Main Street
Winnipeg, Manitoba
R3C 4G1

Attention: Bryan Klein

Dear Sirs and Madam:

Re: Expropriation – Polo Park Phase 2/St. James Street

Enclosed please find the Inquiry Offer's report dated January 30, 2015, regarding the above noted matter.

Yours truly,

TAPPER CUDDY LLP

Per:

GEORGE E. ULYATT*
GEU/pb
Encl.

*Legal services provided by Ulyatt Law Corporation

INQUIRY OFFICER'S REPORT

Re: Expropriation in the City of Winnipeg, in the Province of Manitoba

Being the expropriation of the following lands:

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCELS A, B, C, D, E, F, G, H, J, K, M, N, AND P ON PLAN DEPOSIT 522, 2014 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR.

FOR THE PURPOSE OF EXTENDING AND WIDENING ST. MATTHEWS AVENUE AND WIDENING ST. JAMES STREET FOR POLO PARK AREA INFRASTRUCTURE IMPROVEMENTS, IN THE CITY OF WINNIPEG, IN MANITOBA.

Prepared by:

GEORGE ERNEST ULYATT

Inquiry Officer

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INQUIRY OFFICER'S REPORT

1. On the 29th day of September, 2014, George Ulyatt was appointed as an Inquiry Officer pursuant to Schedule "A" of The Expropriation Act, R.S.M. 1987, c. E190, with respect to the Notice of Expropriation filed by the City of Winnipeg.

2. Pursuant to the terms of the legislation, Section 8 of Schedule "A" of *The Act*, the Inquiry Officer has 30 days to submit his report. Pursuant to a Consent Order of the Honourable Justice Clearwater, dated October 21st, 2014, the date for the Inquiry Officer to submit his report was extended to January 30th, 2015, and the Confirming Authority's extension to confirm the report was extended to March 30th, 2015.

A. LANDS AFFECTED BY THE UNDERTAKING

Lands to be expropriated:

3. The intended expropriation affects the following lands:

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCELS A, B, C, D, E, F, G, H, J, K, M, N, AND P ON PLAN DEPOSIT 522, 2014 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR.

Notice of Expropriation:

4. The notice of such public hearing was affected by serving the Notice of Public Hearing on counsel for each of the parties who

had filed a Notice of Objection and by serving by Registered Mail a Notice of Public Hearing on all persons who have an interest in lands which are subject to the matter of the intended expropriation.

5. This Inquiry Officer caused to be published in the Saturday, September 20th, 2014 edition of the Winnipeg Free Press, a local newspaper, a Notice of Public Hearing for this Inquiry.

B. PARTIES TO THE INQUIRY PROCESS:

6. In accordance with Section 5 of Schedule "A" of *The Act* this Inquiry Officer fixed the 1st day of October, 2014, at 10:00 a.m. at the Multipurpose Rooms 1 and 2, Basement of the Administration Building, 510 Main Street, Winnipeg, Manitoba, as the commencement time for a Public Hearing to determine whether or not the intended expropriation was reasonably fair and reasonably necessary for the achievement of the objectives of The Province, the expropriating authority in this matter.

7. Pursuant to Section 6(2)c of Schedule "A" to *The* Act, the Objectors and the expropriating authority are parties to the hearing.

8. Members of the public who attended the Public Hearing were not added as parties to the proceedings.

9. The parties who attended the inquiry hearing were the following:

A)	For the City of Winnipeg:	**Denise Pambrun,** Counsel for the City.
B)	Objectors:	**GROUP 111 DIVERSIFIED INC.:**
	Counsel for Objectors:	**Charles Chappell** Aikins, MacAulay & Thorvaldson LLP

C)	Objectors:	**0197468 Manitoba Ltd.**; and **3264751 Manitoba Ltd**
	Counsel for Objectors:	**James A. Mercury** Aikins, MacAulay & Thorvaldson LLP
D)	Objectors:	**Oxbow Holdings Limited**; **St. James Industrial Park**; and **St. James Place Warehouse:**
	Counsel for Objectors:	**Mark Newman** Fillmore Riley LLP
E)	Objectors:	**Madison Holdings Ltd.:**
	Counsel for Objectors:	**Robert Tyler** Aikins, MacAulay & Thorvaldson LLP
F)	Objectors:	**IMAGINABILITY INC.**
	Counsel for Objectors:	**Brian Klein** Aikins, MacAulay & Thorvaldson LLP

C. SUMMARY OF EVIDENCE

11. Counsel for the City of Winnipeg, the expropriating authority, hereinafter referred to as "the City" called two witnesses to support the proposed expropriation. The two witnesses were John Zabudney and Stephen Chapman.

12. Mr. Zabudney is the manager of Real Estate for the City of Winnipeg planning and property development department and has been employed by the City for approximately 28 years. Mr. Zabudney's background was set forth in his *curriculum vitae* at Tab 4 and Exhibit 2 which confirmed his qualifications as follows. Mr. Zabudney received his Canadian Residential Appraisal designation in 1998. He was later certified in 2001 as a Leasing Officer. He later became a Fellow of the Real Estate Institute (Executive) in 2003. Finally, he is also recognized by the Appraisal Institute of Canada.

13. Mr. Zabudney reviewed what properties were to be expropriated and referred to Exhibit 3, an overhead display of the affected properties and numbered. This could be cross-referenced with Tab 1 at Exhibit 3 which has the proposed takings numbered and colored but not the proposed takings superimposed on it.

14. Mr. Zabudney identified the holdings as follows:

Holding No. 1: Civic address is 1688 St. Matthews Avenue, with the property owner being 0197468 Manitoba Ltd. There are objections to this expropriation and it is a partial taking of approximately 1,522 square feet.

Holding No. 2: Civic addresses are 6091 St. Matthews Avenue and 503 and 517 Century Street. This is partial taking and there are no objections to same.

Holding No. 3: Civic addresses are 496 and 500 Madison Street, with property owner being Group 111 Diversified Inc. This is a partial taking of the lands of approximately 1,300 square feet and the owners have objected to same.

Holding No. 4: This is a full taking of the land civically described as 505 Madison Street, with the property owner being Madison Holdings Ltd. The owners have objected to same and it is a full taking of the property of approximately 15,747 square feet.

Holding No. 5: This property is owned by Manitoba Hydro and is not subject to expropriation.

Holding No. 6: A vacant piece of property which is being expropriated, owned by Oxbow Holdings Limited, who has objected to the taking and the proposed taking is approximately 20,350 square feet.

Holding Nos. 7(a) and 7(b): This property is civically described as 914 to 950 St. James Street. The freehold land is owned by Oxbow Holdings Limited and the Leasehold interest is St. James Industrial Park. The proposed taking is a partial taking of approximately 16,794 square feet, which also requires taking a portion of the building and the City will require to do construction improvements afterwards.

Holding Nos. 8(a) and 8(b): The property at 890 St. James Street and 904 St. James Street, identified as 8(a) and 8(b), refers to 8(a) as being the freehold property owned by Oxbow Holdings Limited and 8(b) as the Leasehold holdings owned by St. James Industrial Park. This taking is a partial taking of approximately 1,815 square feet and would be a corner cut on St. James Street and a small triangular piece at the rear of the west side.

Holding No. 16: This is 511 Madison Street which is owned by Madison Holdings Ltd. and the proposed taking is approximately 64 square feet.

15. Mr. Zabudney testified that the current expropriation proceedings would be stage 2 of the Polo Park Infrastructure Improvements with stage 1 being the work along St. Matthews Avenue east of St. James Street as well as along St. James Street. The current matter before this inquiry, stage 2, is dealing with the proposed extension of St. Matthews Avenue to Century Street, which,

according to Mr. Zabudney is required to alleviate or lessen traffic congestion in the Polo Park Area. Mr. Zubuney indicated that his department is not responsible for the alignment of the streets but takes instructions from the Public Works Department in order to obtain property for the undertaking. Mr. Zabudney testified that the original alignment of the proposed St. Matthews Avenue extension was different than what was being proposed at present.

16. Evidence was given that the City inadvertently sold more property than it ought to have sold, with respect to the property commonly known as the Winnipeg Canad Inns Stadium to a third party. When the City discovered that property that ought not to have been included was included, negotiated a purchase of part of the lands needed with the third party and as a result, the Public Works Department was able to proceed with the alignment and configuration now shown but not with the configuration which had been previously contemplated.

17. Ms. Pambrun referred Mr. Zabudney to Tab 9, Exhibit 2, which sets forth the original alignment of St. Matthews Avenue to Century Street. Mr. Zabudney identified the alignment and noted that there was not any taking for the properties identified as holdings 7(a) and 7(b) (914 to 950 St. James Street) but will affect the northern building. The majority of the change in the alignment happened east of Madison Street so that a majority of the alignment shifts further north than the original plan called for.

CROSS-EXAMINATION BY MR. CHAPPELL on behalf of the Objectors – GROUP 111 DIVERSIFIED INC.

18. Mr. Chappell elicited from Mr. Zabudney that the Department had been considering realignment of St. Matthews Avenue for some 10 to 15 years, however, Mr. Zabudney was not aware of the specifics of same. Mr. Zabudney indicated that there had been a call for expression of interest with respect to the former Winnipeg Canad Inns Stadium site. An award was made with respect to same and it was later determined that the contract with the third party did not reserve enough lands to proceed with the initial realignment of St. Matthews Avenue. The City was able to renegotiate with the purchaser, Target, part of the lands back in order to complete the realignment. The City made a decision not to expropriate properties from the purchaser but to take lands now before the Inquiry not previously contemplated.

19. Mr. Chappell examined the witness as to the time frame with respect to the expropriation being that the land was purchased in July 2012, sold in 2013, and the decision to proceed with the present proposed expropriation went to the Executive Policy Committee on May 13, 2014, and was approved by City Council on May 27th, 2014.

20. Mr. Chappell asked Mr. Zabudney to examine Exhibit 4 which was a building permit respecting work at 496 Madison Street owned by Group 111 Diversified Inc., holding no. 3. The permit was a "partial

permit-foundation-commercial permit" issued on January 20th, 2014. Mr. Zabudney confirmed that in the issuance of building permits, their issuance are in stages for foundation, structural, mechanical, and super structure. Mr. Zabudney confirmed that the permit issued on January 20th, 2014, was revoked by an email dated March 14, 2014 (Exhibit 4, Tab 10).

21. Mr. Chappell examined Mr. Zabudney with respect to contributions by the entity that had acquired the Winnipeg Canad Inns Stadium property being responsible for 23.86% of the costs as opposed to 25%.

CROSS-EXAMINATION BY MR. MERCURY on behalf of the Objectors – 0197468 Manitoba Ltd. and 3264751 Manitoba Ltd.

22. Mr. Mercury, representing 0917468 Manitoba Ltd. and 3264751 Manitoba Ltd, carrying on business as Canada Auto Repair and Service, cross-examined Ms. Zabudney. Mr. Mercury tendered the book of document marked as Exhibit 5 on behalf of both clients. Mr. Mercury had Mr. Zabudney acknowledge the type of business being operated was an auto service, including maintenance; shop; drive shafts; drive shaft rebuild; repairs; engine rebuilding; mounting and balancing tires. Mr. Zabudney acknowledged that approximately 1,522 square feet of the property being taken and that according to Mr. Zabudney, the taking would affect a portion of the driveway access and the parking lot. Mr. Zabudney also

acknowledged that he has never actually been on the site that is being expropriated.

23. Mr. Zabudney examined Exhibit 5, Tab 7, the picture nos. 1 and 2, which are pictures of the property, and testified he did not believe that the entranceway to the property would be cut off. Mr. Zabudney, then being referred to Exhibit 4, Tab 3, page 9, with the report to the standing Policy Committee, May 13, 2014, identified that the areas affected would be "parking lot - loss of parking, fence relocation, interrupted access". Mr. Zabudney testified that he was not aware of any concerns being voiced by the owner of the property.

24. Mr. Zabudney was examined as to previous expropriations of other properties, the impact of same, and whether the City in fact acquired more land than necessary. Initially, Mr. Zabudney's answer was no, but then continued and qualified his answer and did indicate there have been occasions as evidenced by expropriation of the land leading to MidTown Car Wash, with the acquisition of land from Pembina Dodge and also with respect to the expropriated lands for the Rapid Transit corridor. These were situations which Mr. Mercury submitted that a partial taking rendered those businesses unviable, to which Mr. Zabudney agreed.

25. Mr. Zabudney further testified thay as far as he was aware, in the present circumstances, a full comprehensive analysis has not yet been "performed or conducted" and that "again, were in the preliminary stages".

26 Mr. Zabudney acknowledged that parking spaces were going to be taken and that the parking spacing to be taken would put the property in a non-compliance with City by-laws.

CROSS-EXAMINATION BY MR. NEWMAN on behalf of the Objectors – Oxbow Holdings Limited; St. James Industrial Park; and St. James Place Warehouse:

27. Mr. Newman examined Mr. Zabudney and confirmed that he was a Certified Leasing Officer and he had taken courses regarding leasing and property management. These courses, Mr. Zabudney acknowledged, included the analysis of Real Estate Properties by different types of property. Mr. Zabudney acknowledged that in regards to commercial properties, the issues of location and parking are very important and in fact, Mr. Zabudney acknowledged that for some businesses, if there is not adequate parking the businesses will not be interested in the site.

28. Mr. Zabudney agreed with Mr. Newman that adequate parking must be convenient and visible and that if 75% of the parking is behind the building, and only 25% in front of the building, that this ratio would not be a positive attribute.

29.. Mr. Newman had Mr. Zabudney review Exhibit 7, a series of photos of 890 St. James Street which Mr. Zabudney acknowledged that a variety of businesses operated on the premises, which featured angled parking. On photo 4 there is a picture that demonstrates the space between 890 and 914 St. James Street. In referring the witness to Exhibit No. 9, which was a large overhead aerial photograph of the expropriated area and also illustrated that the property being expropriated at 890 St. James Street is outlined in yellow at the front and the back of the property. On the other side of the photograph is 914 St. James Street.

30. At Exhibit 10, which was an aerial photograph displays 914 St. James Street with areas marked in mauve and an area in yellow. Exhibit 9 shows the access between 890 and 914 St. James Street, with the areas marked in yellow illustrating that on St. James Street, there is a triangular taking and at the west along the middle of the property, there is a triangular taking. Returning to Exhibit 10, the area outlined in purple illustrate a lane way at the southern end of the building on St. James Street and a part of the building. At the other side of the building, outlined in yellow, is to create a lane way at the southern end.

31. Mr. Newman referred Mr. Zabudney to Exhibit 11, which was a colored photograph prepared by the City which contained a series of markings and numbers. Mr. Zabudney acknowledged that

number 10 in red was 914 St. James Street and number 9 in red was 890 St. James Street. The blue lines between 9 and 10 represent the boundaries of the right of way and the red lines between these boundaries represent the actual roadway as well as a meridian. As Mr. Zabudney indicated, he had not seen this Exhibit before but confirmed that the information was correct.

32. Mr. Newman again referred to 890 and 914 St. James Street and that Exhibit 11 acknowledges that the two pieces of property are, in fact, sharing parking on the northern boundary which Mr. Zabudney agreed with. However, Mr. Zabudney questioned the use of this land as it was unlikely to be a conforming use.

33. The witness was cross-examined with respect to the number of parking stalls in front of 890 St. James Street and he acknowledged that there are approximately 22 stalls plus or minus, and that 3 stalls plus or minus would be lost by the taking. Mr. Newman suggested that the only means of ingress to 890 St. James Street once the extension is opened would be the southern end. Mr. Zabudney disagreed with this and advised that Public Works has confirmed that there would be an opening for access to the property at 890 St. James Street. Exhibit 12 was produced by the City which shows that there is access to 890 St. James Street at markings between 902 and 904. It was further acknowledged that with this configuration there would be approximately 12 stalls south of the ingress for 890 St. James Street.

34. In further cross-examination Mr. Zabudney was directed to look at Volume 1, Tab 9 which is the original routing of the St. Matthews Avenue extension, in particular, as it related to 890 St. James Street and 914 S. James Street. Mr. Zabudney acknowledged that the initial plan contemplated that the alignment would go directly through 890 St. James Street with the whole property being taken and there would be no impact on 914 St. James Street. In fact, Mr. Zubuney acknowledged that plans at Volume 1, Tab 9 have been in place for quite some time.

35. Mr. Newman examined Mr. Zabudney with respect to previous reports prepared by Stantec (Exhibit 3, Volume 1, Tab 7) which in fact dealt with street alignments and traffic loads. The initial plans, which would have used land acquired from CN Rail, were not possible due to the accidental selling of lands formerly of the Winnipeg Canad Inns Stadium site. The City negotiated with the purchasers of the Winnipeg Canad Inns Stadium site but was unable to negotiate all the lands necessary to coincide with the initial plans for the St. Matthews Avenue extension.

36. Mr. Newman asked the witness, "Why did you not simply expropriate the land from the current owner?" and the reply was to the effect that it would not have been the right thing to do.

37. Mr. Newman asked whether the owners of 890 St. James Street are suffering consequences because of an error of the City as

according to Mr. Zabudney, there is no impact on the building, because it is not being taken.

38. Mr. Newman further examined Mr. Zabudney on the parking spaces which would be available and whether or not they would be in compliance with the zoning by-laws. He was further questioned upon the convenience of parking at the present site which he had indicated was an important factor for all commercial tenants. Mr. Newman examined Mr. Zabudney concerning the circulation of the traffic around 890 and 914 St. James Street and that due to the narrowness of parking and the circulation lanes, any vehicle that was unloading would cause impairment to the flow of traffic. Mr. Zabudney refused to answer the question that due to the taking of the property at 890 St. James Street, the utility of the property would be destroyed.

39. Mr. Zabudney said that 890 St. James Street would lose a number of stalls, taking the number of parking stalls from 32 to 12 stalls. Mr. Zubuney was questioned with respect to the City of Winnipeg By-law which provides that the property at 890 St. James Street, which has approximately 20,000 square feet, should have parking for 72 vehicles and with the present plans there will only be 12 parking stalls.

40. Part of the building at 914 St. James Street would be demolished and there would be a creation for traffic to circulate around 914 St.

James Street, whereas with the proposed taking there would be no circulation possible for 890 St. James Street. Mr. Zabudney was asked again to confirm that the utility of the property would be destroyed, to which he would not agree, but would concede that it would be impacted.

CROSS-EXAMINATION BY MR. TYLER – Holding No. 4, NE corner of Madison Street and St. Matthews Avenue – on behalf of the Objectors – Madison Holdings Ltd.:

41. Mr. Zabudney acknowledged that taking no. 4 will be a total taking and its present use is that of a car wash. Mr. Zabudney further confirmed had the alignment not been necessary due to the readjustment of the design, an entire taking would not be necessary, nor any of the lands around it being disturbed.

42. Mr. Tyler examined the witness with respect to City lands which may become surplus and whether the City would consider dealing with his client to acquire this property. Mr. Pambrun objected to this line of questioning.

RE-DIRECT BY MS. PAMBRUN OF MR. ZABUDNEY on behalf of the City of Winnipeg:

43. Ms. Pambrun examined the witness as to the issue of road access to 890 St. James Street and he clarified that Public Works has

indicated that there are two areas for access which are being contemplated.

DIRECT EXAMINATION BY MS. PAMBRUN OF STEPHEN CHAPMAN:

44. Mr. Chapman testified that he is a graduate of the University of Manitoba, where he received a Bachelor's Degree in Civil Engineering in 1998 and worked for the City of Edmonton for 1 year. Mr. Chapman then began working with the consulting firm MMN Group until 2005, at which time he then commenced employment with the City of Winnipeg as a Traffic Signs Engineer. In 2010, he became a Traffic Management Engineer with the City.

45. Evidence was given that the traffic management is primarily focused on the operation and regulation of major and regional streets and that this would involve matters of construction, signs, paving markings and matter relating thereto.

46. Mr. Chapman advised that commencing in 2001, there was a Polo Park traffic study undertaking by Stantec Consulting. The purpose of the study was to help the City identify improvements which would deal with existing issues in the Polo Park area from Route 90 to Omand's Creek and north. Mr. Chapman indicated that, as far back as 1967, there have been various versions of development of St. Matthews Avenue to form an extension terminus to the Silver Avenue corridor with the essential purpose

to connect Polo Park and Route 90. Mr. Chapman went into detail to discuss the benefits of the Silver Avenue connection and St. Matthews Avenue extension at a later date.

47. Mr. Chapman testified that in January of 2014, Morrison Hershfield, consultants, were retained to do a Traffic Impact Assessment respecting the Polo Park Infrastructure improvements (Exhibit 2, Tab 16). Mr. Chapman addressed various issues concerning the report dealing with traffic analysis, traffic flows and performance levels of service ranging from "A", which is "really good" to "E" and "F". Mr. Chapman indicated that the intersection of St. Matthews Avenue and Century Street had a very low service level as did Ellice Avenue and Empress Avenue.

48. Mr. Chapman advised that the City had prepared conceptual drawings known as "T drawings" which illustrated the intent over a number of years as to what street alignments would look like, specifically St. Matthews Avenue to a 4 lane divided lane. Mr. Chapman further testified that the T drawings demonstrated what properties would be affected at that time.

49. These plans (T Plans), were ultimately changed and the elements to accommodate design for St. Matthews Avenue with 2 vehicles lanes eastbound and 2 vehicle lanes westbound, a meridian sufficient to accommodate a left storage lane and buffer bicycle lanes eastbound and westbound.

50. The new alignment, Mr. Chapman confirmed, was after the sale of the former Winnipeg Canad Inns Stadium site. The preferred alignment, and the alignment that the City is proceeding with is shown at Exhibit 2, Tab 12.

51. Mr. Chapman testified that an alternate alignment was proposed by the Objectors and the City submitted the alternate design to Morrison Hershfield. Morrison Hershfield addressed the preferred alignment, the alignment done after the sale to the developer, and the alternate alignment suggested by the Objectors.

52. Morrison Hershfield, in their report of September 24, 2013, addressed the options of the preferred and the alternate alignment and states:

> "This figure displays both options for property requirements depending on the alignment. The preferred option is more northerly, while the alternative shifts the property requirement to the south. The northerly option is preferred for transportation/traffic flow, however, may not be preferred for the development of the adjacent property which would be determined by other (current developers/owners of the property. Based on the current review Morrison Hershfield recommends the northerly alternative (Figure 1) for the purposes of providing the safest alternative for the proposed extension."

53. The witness went into detail concerning design issues and confirmed that there had been 3 basic design plans. The original T drawings, the preferred option after the acquisition of the lands by Target and the alternate alignment submitted by the Objectors.

54. Mr. Chapman confirmed that the changes in the T drawings to "the preferred design" were created after the sale of the land to Target. The T drawings, to a large extent didn't require any property to the West of Madison Street.

55. Mr. Chapman testified that there was public input at two open houses on November 26, 2013 and May 8, 2014. Mr. Chapman's evidence for each open house includes letters registered to 4,500 or more addresses; ads placed in newspapers and on the City's website. In addition to the foregoing there were discussion sessions on March 26, 2014 with the invitees including the effected business owners.

CROSS-EXAMINATION BY MR. CHAPPELL – on behalf of the Objectors - GROUP 111 DIVERSIFIED INC.:

56. Mr. Chapman acknowledged that Stantec, a consulting firm, did a report in 2001 and that there was a further report by Morrison Hershfield in 2013. There was a 2013 study compiled not for the City but for the developers to examine the traffic requirements. The Stantec study, Mr. Chapman acknowledged, has not been produced but the analysis was included in Morrison Hershfield report. Mr. Chapman confirmed the second design, which is the one presently being considered, was created after the changes resulting from the Target development site. Mr. Chapman confirmed that the first design (T drawings) did not require any properties west of Madison Street but the

property for that alignment was no longer available as it had been sold to the Target developers. Thus, Mr. Chappell confirmed that the southern alignment, which was the initial plan, was no longer available. Mr. Chappell question the witness as to the designer of the plans, and in fact, the conceptual alignment would have been done by the City and submitted to Morrison Hershfield.

57. Mr. Chappell cross-examined Mr. Chapman with respect to road designs, specifically an offset at Silver Avenue and St. James Street, a T intersection at Maroons Road and St. James Street, an offset at Silver Avenue and Maroons Road and why the same design could not be used for St. Matthews Avenue and St. James Street. Mr. Chapman indicated it is the most desirable configuration but not desirable for high demand traffic and there would be queuing returning in a very closed space. Mr. Chapman was examined with respect to the egress off of St. Matthews Avenue from both eastbound and westbound traffic. At the current time, traffic onto the objector's property have both ingress and egress on St. Matthews Avenue. According to Mr. Chapman, in order to complete the left hand turn, the vehicles have to proceed the wrong way on St. Matthews Avenue for some distance. With the current design, this access would be removed and traffic to the property would be through an entrance on Madison Street which is smaller than the St. Matthews Avenue entrance. Mr. Chappell, while examining Mr. Chapman, advised that at the present time there is street parking on St. Matthews Avenue and under the current plan, there would be only street parking on St. Matthews Avenue.

58. Mr. Chappell questioned the witness on the fact that a building permit was issued for a partial permit on January 20th, 2014, for foundation. Mr. Chapman was not aware of this permit.

CROSS-EXAMINATION BY MR. TYLER – Holding No. 4, NE corner of Madison Street and St. Matthews Avenue – on behalf of the Objectors – Madison Holdings Ltd.:

59. The witness acknowledged in cross-examination that he stated in his previous testimony that there would be a whole taking of the property, whereas under the initial design (T drawings) a small amount of property would be taken. Mr. Chapman acknowledged that under the initial plan, the operation of the commercial business would not have been effected. Mr. Chapman was cross-examined as to what the end of the expropriation proceedings and development, there may be some surplus property available.

CROSS-EXAMINATION BY MR. NEWMAN – Holding Nos. 7(a), 7(b), 8(a), 8(b) (890 and 914 St. James Street) on behalf of the Objectors – Oxbow Holdings Limited; St. James Industrial Park; and St. James Place Warehouse:

60. Mr. Chapman acknowledged that the expropriation as shown by the drawings would affect 890 St. James Street by the taking of the northeast and northwest corners of the property. Mr. Chapman also acknowledged that at present 890 St. James Street receives ingress to the property between 890 St. James Street and 914 St. James Street

and in front of 890 St. James Street is angled parking. The witness acknowledged that with the taking, there would be no ingress between 890 St. James Street and 914 St. James Street. The previous T drawings show that the proposed extension would go through 890 St. James Street and that there would be little impact on 914 St. James Street.

61. Mr. Chapman acknowledged that there was a review of a proposal by Morrison Hershfield put forward by the owners of 890/914 St. James Street which realigned the new proposal to the south. Mr. Chapman acknowledged that the reason for the proposed option was to minimize the impact on 914 St. James Street. Mr. Chapman was referred to a Stantec Report which identified that the City had acquired the lands to CN Railway right of way which allowed for big box development to occur on St. James Street. This acquisition would have seen the St. Matthews Avenue extension go through 890 St. James Street and minimally impact 914 St. James Street. Mr. Chapman acknowledged that with the present design, there is no proposal to take down any part of 890 St. James Street or to allow the circulation of the traffic and that with the present design, traffic westbound on St. Matthews Avenue, would not be able to make a left turn into 890 St. James Street. Similarly, eastbound traffic on St. Matthews Avenue, will not have the ability to enter 914 St. James Street.

62. Mr. Chapman submitted that the proposed design (the Objector's) did not meet design standards but acknowledged that the design did impact the Objectors less significantly than the preferred design.

63. Mr. Newman referred Mr. Chapman to Standing Policy Committee Minutes of May 15, 2014, which approved the expropriation of the various lands for the St. Matthews Avenue Extension. Based upon a report from the Planning and Property Development Real Estate Division dated May 2, 2014, some 6 days before a Public Open House, thus, Mr. Newman suggested "because it seems to me that the people who are most impacted by this expropriation the people on St. Matthews Avenue to the west of St. James, those people were never invited to the key person interviews." To which Mr. Chapman agreed. In fact, the second meeting Open House in May was not for public consultation or input but rather to advise on what was transpiring, to which Mr. Chapman agreed.

CROSS-EXAMINATION BY MR. MERCURY 1688 St. Matthews Avenue, on behalf of the Objectors – 0197468 Manitoba Ltd. and 3264751 Manitoba Ltd.

64. Mr. Chapman agreed with Mr. Mercury that if the City had proceeding with the preliminary plan (T drawings), his client's property would not have been effected. Mr. Mercury examined Mr. Chapman as to service levels that after network improvements, rating capacity will not be as high as it existed before. Mr. Mercury examined Mr. Chapman as to turning lanes and traffic movement,

specifically with Canada Auto at 1688 St. Matthews Avenue. Mr. Mercury and Mr. Chapman acknowledged whether the access in front of the Goodyear parking building would be affected by the project. Mr. Mercury and Mr. Chapman confirm that the taking would extend beyond the fence on the property, all the spaces on St. Matthews Avenue would be impacted, the lot would be smaller and the parking on St. Matthews Avenue would be eliminated.

D. EVIDENCE ON BEHALF OF THE OBJECTORS

BARRY SHENKAROW, called on behalf of the Objectors Oxbow Holdings Limited and St. James Industrial Park

65. Mr. Barry Shenkarow was called as a witness on behalf of the Objectors and testified that he is the Chairman of the Board of Towers Realty, who are the property managers for the property at 890/914 St. James Street. Mr. Shenkarow testified that Towers Realty has managed the property for 8 years and prior to that Apex Agencies had been the property managers.

66. Towers Realty was representing Oxbow Holdings Limited, and had their first discussions with the City in July of 2013.

67. Mr. Shenkarow was shown a series of photographs of 914 St. James Street, which he described is a single storey building with retail and warehouse tenants and 890 St. James Street (Exhibit 7), a two storey building that is primarily retail with over 20,000 square feet. Mr. Shenkarow testified that the evidence, Exhibit 9, shows that there is a lane way between the two buildings (890 St. James Street and 914 St. James Street) and that in front of 890 St. James Street there is angled parking which was very tight as the laneway is very narrow and there is no sidewalk. At the present time, there is 22 parking stalls of good quality because they are at the front door of the building. The evidence disclosed that there are 10 other stalls on the north side of the building

acting as secondary for retail. The evidence disclosed that the building, which was constructed in the 1950s and parking was not as major a concern as it is today. The parking on the north side was added in order to alleviate the paring situation.

68. Mr. Shenkarow testified with ingress only at the south end of 890 St. James Street, it would require drivers entering the lot to change the angles of the parking but the vehicles would have to back out.

69. In Mr. Shenkarow's testimony, having been involved in commercial real estate for a period of 35 years, that besides the location being vital, the issue of parking is equally as crucial. That the present number of parking stalls being reduced to 12 parking stalls, would effectively "neuter" the property and would have no valuable use. Also, according to Mr. Shenkarow, there has been discussions to create a laneway behind 914 St. James Street for circulation of traffic but there has no proposal with respect to 890 St. James Street. Mr. Shenkarow testified that in his opinion, the City, in fact, should take the whole property located at 890 St. James Street.

CROSS-EXAMINATION BY MS. PAMBRUN on behalf of the City:

70. Mr. Shenkarow testified that the first meeting he had with the City concerning 890 and 914 St. James Street, was in June of 2013. Mr.

Shenkarow stated that prior to that meeting, had been aware for at least 7 years, according to the T drawings, how the proposed alignment was to proceed. Mr. Shenkarow acknowledged that in his discussions with the City, the City never made any promises as to where the road alignment was going to go.

71. Ms. Pambrun questioned the witness on trucks entered the property at 890 St. James Street, indicating they may back in, but Mr. Shenkarow responded that big trucks could not make the turn. Mr. Shenkarow confirmed that the properties at 890 St. James Street and 914 St. James Street are both owned by the same property owner, namely Oxbow Holdings Limited. Ms. Pambrun questioned the witness as to discussions concerning expropriation of the properties and what lands are to be taken.

DIRECT EXAMINATION OF THE OBJECTORS GROUP 111 DIVERSIFIED INC. – represented by SYD THOMPSON

72. Mr. Thompson was produced as a representative of the Objectors Group 111 Diversified Inc., respecting the property identified as taking no. 3. The property located at 500 Madison Street.

73. Mr. Thompson testified that the Objector had owned the property for about 16 years, occupies approximately 3.53 acres and there is a large single storey building of approximately 53,000 square feet. The present taking is at the south end of the property. Mr. Thompson testified that

the building is being leased to ImaginAbility Inc., a not-for-profit organization, which works with individuals with intellectual disabilities. ImaginAbility Inc. has 250 clients and approximately 40 employees which supports the business packing small packages, cartons and overwraps. Mr. Thompson testified that the ingress/egress at the present time is off of St. Matthews Avenue, and the property has a large driveway entrance on a private approach and there are 4 loading docks on the property.

74. Mr. Thompson indicated that he had gone to an open house on May 8th, 2014, and spoke to a representative from the City concerning access and was advised that access would remain the same.

75. Mr. Thompson testified that what he was advised at the open house is contrary to Mr. Chapman's evidence, which indicated that access would be off of Madison Street. Mr. Thompson testified that access off of Madison Street is practically impossible to put a 53 foot trailer through this entranceway without hitting the curb or the building.

76. At present, vehicles come off of Century Street onto St. Matthews Avenue and enter the property at the existing site. Mr. Thompson states that whilst not objecting to St. Matthews Avenue being extended from St. James Street to Century Street, he would have preferred the 2009 (T drawings) as they would not have effected their property. Mr. Thompson further testified that he only became aware of the T drawings previous to his testimony.

77. Mr. Thompson indicated that the owners of the property were preparing to develop a 10,000 square foot addition, and had applied for a foundation permit for retail and or medical office use. Pre-Con Builders were engaged to prepare plans in 2013 and a building permit for the foundation was obtained on January 20th, 2004, with construction commencing that spring (Spring of 2014). The testimony of Mr. Thompson confirmed that the City by email on March 14th, 2014 cancelled the building permit and there has been no further contact from the City with respect to the cancellation of the building permit.

78. Mr. Thompson confirmed the access onto St. Matthews Avenue is crucial, and without the same access, the present facility could not be operational.

CROSS-EXAMINATION BY MS. PAMBRUN on behalf of the City:

79. Ms. Pambrun questioned Mr. Thompson and he confirmed that at the open house he was advised that his access off of St. Matthews Avenue would not change.

80. Ms. Pambrun indicated to Mr. Thompson that there would still be access to the property, notwithstanding a new meridian on St. Matthews Avenue. Mr. Thompson testified that with the meridian as designed, it would make it impossible to make the turn. On further examination, Mr. Thompson acknowledged that the proposed taking of lands would not affect their current parking.

81. On re-examination Mr. Thompson testified that, as a point of fact, the building permit, which was approximately $7,000.00, has never been returned.

DIRECT EXAMINATION BY ROBERT TYLER OF LARRY KUNKLE on behalf of the Objector - Madison Holdings Ltd.:

82. Mr. Larry Kunkle testified that the Objectors incorporated in 1991 and at present, he is the President and his brother, Brian Kunkle, is another Officer and Director. Madison Holdings Ltd. has been a family business since approximately 1990, which was first commenced by George Kunkle, his father. The Objectors advised that they have been the owners of the lands since 1996.

83. The Corporation operates two components, one being an environmentally friendly based product to spray on cars to keep them from rusting and also a three bay carwash facility. Mr. Kunkle testified they have a client base of 3,000 to 5,000 and do approximately 1,500 rust checks per year.

84. Mr. Kunkle testified that the business is solid and that his Objectors only learned of the expropriation approximately 2 to 3 months prior to hearing. Prior to being aware of the proposed expropriation and alignment, the Objectors were under the impression that the extension based on the T drawings would minimally impact the use of the property. Upon questioning by Mr. Tyler, that there may be surplus

land in the vicinity, would Mr. Kunkle be interested in acquiring same, to which Mr. Kunkle indicated that he would like to remain in the vicinity and acquire the property to lessen the impact of the expropriation.

CROSS EXAMINATION BY MS. PAMBRUN OF LARRY KUNKLE on behalf of the Objector - Madison Holdings Ltd.:

85. Ms. Pambrun asked the witness if he had been aware of the open houses in 2013 to which he replied "yes", but further confirmed that he did not attend.

RE-EXAMINATION BY MR. TYLER OF LARRY KUNKLE on behalf of the Objector - Madison Holdings Ltd.:

86. Mr. Tyler questioned Mr. Kunkle who indicated that if he had been aware that his whole property was to be expropriated they would have attended the hearing.

DIRECT EXAMINATION BY CHARLES CHAPPELL OF ROBYN LEE, a Witness called on behalf of the Objector - Group 111 Diversified Inc.

87. Mr. Lee testified that he is currently a Principal at Pre-Con Builders and has been there since 1997, and prior to that date, he had been employed with Shindico Realty. Mr. Lee indicated that he is aware of the site owned by the objector, Group 111 Diversified Inc. Mr. Lee testified that beginning in 2007 there was some interest of development of the property and this continued into 2010 when the

tenant, Versatech (now ImaginAbility Inc.), signed a lease and drawings were done in 2011. In the summer of 2012, Pre-Con was developing detailed blue prints for the purpose of building permit submissions. Discussions continued throughout 2012, 2013 and in January 20, 2014 a building permit was issued by the City of Winnipeg for the foundation.

88. Mr. Lee testified as to access off of St. Matthews Avenue that could line up with Kensington Street. Mr. Lee testified that there would be difficulty in having trailers enter the property off of Madison Street and he further testified that:

> "In my opinion, that any long term viability and success of the property would definitely require access off of St. Matthews Avenue".

89. Mr. Lee stated the utilization of the property only made sense to utilize access to St. Matthews Avenue as a safe throughfare for semitrailers, fire/paramedics service, etc. Mr. Lee did acknowledge that he is not a traffic engineer but in his experience as a real estate developer, Mr. Lee did an analysis of the issues of ingress/egress with respect to the subject property highlighting Kensington Street, St. Matthews Avenue and Madison Street. Mr. Lee also pointed out that there is a T intersection at St. Matthews Avenue and St. James Street and at Silver Avenue. Mr. Lee gave evidence that there is no reason that access cannot occur on either side of St. Matthews Avenue and the meridian openings be constructed as the City did on Silver Avenue, which allowed free flowing access.

CROSS-EXAMINATION BY MS. PAMBRUN OF ROBYN LEE, a Witness on behalf of the Objector Group 111 Diversified Inc.:

90. Initially, Mr. Lee in response to Ms. Pambrun, testified that the 2011 drawings were only preliminary plans and not final plans.

91. In answer to Ms. Pambrun's question, he did acknowledge that the taking, as proposed, would have impact on the parking areas. Ms. Pambrun then examined Mr. Lee concerning the issuance and revocation of a building permit.

92. In specific questioning of Mr. Lee, concerning the existing approach off of St. Matthews Avenue, Mr. Lee acknowledged that the design plans called for the narrowing of the entranceway.

93. The plans called for the entranceway on Madison Street to be widened for larger vehicles. With respect to the approach of St. Matthews Avenue, Ms. Pambrun indicated traffic would have to proceed slightly the wrong way on St. Matthews Avenue in order to complete the turn. Mr. Lee indicated he was surprised by same because computer simulations did not show a problem and that for the foundation stage of the permit, the plans had been sent to the Fire Department for review. Mr. Lee confirmed that his evidence was based as a developer and that he was providing his comments on a non-professional basis.

EXAMINATION BY MR. NEWMAN OF ROBYN LEE, a Witness called on behalf of the Objector Group 111 Diversified Inc.:

94. Mr. Lee was examined by Mr. Newman who referred him to Exhibit 18 that demonstrates that there is a parking stall count of 230 stalls and average for retail parking is 4 stalls per 1,000 square feet equaling 234 stalls. Mr. Lee confirmed that in order to attract first class tenants to the property, there has to be adequate parking and in his experience of the past 15 years he has never seen a tenant accept parking anything less than the 4 to 1 ratio. Mr. Lee testified that access to parking is a concern to tenants. Finally, Mr. Lee stated that he had never seen a development occur that had improper parking or enough parking to meet retailer's demands.

DIRECT EXAMINATION BY MR. NEWMAN OF RENNIE ZEGALSKI, on behalf of the Objectors in respect to 890 St. James Street and 914 St. James Street:

95. Mr. Zegalski testified that he is a Commercial Realtor employed by CB Richard Ellice and had submitted his CV that indicated that he had been employed by CB Richard Ellice for 12 years and 3 years with Chartier & Associates. Mr. Zegalski testified that his commercial real estate experience dealt with both national and local tenants as well as representing landlords and tenants. Mr. Zegalski testified that the issue of parking is absolutely critical to a commercial site.

96. Mr. Zegalski was referred to the properties at 890 St. James Street and 914 St. James Street. Mr. Zegalski testified that upon reviewing the access, the access with the expropriation was poor considering access is only from one direction, which is southbound, and traffic heading northbound is unable to reach the site in any convenient way. Mr. Zegalski indicated that he is acquainted with the building and that 15,000 square feet is on the main floor and is primarily retail and the second floor, 5,000 square feet, is predominantly office space. Mr. Zegalski testified that 12 parking stalls is not adequate parking and with 15,000 square feet, does not meet the acceptable minimum of approximately 5 stalls per 1,000 square feet. Also, Mr. Zegalski testified that there is no on street parking. Mr. Zegalski did discuss parking in the area and the viability of the project. In Mr. Zegalski's opinion, the site in question would not be suitable for a national tenant or even a local tenant with the present parking and access.

CROSS-EXAMINATION BY MS. PAMBRUN OF RENNIE ZEGALSKI

97. Ms. Pambrun was putting to the witness whether or not there were any agreements between 890 St. James Street and 914 St. James Street for using the ingress and egress between the two buildings. Mr. Zegalski indicated he was not aware. Ms. Pambrun suggested that the City was considering putting an access site on 890 St. James Street and that this would essentially alleviate the problems with the removal of 890-914. Mr. Zegalski disagreed because at the present time, people access the property, can enter the property and at the present

design, not share the ability for a northbound property to proceed. Mr. Zegalski offered his opinion about the lack of parking at the rear of the building and was examined extensively as to whether or not he was an expert as a traffic engineer. Mr. Zegalski acknowledged that he is not a traffic engineer, has not read the City reports in traffic flow, but has a good read on what is viable in commercial developments.

98. Ms. Pambrun put to the witness that the current parking in front of 890 St. James Street has approximately 21 stalls and that this was adequate parking. The witness indicated it is not good parking and that at the present time, when the stores/shops are busy, the parking is in front of 914 St. James Street. In fact, the witness went on to say, customers at busy peaks would go park at the old Winnipeg Canad Inns Stadium parking lot.

DIRECT EXAMINATION BY MR. MERCURY OF DANIEL IWANCHUK, on behalf of the Objectors - 0197468 Manitoba Ltd and 3264751 Manitoba Ltd., 1688 St. Matthews Avenue:

99. Daniel Iwanchuk was called as a representative of the Objectors. Mr. Iwanchuk indicated that he represents the two Objectors, that he is the President of 3264751 Manitoba Ltd and is the Secretary of 0197468 Manitoba Ltd. The number company 0194768 Manitoba Ltd. is the Registered Owner of the land at 1688 St. Matthews Avenue and the 3264751 Manitoba Ltd. numbered company is the tenant and a related company and carries on business as Canada Auto.

100. Mr. Iwanchuk represented that Canada Auto was a business that was initially commenced in 1935 by the witness's grandfather. The business initially commenced on Fort Street but as the business grew the 5,000 square foot building became too small and in 1999 the business was moved to St. Matthews Avenue. The move to St. Matthews Avenue was to a 12,000 square foot premises where they were able to maintain, and even grow, the engine rebuilding machine shop. At present there are seven service bays for performing auto repairs. The business is also a Good Year Tire distributor and includes complete automotive body service, other than just body work.

101. Mr. Iwanchuk confirmed the building is approximately 12,000 square feet and the land area for the property is 19, 680 square feet. Thus the building occupies just over 60% of the property. The property, at present, has 16 parking stalls and Mr. Iwanchuk testified that initially upon moving to this address there had been issues with the City obtaining an occupancy permit due to the lack of parking.

102. Mr. Iwanchuk indicates that the use of the building is approximately 8,000 square feet for services bays, 1,500 square feet for showroom and 2,500 for machine shop area. The service area consists of seven service bays.

103. Mr. Iwanchuk also indicated that in addition to the work, they also sell vehicles and have between 6 and 10 vehicles for sale at any time averaging around 7 to 8 vehicles. The sale of the vehicles has been in existence since approximately 2000 and the vehicles are usually displayed along Route 90/Century Street.

104. Mr. Iwanchuk indicated that in addition to the parking stalls identified, there is also parking on St. Matthews Avenue. Mr. Iwanchuk indicates they make use of those parking spots occasionally and some customers who drive larger vehicles prefer to leave their vehicles on the street. Mr. Iwanchuk indicated that on of the challenges of carrying on the business is the constant flow of traffic and that the business is constantly parking an re-parking customer's vehicles the accommodate the vehicles being picked up and dropped off.

105. Mr. Iwanchuk indicated that he is not objecting to the expropriation but if the lands presently identified are being expropriated, so should the entire site.

106. Mr. Iwanchuk identified parking locations that they would be losing 7 stalls, namely: 2 parking stalls on the corner of Century Street and St. Matthews Avenue, 3 stalls on St. Matthews Avenue (facing St. Matthews Avenue) and further east, 2 additional stalls. Also, Mr. Iwanchuk's understanding that parking on St. Matthews Avenue would no longer be available.

107. Mr. Iwanchuk testified that in 2013 the City had proposed to voluntarily acquire the lands which are the subject of the expropriation.

108. Mr. Iwanchuk indicated that when he first became aware of the proposed taking, he contacted the City and notified them that the proposal was unworkable for his business but, at that time, no one from the City responded to him. The evidence further disclosed that approximately the year after Mr. Iwanchuk became aware of the expropriation in 2014, Mr. Hannam did in fact meet with the Objectors and spent about 30 to 45 minutes walking the property and discussing the issue with the Objectors. It was testified that by the time Mr. Hannam had attended, the City had already attended the expropriation site and had put in stakes identifying where the land was to be taken. The evidence was Mr. Hannam suggesting parking somewhere across the street but Mr. Iwanchuk was dismissive of that idea as it was not feasible to have customers parking across the street and walking back to the business.

109. Mr. Mercury identified Exhibit 4, Tab 3, page 9, which identified the City's assessment of the impact on the property as being:

> "parking loss, loss of parking signage and fence relocation, interrupted access"

Mr. Mercury walked Mr. Iwanchuk through Exhibit 21 the Supplemental Book of Documents for Comparable Auto Centres. Mr. Iwanchuk identified the different sites including Sturgeon Auto

located at 2640 Portage Avenue which is a similar sized area of what the Objectors operate and that site has approximately 25 parking stalls. Another comparison was Keystone Auto Repair, Tab 3 of Exhibit 21, which is a smaller building, approximately 11,858 square feet and has an estimated 20 parking stalls. The same was with Lanpro Auto Care Centre at 1870 Ellice Avenue which has 10 services bays, a somewhat larger area than the witness's and have approximately 30 stalls. Other caparisons were made with respect to Joy Automotive, Fountain Tire, Ness Auto Service, T-MAC Auto Service, Cloutier's Auto Service, Berrydale Auto Centre and Tony's Academy Auto Sales, all who have considerably more parking stalls than what is present at the current site of the Objector.

CROSS-EXAMINATION BY MS. PAMBRUN OF DANIEL IWANCHUK ,on behalf of the Objectors 0197468 Manitoba Ltd and 3264751 Manitoba Ltd., 1688 St. Matthews Avenue:

110. Ms. Pambrun confirmed Mr. Iwanchuk's evidence that the business could not operate without the parking stalls that the City is proposing to eliminate by virtue of the proposed expropriation and that the witness acknowledged that the evidence was based upon his own personal experience as opposed to having an analysis done by an accountant or valuator.

DIRECT EXAMINATION BY MR. KLEIN OF AUDRA PENNER, on behalf of the Objector - ImaginAbility Inc.

111. Ms. Penner indicated that she is the President and CEO of ImaginAbility Inc., formerly Versatech Industries, and has had that position since July 2nd, 2013. Versatech has been in existence for 53 years and supports 230 people with intellectual disabilities and employs a staff of approximately 50 people. The business is located at two sites. One on William Avenue, where there is approximately 45 individuals and the major site located on Madison Street. Ms. Penner indicated that at the current time they have a Lease at 500 Madison Street which is expiring in September of 2020.

112. At the Madison Street location there are approximately 160 people labeled with intellectual disabilities and 35 to 36 individuals who are direct supported workers. These employees work closely with the persons with intellectual disabilities. It was testified that the supported workers arrive at the worksite in a variety of ways, approximately 1/3 take public transit and the balance come either via Handi-Transit or Vital Transit. Of the supported workers, 17 individuals require wheelchair accessibility and or use walkers. Ms. Penner went on to clarify that the individuals who use City Transit are trained by ImaginAbility Inc. to use the Transit system and the balance are picked up by the white buses marked with "First Canada" on the side.

113. As way of background, Mr. Penner testified that 74% of their funding comes from the government and the balance is from the work that is done in packaging and assembling. Ms. Penner identified customers bring their product by truck and the supported workers will do the assembly, packaging and palletize the product and ship it out. Some of ImaginAbility Inc's customers have included Coughlan's, City of Winnipeg, Formery Brewery, and Boeing. Ms. Penner testified that the buses and the trucks attending at this site use a preferred route, coming off of Century Street east onto St. Matthews Avenue and making a northern turn onto the property. Ms. Penner indicated that they do not use the Madison Street entrance as the St. Matthews Avenue route is easier and enter via Madison Street would almost require making a U-turn. Ms. Penner acknowledged that with the present realignment of St. Matthews Avenue, the proposal would be that there the meridian cut on St. Matthews Avenue would be closed and the trucks will have to use an alternative route. Ms. Penner indicated that this was sure to cause problems as it would force the supported workers to walk a further distance than they do at present, that the supported workers would be exposed to a busier route and there would be safety concerns. Ms. Penner testified that with the removal of the St. Matthews Avenue cut, there would be concerns about access to the property for emergency vehicles.

CROSS EXAMINATION BY MS. PAMBRUN OF AUDRA PENNER, on behalf of the Objector - ImaginAbility Inc.:

114. On cross-examination Ms. Penner acknowledged that the Lease was entered into in 2010 and the supported workers usually attend the site via the Public Transit routes 77, 14, 24, 11, 22 and 21. The evidence was that the supported workers come from all parts of the City. Ms. Pambrun elicited from the witness that there is an equal amount of people that come off of Route 90 and the other half off of St. James Street. The majority of the supported workers enter the premises on the St. Matthews Avenue approach. The evidence was the supported workers do not use the entrance on Madison Street. The reason that entrance is not used is because at present St. Matthews Avenue is a dead end street but this expropriation will open up St. Matthews Avenue from St. James Street to Century Street.

115. Ms. Pambrun examined the witness as to the fact that traffic currently entering St. Matthews Avenue at the site has to proceed, for a short distance, the wrong way on the street in order to make the turn. The witness acknowledged that she is aware of that but with the present expropriation she was concerned about the increase in traffic volumes.

116. The witness stated that the traffic flows directly related to the business included 3 to 4 Vital Transit busses per day, 35 cars, and

4 to 7 delivery trucks arriving in the morning hours. The concern Ms. Penner acknowledges is that the vehicles will travel along St. Matthews Avenue and turn left on Madison Street.

117. The concern is for the construction of crosswalks, safety signs and that they work very closely with the people conducting the construction and have examined the plans as the bus routes for the supported works keeps changing. These concerns were expressed at the open houses.

RE-EXAMINATION BY MR. CHAPPELL OF SYD THOMPSON, on behalf of the Objector - Group 111 Diversified Inc.

118. Evidence was given that following the previous hearing, the Objector, Mr. Thompson had a meeting, arranged by Ms. Pambrun, with Ms. Konzelman and Mr. Chapman who are with the Public Works Department, to discuss the access off of St. Matthews Avenue.

119. As a result of the meeting, it became apparent that the access that the Objectors thought they were going to have off of St. Matthews Avenue was not available and the Objectors were prepared to move their access point westward to accommodate the City. The evidence disclosed that the City would no longer allow the access point off of St. Matthews Avenue as it is in non-compliance with existing by-law and the use has in fact been illegal. Mr. Thompson

stated that this entranceway has been used for 50 years. Mr. Thompson indicated that they would be asking the Inquiry Office to make a finding to support the expropriation access provided at Kensington Street moving the access point west ward so there would be a meridian cut at Kenaston.

CROSS-EXAMINATION BY MS. PAMBRUN OF SYD THOMPSON, on behalf of the Objector - Group 111 Diversified Inc.;

120. Ms. Pambrun confirmed that the entrance way on St. Matthews Avenue is not a lawful entrance to which Mr. Thompson acknowledged but advised they have been using same for many years. Mr. Thompson indicated that the City did not want to compensate them for something that they were not lawfully entitled to.

E. REVIEW OF EVIDENCE

121. The evidence disclosed that the expropriation of the land in question is a development of the traffic requirements in an area referred to commonly as Polo Park in Winnipeg, Manitoba. The Polo Park Infrastructure Expansion was done in two parts, the first being (Stage 1) work off of St. Matthews Avenue off the east of St. James Street as well as along St. James Street. Stage 2, of the infrastructure development is the proposed extension of St. Matthews Avenue to Century Street.

122. The City called two witnesses, the first witness being Mr. Zabudney, manager of the Real Estate Division for the City of Winnipeg, who identified the present design for Stage 2 and acknowledged that this design is different from the original designs. The original designs and the present one (hereinafter referred to as the "preferred design") is different in that the design shifts further to the north and thus, the properties being affected are different from those of the original design. The original design, Mr. Zabudney testified, was not possible as the City had sold lands, formerly known as the Winnipeg Canad Inns Stadium, to a third party, and at the time of the sale, the City sold more land than they ought to have sold. The City, according to Mr. Zabudney, when they discovered this error, negotiated to reacquire part of the lands but were unable to acquire all of the land necessary to keep the originally designed alignment. The City

chose not to exercise the powers to expropriate these lands against the third party whom they had just sold the land to, but chose to proceed on a new alignment which impacted the present Objectors at different levels.

123. In general terms, Mr. Zabudney testified that the former Winnipeg Canad Inns Stadium property was acquired in 2012, sold in 2013, and the approval of the expropriation with respect to the current matter occurred on May 27, 2014, at City Council. Mr. Chapman was also called as a witness by the City and acknowledged that at the present time he is a Traffic Management Engineer. According to Mr. Chapman, as far back as 1967, there have been various versions of the St. Matthews Avenue having an extension to Silver Avenue, thus connecting Route 90 to Polo Park.

124. The initial plans, called T plans, had been in existence for some time and were the conceptual drawings for the extension. The T drawings were not viable after the sale of the Winnipeg Canad Inns Stadium property and a new design was prepared. Mr. Chapman testified that the Objectors had prepared an alternate plan and had submitted it to the City for consideration. The City submitted two design options to the consulting firm, Morrison Hershfield: one, the preferred option, being the option developed after the original plans were no longer viable due to the error in acquiring sufficient lands and tow, the second design being the

alternate alignment provided by the Objectors to a consulting firm, Morrison Hershfield.

125. Morrison Hershfield recommended the preferred option as opposed to the alternative option and in sole recommending, commented that the preferred route was the better option to accommodate traffic flow and was the better design for safety concerns.

126. Mr. Chapman went into a detailed examination of the City documents including traffic flows and design standards and the discussion of T intersections.

127. Mr. Chapman testified that there were two public open houses concerning the expropriation. These public hearings were held after notification to the public by in excess of 4,500 letters, newspaper ads and notices on the City's website. The open houses occurred on November 26, 2013, and May 8, 2014.

128. The majority of the evidence as it related to the how the expropriation affects the property were canvassed by the Objectors on the Cross-Examination of the City's witnesses and by calling their own witnesses. The evidence is clear that the properties at 914 St. James Street (holdings 7a and 7b) and 890 St. James Street (holdings 8a and 8b) are lands owned by Oxbow Holdings Limited, these being identited by 7a and 8a and are managed by St. James Industrial Park (7b and 8b).

129. There were significant differences between the original drawings (T drawings) and the preferred taking. The original design would have effectively taken all of 890 St. James Street and would have had little impact on 914 St. James Street. At present, the original design and preferred design have significant differences in that there is very little being taken from 890 St. James Street and a significant amount of the land from 914 St. James Street which requires demolition of part of the building.

130. The evidence disclosed that at 890 St. James Street, the City is proposing to take corner strips at the Northeast and the Northwest corners of the property. The building presently on the site is a combination of retail/office space facing St. James Street with angled parking. The evidence disclosed that in front of the building, there are 22 parking stalls, single lane parking at the rear of the building. There are entrances at both the south end of 890 St. James Street and north of the property where 890 St. James Street and 914 St. James Street, and they share a common driveway. The present configuration also allows for vehicles to circulate around the building and provides overflow parking to both pieces of property. With the present design, access to 890 St. James Street will be limited to the south entrance and the number of parking stalls will be reduced from 22 to 12 at the front of the building. The evidence was that the City was contemplating opening up an entranceway to 890 St. James Street on St. James Street but the specifics have yet to be determined.

131. The evidence respecting 914 St. James Street would be that there would be partial demolition of the building but there would be a creation of traffic circulation route around 914 St. James Street.

132. The evidence of the Objectors respecting 890 and 914 St. James Street relied on that of Mr. Barry Shenkarow and Mr. Rennie Zegalski, who testified that both parking locations were crucial to any commercials site and that the proposed taking of the stalls would effectively destroy the economic viability of the property at 890 St. James Street. Another witness, Mr. Rennie Zegalski also gave supporting evidence as to the importance of parking and access to the property site and commented that traffic flows may, at present, not be at the levels projected.

133. The Objects Madison Holdings Ltd., 511 Madison Street, disclosed that the proposed taking will take all of the lands identified as holding no. 4 which is a property at 505 Madison Street and owned by Madison Holdings Ltd. The taking is a full taking and is approximately 15,747 square feet. Mr. Tyler, on Cross-Examination determined that under the initial design (T drawings) only a small amount of land would have been taken whereas under the present expropriation, the whole property would be taken. Mr. Tyler also elicited from Mr. Chapman that there would surplus land available near the Madison Holdings Ltd. current site.

134. The taking of holding no. 3, 496 and 500 Madison Street, is a partial taking of lands of approximately 1,300 square feet. The owners, Group 111 Diversified Inc., and the tenant, ImaginAbility Inc., are both Objectors to the expropriation. The issue is not of the taking in itself, but primarily as it affects the access to the building and the City's conduct with respect to the proposed expansion of the property. The tenants objection is also as it related to access to the property and safety issues as the clientele of the tenant are those with intellectual disabilities.

135. At the present time, access to the property owned by Group 111 Diversified Inc, is off of Madison Street, with traffic coming off of Century Street and making a left hand turn (north) onto the property. The design of the entrance off of Madison Street is not large enough to accommodate semi-trailers, buses, fire trucks, ambulances, Handi-Transit vehicles and passenger vehicles. However, in order to make the left turn into the property off of St. Matthews Avenue these vehicles must travel for a short distance on the wrong side of the road to complete this turn.

136. The City is proposing that there be a median constructed that would prevent this turn into Group 111 Diversified Inc.'s property by St. Matthews Avenue and the traffic ought to enter the property by way of Madison Street. The evidence was that the Madison Street entrance was smaller, not convenient and that traffic flows would be dangerous to pedestrians.

137. The owners stated that they did not object to the expropriation but they objected to losing the access off St. Matthews Avenue which they have enjoyed since the acquired the property 16 years ago. The City was not prepared to accommodate a design change as it had been an illegal entrance The City was concerned with intersection designs and traffic flow on St. Matthews Avenue if access was permitted.

138. Evidence was tendered that the owners had applied for a building permit in 2014 respecting expansion to the property. The evidence was that the owners have been, since 2007, contemplating expansion, and in 2010 when a lease was signed with ImaginAbility Inc., plans became more focused with blueprints being prepared in 2012. A building permit was issued by the City of Winnipeg in January 2014, but was cancelled in March 2014, without consultation. Evidence by the witness, Mr. Lee, was with respect to the proposed construction of the expansion on the property, but he also commented with respect that the access off of St. Matthews Avenue would be important for fire trucks, paramedics and other emergency vehicles. Furthermore, Mr. Lee testified that the plans for the expansion which has been submitted ot the City for the building permit, would have been submitted to the fire department who would have examined the proposed entranceway off of St. Matthews Avenue. Mr. Lee testified that the economic viability of the business was dependent upon access off of St. Matthews Avenue.

139. The evidence discloses that the City was quite adamant that the proper entranceway into the property should be off of Madison Street and they were not going to permit an entranceway that, notwithstanding its long-term existence, was in fact not a legal entranceway.

140. The evidence disclosed that the tenant, ImaginAbility Inc., 500 Madison Street, occupies a business for intellectually challenged individuals. ImaginAbility Inc. does packaging and wrapping for different firms throughout the City. The evidence disclosed that was there was a high degree of traffic consisting of buses, Handi-Transit vehicles and trucks to service the clientele. The evidence disclosed that many of the clientele use public transit, and with the reconfiguration of the street and traffic flows, there is genuine concern for the safety of those clients. The Objector on behalf of the tenant was looking for assurances with respect to safety should the entranceway off of St. Matthews Avenue not be amended.

141. The proposed taking of land at 1688 St. Matthews Avenue is land owned by 0197468 Manitoba Ltd. and leased by 3264751 Manitoba Ltd. These corporations are related corporations and carry on business as Canada Auto. Under the original alignment and design, these lands would not have been affected but with the preferred design, the present site is losing 1,522 square feet.

142. Canada Auto has operated its business at this location since moving there in 1999 and its business is a full service auto centre with 7 service bays, machine shop, sales of tires and some auto sales. At present there are 16 parking stalls and with the proposed taking, 7 stalls will be lost as well as access to the property will be more difficult. Considerable evidence was led as to other similar businesses throughout the City, their size of operation, amount of service bays, and parking stalls as compared to Canada Auto and it disclosed that Canada Auto prior to the taking had less parking stalls than its competitors (comparables). The evidence also disclosed that when Canada Auto moved to its current location, it experienced difficulty in obtaining an occupancy permit due to the lack of adequate parking.

F. POSITION OF THE PARTIES

143. The parties, through their respective counsel made submissions as follows:

Position of the City of Winnipeg:

144. The City submitted that the proposed plan has been part of the long term strategic road network improvements for the City. The general plan was developed in 1967 in that the roadways between the north/south arterials Route 90/Century Street and St. James Street would benefit overall traffic operations in the Polo Park area. The City made reference to the Stantec Report and dealt with issues in regards to traffic flows, safety issues and design issues. The Stantec Report contemplated a 4 lane divided roadway with appropriate intersection channelization between St. James Street and Century Street and also confirms the need for the improvement for future development. The City submits that the Morrison Hershfield report dated January 16, 2014, updated the data of 2001 Stantec Report and recommends improvements that St. James Street be widened from Maroons Avenue to Ellice Avenue and the 2 way left turn lane be removed and the cross section be 4 lanes divided with a raised median. The City called evidence dealing with design issues, traffic flow issues and TAC guidelines. One of the main issues arises in as much that St. Matthews Avenue at the east end does not align perfectly at the west end. The City

reviewed the initial concepts which were tendered as evidence as the T Drawings.

145. The City acknowledged that the sale of the Winnipeg Canad Inns Stadium and the error in selling more property resulting in insufficient land being held back to accommodate the proposed initial concept. The City was able to acquire some of the lands from the developer but unable to acquire all of the lands required to meet the original objectives. The evidence was the developer did not get a reduction in the sale price but did get a reduction in dedication fees with the acquisition of the land from the developer.

146. The City realigned the design of the corridor to make it a more northerly path changing the original plan that had been proposed. The City acknowledged that the Objectors had filed an alternate alignment which they acknowledged does meet the TAC guidelines but does not have an optimal design (77 degree radius), complicated drainage problems and poor site lines. The alternate option as opposed to the original option, would require the demolition of both 914 and 890 St. James Street as opposed to only the demolition of 890 St. James Street.

147. With respect to the taking of the Canada Auto site, the City submits that the Objectors are losing the bottom portion of the parking lot and whilst acknowledging that operation will be affected, there is sufficient evidence that the business will become completely

inoperable. The City disagrees with the Ojectors that the taking will make the business inoperable but does acknowledge that the business will be affected.

148. With respect to properties at 496 and 500 Madison Street, the City submits that the property will not be affected greatly. The main impact, according to the City, is the access to the property will be moved further north. The City submits that access will not be affected. The evidence did show that the City will not leave a median cut in the middle of St. James Street and the City submits that the median without a cut is not depriving the current owner and tenant of a legal left turn going eastbound on St. Matthews Avenue. Furthermore, the City submits that the property owners have a small access from Madison Street. The City submitted that the reason the City did not want a cut on a left turning lane was for safety reasons and that it is not safe to have cars lined up to turn left and having vehicles trying to cross that intersection.

149. With respect to the properties being taken 890 and 914 St. James Street, the City takes the view that it is not necessary to take 890 St. James Street as there is no need for the demolition of the building as the impact is minimal. The City acknowledges there will be a loss of parking stalls which can be dealt with by way of compensation. With respect to the northern property 914 St. James Street, there would be a considerable taking and the City has attempted to mitigate the demolition to a portion of the building and

then building a lane so there would be some mitigation of the access issues. The City took the position that there will be some loss of parking to 890 St. James Street and that the northern access will be affected. The City submitted that there is no easement agreement between 890 and 914 St. James Street.

150. The City also takes the position that there were 2 open houses with extensive mailings, newspaper ads, and email notices. The first took place on November 26, 2013 and the second took place on May 8, 2014.

Position of the Objector Group 111 Diversified Inc., 496 and 500 Madison Street:

151. The position of this Objector is whilst they agree with the reconstruction between St. James Street and Century Street, they object in the manner the City has proceeded. The Objector believes the City has failed to utilize the property previously dedicated for this expansion and has acted in bad faith with respect to the persons presently being affected by Stage 2 of the Polo Park Infrastructure Improvements project. The Objector reiterated the fact that if the City had chosen to take an additional 8 to 12 feet from the developer of the former Winnipeg Canad Inns Stadium site, they would not be affected by the expropriation. Furthermore, there was late disclosure as to traffic requirements and the property requirements, according to the Objector, were not disclosed until May 3, 2014. The Objector also pointed out that a building permit

was issued to the Objector regarding expansion of the building on January 20, 2014, and it was revoked by email on March 14, 2014. No reason was given for the revocation other than the issuance was done in error.

152. With respect to the issues of access to the property, the Objector states that 99% of the traffic coming onto the property comes off of Century Street, eastbound on St. Matthews Avenue and enter the property by making a left hand turn on St. Matthews Avenue. The access the City is proposing off of Madison Street, according to the Objector, is not realistic, is inconvenient, and will not be used. The Objector has asked for the following:

1. That access off of Century Street to the subject property be allowed by way of a meridian cut at the intersection of Kenaston and the property;

2. That the Kensington Street/St. Matthews Avenue intersection be a four-way intersection;

3. The access to 496 and 500 Madison Street be at a right angle to Kensington Street off of St. Matthews Avenue; and

4. That there be traffic control devices at the corner of Madison Street and St. Matthews Avenue for safety concerns.

Position of the Objector ImaginAbility Inc., 496 and 500 Madison Street:

153. The Objector initially advised they object to the expropriation because of detrimental and injurious effects which the proposed

extension of St. Matthews Avenue will have on its operation, the use of the property and the enjoyment of the building at 500 Madison Street. The Objector indicated that there were 3 aspects of injurious affection:

1. Its effects on the access and parking;

2. The effect on public safety; and

3. It will make the lands less valuable for the needs of the tenants.

154. In that regard, the limited access will significantly and adversely affect deliveries to the premises and in that regard, the objector states that the City's proposal that vehicles go north on Century Street, cut east on Ellice Avenue and come down Madison Street and make a right is impractical and does not reflect the needs of trucks and emergency vehicles.

155. The Objector asked that:

1. That a curb cut be allowed off of St. Matthews Avenue onto the property to allow the continued access of the property by buses;

2. Traffic signals be installed at Madison Street and St. Matthews Avenue and crossing guards should be required during rush hours; and

3. ImaginAbility Inc. should be compensated for reduced parking, reduced accessibility for truck, buses and emergency vehicles.

156. The Objectors respecting 890 St. James Street submit that there is a piece of land that is owned by the City of Winnipeg that runs parallel to St. James Street which the City had acquired with

respect to the extension of St. Matthews Avenue. If the plans had initially proceeded, the taking now contemplated would not have been necessary. The present expropriation affects 890 St. James Street for the following reasons:

"1. 12 parking stalls in the front of the building would not be adequate for a building with 15,000 square feet of main floor space;

2. There is no on street parking available around the site;

3. The cite would not be adequate for a national or local tenant because of access, and lack of parking issues; and

4. It has lost all viability as a retail property."

The Objectors pointed out that the proposed expropriation of 890 St. James Street substantially reduces the amount of parking stalls and makes it inconvenient. Due to the taking, the property will lose convenient parking, convenient entranceway and multiple parking spaces. As a result, the viability of the property is destroyed.

Position of the Objector Madison Holdings Ltd., 505 Madison Street:

157. The Objector indicated whilst the taking is a whole taking and they are not objecting to same, they wished it to be acknowledged and considered that a 3 generation business which has been operating on this site since 1986 and is being

eliminated. The position is relocation is difficult and expensive and the present expropriation only became know to them approximately 2 months ago. The Objectors request that any surplus property that is available would be made available to this Objector.

Position of the Objectors 0197468 Manitoba Ltd. and 3264751 Manitoba Ltd., carrying on business as Canada Auto, 1688 St. Matthews Avenue:

158. The Objectors position is that with the present taking, the City is proposing to take approximately 50%, 7 of 16 stalls, of the parking of an already congested lot and furthermore, the City proposes to eliminate all of the street parking on St. Matthews Avenue. Also, of the remaining stalls the business requires a number of these stalls for the Auto Sale portion of their business.

159. The Objectors reiterated the challenges they had encountered in obtaining an occupancy permit, they initially moved to the site in 1989. The evidence is the business has grown but the property site has not.

160. The Objector submits that the business is inoperable and the test the Inquiry Officer would use for the determination of the expropriation is "The test that you are asked to employ is not

whether it is left completely inoperable. The test is one of fairness...".

161. The Objectors submitted that the City has done virtually no analysis with respect to Auto Canada's property and the City has had minimal contact with the owners. The uncontradicted evidence the Objector submitted is the fact that the business is inoperable with the taking of the lands.

162. The Objectors submitted evidence of comparables of similar businesses throughout the City. The comparables related to size of lot, service bays and on-site parking. The position of the Objectors is that in comparing the present operation to others throughout the City, they are operating with the least available number of parking stalls compared to their competitors.

163. The Objector also submitted that on at least two other occasions, the City has chosen to expropriate the entire property, as opposed to a partial taking, in as much as a partial taking would render the business inoperable. One such instance referred to was a property commonly known Pembina Chrysler on Pembina Highway and the other instance was the business commonly known as Midtown Car Wash. The Objector states that those instances the City acknowledge that the taking of lands made the businesses inoperable.

164. The Objector referred the Expropriating Officer to the cases of *York Regional Municipality v. Gil* and *Ontario v. Marwick.* The first case indicating that it was not fair and reasonably necessary as the expropriation was not extensive enough, and in the *Ontario v Marwick* decision the Inquiry Officer recommended a full taking, as a partial taking would have an adverse impact on the development and the value of the business. Thus a full taking should occur.

G. JURISDICTION OF THE INQUIRY OFFICER

165. Subsection 6(2) Schedule A of *The Act*, requires that the Inquiry Officer determine if the intended expropriation is fair and reasonably necessary for the achievement of the objectives of the expropriating authority. By Statute the Inquiry Officer is obligated to do the following:

1. Require the expropriating authority to attend at the hearing and to produce such maps, plans, studies and documents as are deemed necessary for the purpose of the inquiry.

2. Add any owner whose land would be injuriously affected by the intended expropriation and by the work for which the intended expropriation is required, as a party to the inquiry.

3. Give each party to the inquiry a reasonable opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his or her counsel or agent.

4. May inspect the land intended to be expropriated or the land of an owner referred to, either with or without the presence of the parties.

166. Furthermore, Section 6(2) also states that for the purpose of an inquiry, the Inquiry Officer is not legally bound by any technical or legal rules of evidence. The Inquiry Officer however, by Section 6(3) of Schedule A of the Act, is not to consider any matter or question relating to the following matters:

1. The due compensation that would be payable if the expropriation is continued; or

2. The advisability, expediency, legality or necessity of the objectives of the expropriating authority for the achievement of which the land to be expropriated is being acquired.

167. As a result of the Notice of Expropriation there were the following Objectors:

GROUP 111 DIVERSIFIED INC. respecting 496 and 500 Madison Street;

0197468 MANITOBA LTD., 1688 St. Matthews Avenue;

3264751 MANITOBA LTD., 1688 St. Matthews Avenue;

OXBOW HOLDINGS LIMITED; 914 and 890 St. James Street;

ST. JAMES INDUSTRIAL PARK; 914 and 890 St. James Street;

ST. JAMES PLACE WAREHOUSE; 914 and 890 St. James Street;

MADISON HOLDINGS LTD., 505 Madison Street.

168. At the hearing, at the request of a Tenant of 500 Madison Street, **IMAGINABILITY INC.**, the were also added as an Objector.

169. The hearings commenced on October 1st, 2014, and continued on October 2nd, 3rd and 23rd, 2014, with the final argument being on November 17th, 2014.

170. The purpose of the proposed expropriation is to deal with the development of a traffic plan to facilitate the flow of traffic around Polo Park, Winnipeg, Manitoba. Stage 1 of the expropriation dealt with the widening of St. James Street.

171. The issue before the Inquiry of Polo Park Stage 2, is the proposed extension of St. Matthews Avenue from Century Street to St. James Street, to alleviate or lessen traffic congestion in and around the Poo Park Area.

172. In the present circumstances it is common ground for all the parties that there is need to for a corridor that connects St. James Street on the east with Route 90 on the west by way of St. Matthews Avenue. The evidence is clear that preliminary drawings (T Drawings) had been in existence since at least the 1990s. It was common to those who are either property developers or owners of the suggested design and which properties would be affected by the expropriation.

173. However, in 2012, when the former Winnipeg Canad Inns Stadium site became available for sale, the City sold the site to a local developer. It is submitted by the City that due to an error on the part of the City, the City sold more land than it ought to have sold. This evidence of the City making an error and selling more land was ridiculed at some points by the Objectors but in fact it was not challenged. As a result of the error, the City attempted to acquire lands to proceed with the initial development from the new purchaser. Unfortunately, the City was not able to acquire all of the lands required for the initial plans and a new alignment was necessary. This alignment moved the design further to the north and as a result, affected owners of the land and tenants

who previously would not have been affected or would have been affected in a different manner.

174. The evidence suggested the amount of land that the City would have required to maintain the original T Drawing alignment would have been with the land approximately 8 to 12 feet. The City chose not to exercise their powers to expropriate to "regain these lands sold to the developer of the former Winnipeg Stadium site". John Zabudney, Manager of the Real Estate Department for the City, advised the Inquiry Officer that to have expropriated these lands would not have been the right thing to do. Thus, but implication, the City's right thing to do was to proceed with a new alignment affecting the current Objectors.

175. An alternative design for the alignment was submitted by the Objectors Oxbow Holding Limited and this design would have moved the design further to the south. The preferred plan of the City and the alternate plan were submitted by the City to the consulting firm of Morrison Hershfield who chose the preferred plan on the basis of traffic flow, site lines, safety and construction issues relating to drainage. Thus, there have been 3 development designs, namely:

1. The initial T drawings;

2. The preferred design created after the error of the land sale to the developer was discovered; and

3. The alternative design by the Objectors.

There was evidence as to the alternate design and most attention was directed to the original T Drawings and the preferred alignment, thus, there was no evidence as to what impact the alternate plan would have had on parties not present at the Public Hearing and accordingly, the Inquiry Officer has not addressed these plans.

176. The timing of the expropriation is noteworthy in that whilst there were public Open Houses in December of 2013, and then a second in June 2014, the Declaration of Expropriation was only passed by City Council on May 27, 2014. Thus, the meeting in June 2014, would not have been a consultive process but a session to advise as to the present plans..

177. In the present circumstances, there appears to be common ground by both the City and the Objectors on a number of issues. Firstly, the parties all agree that Polo Park Infrastructure Improvements, Stage 2, is necessary. Secondly, all agree that the City failed to maintain enough land when the sold the Winnipeg Canad Inns Stadium site than they ought to have and their error caused the City to proceed with a new alignment. Thirdly, issues of location of businesses, parking for business sites and access to the business sites are all fundamentals to a business's operations.

178. The issues that have caused the Objectors concerns, except for Madison Holdings Ltd., is the design of the taking, the impact of the taking on the businesses being impacted, lack of consultation by the City, and actual or perceived inflexibility on the part of City to make design changes to accommodate affected property owners. Some of the Objectors have suggested bad faith of the City in the present proceedings.

179. Section 6.2 of Schedule A of *The Act* states in part:

> "The Inquiry Officer shall inquire into whether the intended expropriation is fair and reasonably necessary for the achievement of objectives of the expropriating authority."

180. The word "fair" in the above section has been canvassed in previous Inquiry Reports by this Officer and the powers of the Inquiry Officer have been reviewed by the Courts.

181. In the case of *Bourbounniere et al. v. The Queen in right of Manitoba et al., 39 L.C.R. 225;* The Court acknowledged that the Inquiry Officer has wide discretion and at Page 227 stated:

> "Pursuant to s. 6(2) of Schedule A to *The Act*, at the public hearing the Inquiry Officer "shall inquire into whether the intended expropriation is fair and reasonably necessary for the achievement of the objectives of the expropriating authority". The Inquiry Officer is given a wide discretion as to the conduct of the hearing and the evidence that he deems necessary for the inquiry. Pursuant to s. of Schedule A of *The Act*, the Inquiry Officer, in making his report, is required to provide a summary of the evidence, a determination for the facts, his conclusions, and "such other matters as he deems expedient and in the public interest".

182. The test of fairness is examined in *Walters et al. v. Essex County Board of Education 3 (1971) O.R. 346.* There was a discussion by the High Court of Justice in dealing with farmers land being expropriated, stated at 347:

"The plaintiffs, like many persons whose properties are expropriated, feel that a great hardship is being done them."

183. The Ontario legislation uses the words "fair", "sound" and "reasonably necessary". The only difference between Manitoba and Ontario legislation is the word "sound", it is not found in the Manitoba Act. The Court, in the Walters Case (at page 347 – 348) states that:

"The desirability or undesirability of this particular site is a matter to be determined solely by the Essex Board of Education. They are entrusted with wide powers of expropriation and the Legislature is entitled to assume that they will exercise these powers in the widest public interest."

184. The Court also at page 349, made the following comments:

"In applying the words used in the Act, namely, "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority" and lacking any judicial pronouncement as to the meaning of these words, the Inquiry Officer adopted the suggestion made my Mr. John W. Morden in the *Special Lecutres of the Law Society of Upper Canada, 1970,* "Recent Developments in Real Estate Law", 9. 226, where that writer had suggested, "that it would be more realistic to regard to the formula as conveying the broad standard – having regard to the objectives of the authority is this expropriation reasonably defensible." Similarly, as to the meaning of "fair" the Inquiry Officer adopted Mr. Morden's suggestion, "that it involves a balancing of the public interest allegedly being advanced by the expropriation with that of the private interest of the owner."

185. This Inquiry Officer canvassed in an Expropriation Report concerning the R.M. of Birtle and Polo Park Infrastucture Improvement Stage 1, the balancing act between public interest and private interest. These tests need to be restated and in the case of *Re Parkins and the Queen (1978), 14 L.C.R. at 327* discusses the 1998 O.J. 4069 the Court in dealing with the concept of fair sound and reasonably necessary made the following comments:

> "Again, giving full allowance to the applicant's argument that expropriation matters require a strict construction approach to favour, the property owner, the legislation lays down a test of whether the expropriation is fair, sound and reasonably necessary. It is my view that this implies that some latitude has to be accorded to the expropriating authority and that the court is not entitled to substitute its opinion for that of the expropriating authority. In a case such as the present, some consideration has to be given to the practicality of the situation that confronts the expropriating authority."

186. Counsel for Canada Auto referred the Inquiry Officer to two decisions of Inquiry Officers in Ontario cases. The first case of *York Regional Municipality v. Gil* was where the Inquiry Officer determined that in his opinion, the taking was not extensive enough and recommended that the whole property be taken. This recommendation was accepted by the expropriating authority. The second case, *Ontario (Ministry of Transportation v Marwick*, 1998 Cargill Ontario 6130 (part of Inquiry), the Inquiry Officer directed that there be a whole taking of the parcel of land as opposed to a partial taking in as much as the partial taking would have land locked the remaining lands not taken.

187. It is the position of the Objectors that in the present proceedings, this Inquiry Officer consider what is fair in the degree of taking, the designs, especially in light of the mission by the City that was has occurred was due to the City's error.

188. The Inquiry Officer will examine the Objectors and apply the foregoing tests to each of the properties affected.

H. DETERMINATION OF FACTS AND ISSUES

Holding No. 1, 1688 St. Matthews Avenue, Objector 0197468 Manitoba Ltd and 3264751 Manitoba Ltd. carrying on business as Canada Auto:

189. The evidence concerning this property has been reviewed in some detail in this report. It is apparent that the taking whilst being relatively minimal of approximately 1,522 square feet, the impact on the owner and business is substantial. The evidence by the Objector was concise, well documented and supportive of the position that the business would become inoperable with the reduction of the parking stalls and other impacts on the property. The evidence of the impact on the business and the comparables to other businesses of a similar nature was compelling. ****RE-READ****The Objector testified that in other expropriations, the owner's properties were expropriated in whole even when the whole property was not required for the expropriation, this occurred due to the economic impact upon the businesses. This evidence was unchallenged. In fact, the City's witness agreed that in previous expropriations, the City took all of the land owned by Pembina Dodge and MidTown CarWash as the lands required to be taken actually rendered the business inoperable.

190. Whilst Mr. Iwanchuk acknowledged that he was not a Business Valuator, his evidence was compelling. Mr. Zabudney, is his

evidence, acknowledged that it was a critical issue for businesses.

191. In determining whether the issues of public versus private interest, it is apparent that the land needs to be expropriated from the current owner. However, in the present circumstances, it would be not fair and reasonably necessary to expropriate only the portion so identified. It would be fair and reasonably necessary to expropriate all of Holding No. 1. It would be patently unfair to approve a course of action that would effectively destroy an existing and long term business.

Holding No. 3, (a) 496 and 500 Madison Street, Objector Group 111 Diversified Inc. and (b) 500 Madison Street, Objector ImaginAbility Inc:

a) Objections by Group 111 Diversified Inc.:

192. The proposed taking by the City is approximately 1,300 square feet which commences at the northwest edge of the property, proceeds easterly and flares out towards the north at the most easterly border. The taking will affect parking and space design for future expansion. The objection is not against the expropriation *per se* but the design of the project and future access to the property. The current owners of 16 years own approximately 3.3 acres and have a large single storey building of approximately 53,000 square feet. The principle tenant is a

corporation called ImaginAbility Inc., which is a not-for-profit organization that employs approximately 250 clients with intellectual disabilities and 40 staff members between two locations. The principle location is at 500 Madison Street.

193. At present the primary entrance, although having a Madison Street address, is off of St. Matthews Avenue. On the southern property facing St. Matthews Avenue there is a permanent driveway on the property which accesses both parking stalls, loading docks and the building.

194. There are different components to the Objector's position. Firstly, at present, vehicles enter St. Matthews Avenue from Century Street, travel eastbound from Century Street and make a left hand turn onto the property. With the proposed design, the access to the property would no longer be off of St. Matthews Avenue but through Madison Street. The present design would no longer permit left hand turns off of St. Matthews Avenue due to the construction of a median. The entrance on St. Matthews Avenue would still be facilitating the access for vehicles travelling in a westerly direction. With the proposed expropriation, the property line will be moved further north.

195. The issue respecting access as it exists is that at the present time, vehicles accessing the property proceed easterly on Century Street, make a left-hand turn and proceed a short

distance on the wrong side of St. Matthews Avenue to complete the turn into the property. The current design would have a median that would not permit such a turn.

196. The City is proposing that the vehicles wishing to access 500 Madison Street should use the Madison Street entrance which has a smaller entrance than the St. Matthews Avenue entrance and makes it more difficult to access by taking a longer route.

197. The City also wishes to develop a left turning lane off of St. Matthews Avenue onto Century Street and states that a median cut in the storage lane would hamper safety and traffic flows. The Objector contends that traffic flow under the current plan has been in effect for some 50 years and there have been no issues. The Objector also pointed out that under the original drawings, there would have no realignment of the Objector's property. The Objector's position with respect to access is:

1. That there should be a design for traffic coming off of Century Street by way of a median cut at the intersection of Kensington Street;

2. That the Kensington Street intersection at St. Matthews Avenue be a four-way intersection in the same manner as the Silver Avenue and Kensington Street intersection was developed;

3. That access to 496 and 500 Madison Avenue be at right angles to Kensington Street off of St. Matthews Avenue; and

4. That there be traffic control devices at the corner of Madison Street and St. Matthews Avenue to maintain safety.

The Objector also pointed out that his intent had been, as far back as 2007, planning an expansion or the property site and moved forward with those design plans when the tenant, ImaginAbility Inc., signed a lease, with blue prints being made in 2012 and a permit for the foundation being applied for and granted on January 20, 2014. It was pointed out that the building permit for the foundation was revoked by the City on March 14, 2014, prior to the Objectors or the public being aware of the current design plans. In response to that, the City contends that the proposed extension came at the 11th hour and ought not to be considered.

198. The Objector called Mr. Lee, confirmed the development plans and also gave evidence that access off of St. Matthews was crucial.

b) Objections by ImaginAbility Inc.:

199. The Objector, ImaginAbility Inc., is a tenant at 500 Madison Street and they object to the expropriation due to injurious affects the proposed extension would have on its operations and its enjoyment of use. There are 3 aspects of the injurious affections:

"1. Truck access will be significantly adversely affected as delivery truck drivers will be less willing to take the route north on Century Street, East on Ellice Avenue, and come back now Madison Street to make a right hand turn. This is also compounded in that it affects not only trucks but emergency

vehicles. The Objector suggests that there should be a median cut that permits access from St. Matthews Avenue onto the property.

2. The Objector submits the increased traffic that will be created by the design and this will increase the risk of pedestrians as there is no plan for a safety crossing at Madison Street or pedestrian signals. As part of the safety concern, the fact that vehicles have to make a difficult turn off of Madison Street will create a higher risk for accidents to occur.

3. The building will not be as viable as a result of the expropriation and not as viable to the current operation of ImaginAbility Inc."

200. Therefore, the Objector asked for the following:

"a) A recommendation that a median cut be allowed off of St. Matthews Avenue onto the property to allow continued access;

b) That Traffic signals be installed at the Madison Street and St. Matthews intersection or on Kensington Street if the City would allow reconstruction and access off of St. Matthews Avenue; and

c) ImaginAbility should be compensated for reduced parking and reduced accessibility."

201. The Objectors of the taking at 496 and 500 Madison being both the owner and the tenant have for the most part common objections. The taking, whilst relatively small, impacts both the owners and the tenants. The Owner gave evidence that there is no objection to the expropriation but seeks cooperation from the City in order to minimize the impact of the taking and the proposed design of the street. The property line, with the taking, is moved further to the north and there are further street alignments. St. Matthews Avenue has a proposed configuration that traffic off of Century Street heading east on St. Matthews

will have left turn lanes and the City has indicated that a median will be constructed that will prevent left hand turns from St. Matthews Avenue onto the Objectors property. The Objector submits that since the property access has primarily been off of St. Matthews Avenue to which the City contends that the access off of St. Matthews Avenue was illegal as the entrance required vehicles to travel for a short distance on the wrong side of the road to complete the turn. Thus, the City is not prepared to grant to the Objector, an entrance off of St. Matthews that they did not have legally before. Also, the evidence was that the turn off of St. Matthews would disrupt the flow of traffic turning off of Century Street to turn east. The evidence of the Objectors, both the owner and the tenant, confirmed that access off of St. Matthews Avenue was crucial for many reasons including the accessibility of delivery trucks, Handi-Transit buses and emergency vehicles including ambulances and fire trucks. The owner called evidence which supported the position that access to the property was crucial to the viability of both the tenants and of the owner.

202. The owner concerns as to the taking by the City as exacerbated based upon the City's actions with respect to obtaining a building permit. The evidence was clear that a building foundation permit was issued by the City on January 20th, 2014, and cancelled on March 14, 2014. The actual reason for the cancellation of the building permit is unclear but it was

acknowledged that the plans for the building permit contained a submission of a design which would have shown access to the property off of St. Matthews Avenue. Thus, the City was aware of the proposed access route and this route was also reviewed by the City of Winnipeg Fire Department.

203. The tenant's concerns are similar to that of the owner for these concerns are magnified in that they are dealing with individuals with intellectual disabilities.

204. One of the objections to the expropriation by the tenant was an economic issue which the Inquiry Officer cannot address.

205. In reviewing the proposed taking, the Inquiry Officer finds that the Expropriating Authority has met the tests of establishing that it is fair and reasonably necessary and that the Expropriating Authority has met the test of balancing public versus private interests.

206. Notwithstanding the finding, it is important to note that the comments of the Objectors, both the owner and the tenant are valid.

207. The Inquiry Officer would make the following recommendations to the Confirming Authority:

a) That a median cut be allowed off of St. Matthews Avenue onto the property to allow continued access;

b) That Traffic signals be installed at the Madison Street and St. Matthews intersection or on Kensington Street if the City would allow reconstruction and access off of St. Matthews Avenue; and

c) That the Kensington Street intersection at St. Matthews Avenue be a four-way intersection in the same manner as the Silver Avenue and Kensington Street intersection was developed;

d) That access to 496 and 500 Madison Avenue be at right angles to Kensington Street off of St. Matthews Avenue; and

e) ImaginAbility should be compensated for reduced parking and reduced accessibility.

208. The City, in its evidence had called Mr. Zabudeny who gave evidence as to the acquisitions of lands relating to the former Winnipeg Canad Inns Stadium site. Mr. Zabudney, in his testimony, indicated that the City, in dealing with the developer acquiring the stadium site, wanted to do what was right. In the present circumstances, what is right and fair is for the City to work cooperatively to assist land owners and tenants who have been impacted by an expropriation due to the error of the City.

Holding No. 4, 505 Madison Street, Objector Madison Holdings Ltd.:

209. The proposed taking under the preferred design is a whole holding as opposed to only a small taking under the original design (T Drawings). The present owner has carried on a small business since 1990 and has operated the business on these

lands since 1996. Evidence was led that the Objector only learned of the expropriation 2 to 3 months prior to the commencement of these hearings. Whilst the Objector filed a Notice of Objection, the owner acknowledged at the hearing that they are not opposing the expropriation. The Objector understood that as result of the expropriation and the realignment of St. Matthews Avenue, there may be surplus lands that the City may acquire. It is the Objectors desire that the City consider offering these lands to the Objector so that the Objector may continue carrying on business in the same area.

210. Thus, in light of the lack of opposition, the tests of being fair and reasonable necessary have been met and this Inquiry Officer would recommend that the City, if at all possible, work with this Objector to acquire any surplus lands that may become available.

Holding No. 6, Objector Oxbow Holdings Limited:

211. Besides the Notice of Objection, no evidence was called and therefore, the tests for expropriating the property have been met.

Holding No. 7a, Objector Oxbow Holdings Limited as the owner, Leasehold Interest St. James Industrial Park, 914 – 950 St. James Street and Holding No. 8a, Objector Oxbow Holdings Limited as the owner, Leasehold Interest St. James Industrial Park, 890 St. James Street:

212. There was considerable evidence respecting 890 St. James Street and the relationship with 914 St. James Street. The facts are that under the original alignment, the property at 890 St. James Street would have been a full taking and the property at 914 St. James Street would be minimally impacted. However, with the new alignment, the major taking is from 914 St. James Street of approximately 16,794 square feet and requires partial demolition of the building. The property at 890 St. James Street is now a taking of approximately 1,818 square feet being the northeast and northwest corners of the building.

213. The proposed taking from 890 St. James Street is relatively a small size but the impact is significant. The building on the property at present is approximately 20,000 square feet with 22 parking stalls at the front, 10 stalls at the rear of the building that also accommodate employee parking and truck loading capabilities. At present, access to 890 St. James Street is at the north end of 914 St. James Street, egress is from the south end of 890 St. James Street as well as in the centre of the 890 St. James Street location.

214. The proposed would reduce the parking to 12 stalls in the front of the building and the 10 stalls at the rear of the building would be lost. Also, the ability of vehicular traffic to circulate around the building would be lost as the driveway between 890 and 914 St. James Street would be closed.

215. The Objectors, Oxbow Holdings Limited, being proactive, had an alternate route designed in order to minimize the impact on the property at 914 St. James Street. The alternate route which would have minimized the impact on 914 St. James Street would not have eliminated the problems respecting 890 St. James Street. The matter of the alternate route is moot as the City is still proceeding with the preferred design.

216. The City's witness, Mr. Zabundey, initially did not feel the taking would impact the property at 890 St. James Street. It was also suggested by the City that the impact would be minimal as there was no easement agreement between 890 and 914 St. James Street.

217. With respect to the first issue of the expropriation not impacting the owners is not tenable. The evidence of Mr. Zabudney was to the effect that parking is crucial to a commercial tenant and that the stall currently available would be reduced from 22 stalls to 12 stalls in the front of the building and the 10 stalls at the rear of the building would be lost completely. Furthermore, the

evidence of Mr. Shenkarow and Mr. Zegalski corroborated what Mr. Zabudney testified about parking being crucial. The evidence of Mr. Shenkarow and Mr. Zegalski confirmed that the number of stalls is inadequate and the economic viability of the businesses is lost.

218. The issue of an easement agreement being in place between 890 and 914 St. James Street is specious in as much as the owners of both properties are one in the same.

219. In reviewing the evidence, the City has established that the taking is fair and reasonably necessary and the City has balanced issues of public versus private interest.

220. The Objectors have asked that the Inquiry Officer make a recommendation respecting 890 St. James Street to the effect that the City should expropriate all of 890 St. James Street and not just the proposed corners. In that regard, it is this Inquiry Officer's opinion that the present taking of the property at 890 St. James Street effectively eliminates it as a viable commercial building. This Inquiry Officer would adopt the comments of the witness Barry Shenkarow who indicated "The building would be neutered". In making this finding, the evidence is not based solely on that of the Objector's witnesses, but also to a large extent of the evidence of the City's witness, Mr. Zabudney, who is the Manager of the City's Real Estate Department. Not only

did Mr. Zabudney testify as to the importance of parking but also indicated the parking requirements for a 20,000 square foot building, which cannot be met by this building. Furthermore, the parking issue is exacerbated in the fact that there is no on-street parking on St. James Street. This Inquiry Officer would recommend that "in fairness" to the present owners, the whole of 890 St. James Street be expropriated.

221. With respect to the property at 914 St. James Street, the City has met its obligations with respect to establishing the taking is fair and reasonably necessary and has balanced the public versus private interest.

222. In making the above recommendations and findings, and reviewing the actions of the City, this Inquiry Officer has applied the task of weighing public interest as against private interest, whilst assessing the fairness of the expropriation. This Inquiry Officer has found that Expropriating Authority has struck a balance between public and private interests. The Inquiry Officer did, in this report, make a finding as it related to taking no. 1, 1688, St. Matthews Avenue, that it would be fair and reasonable for all of the lands to be taken.

223. The unusual circumstance at present is the City in the present circumstances was required to change alignments due to an error they acknowledged in the sale of the Winnipeg Canad Inns

Stadium site. It is as a result of this error that many of the issues arose as against the present objectors. This Inquiry Officer made certain recommendations based upon the City's willingness to do what is right with the developer of the Winnipeg Stadium Property and thus assumes that the City treat the Objectors in the same manner.

Date: January 30, 2015

Submitted by G.E. Ulyatt

Inquiry Officer.