INQUIRY INTO THE EXPROPRIATION OF LAND BY THE CITY OF WINNIPEG

FOR THE PURPOSES OF THE SOUTHWEST RAPID TRANSIT WAY (STAGE 2)

Prepared by:

GEORGE ERNEST ULYATT

Inquiry Officer

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INQUIRY OFFICER'S REPORT

1. The City of Winnipeg, the Expropriating Authority, passed Bylaw No. 33/2015 expropriating lands (see attached Schedule A) and subsequently filed a Declaration of Expropriation in the Winnipeg Land Titles Office and caused to be issued a Notice of Intended Expropriation which was served on all affected parties of the expropriation.

2. As a result of the Notice of Intended Expropriation, a number of objections were filed.

3. On the 30th day of July, 2015, 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.

4. 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 Dewar, dated August 14th, 2015, the date for the Inquiry Officer to submit his report was extended to October 13th, 2015, and the Confirming Authority's extension to confirm the report was extended to October 29th, 2015. A further Consent Order was pronounced by the Honourable Justice Rempel, dated October 7, 2015, which extended the submission date for the Inquiry Officer's Report to November 16th, 2015 and the confirmation date for the Confirm Authority to January 31st, 2016.

A. LANDS AFFECTED BY THE UNDERTAKING

Lands to be expropriated:

5. The intended expropriation affects the lands as listed in Schedule A attached hereto.

Notice of Expropriation:

6. 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.

7. This Inquiry Officer caused to be published in the Saturday, July 18th, 2015 edition of the Winnipeg Free Press, a local newspaper, a Notice of Public Hearing for this Inquiry.

B. PARTIES TO THE INQUIRY PROCESS:

8. In accordance with Section 5 of Schedule "A" of *The Act* this Inquiry Officer fixed the 4th day of August, 2015, at 10:00 a.m. at the Delta Hotel, 350 St. Mary Avenue, Winnipeg, Manitoba, Assiniboia Room, 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. The hearings continued on August 6th, 7th, 10th, 11th, 12th and 25th and September 2nd and 4th, 2015.

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

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

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

A) For the City of Winnipeg: **Denise Pambrun**,
Counsel for the City.

B1) Objectors: **McDONALD GRAIN COMPANY LIMITED;**
1833 Pembina Highway

ACI SHOPPERS SOUTHPARK LTD.;

2211 Pembina Highway

6165347 MANITOBA INC. and FIRST NATIONALS FINANCIAL GP CORPORATION

Holding No. 29

Counsel for Objectors: **Mark Newman**

Fillmore Riley LLP

B2) Objectors: **3346234 MANITOBA LTD.;**

Holdings 20 and 39, 1000 Taylor Avenue

PEMBINA CARE SERVICES LIMITED;

1679 Pembina Highway

2114062 MANITOBA LTD. c/o QUALITY MANAGEMENT LTD.

75 Southpark Drive

Counsel for Objectors: **Antoine Hacault**

Thompson Dorfman Sweatman LLP

B3) Objectors: **GBR INTERNATIONAL INC.**;

R.S. HARRIS TRANSPORT LTD.; and

NORTH AMERICAN FOOD INGREDIENTS INC.:

555 Hervo Street

	Counsel for Objectors:	**Vincent Bueti** Pullan Kammerloch Frohlinger
B4)	Objectors:	**CATIA APARECIDA MACIEIRA and ANDERSON MACIEIRA;** 1500 Parker Avenue **850 PEMBINA HIGHWAY LIMITED PARTNERSHIP and FWS PEMBINA LTD.;** 850, 870 and 890 Pembina Highway
	Counsel for Objectors:	**James Mercury** Aikins, MacAulay & Thorvaldson LLP

C. SUMMARY OF EVIDENCE

12. The City of Winnipeg ("the City"), at the outset, filed a Binder of Documents ("the Binder of Documents" or "Exhibit 3") which included:

    a. Minutes of Meeting of Council of City of Winnipeg on February 25, 2015, with attached Administrative Report re: Expropriation;

    b. Dillon Consulting Southwest Rapid Transit Corridor Stage 2 Alignment Study Final Report dated January 3, 2013; and

    c. Dillon Consulting Southwest Transit Way – Stage 2 Function Design Final Report dated April 2015.

13. The Binder of Documents formed the core of the City's evidence in support of the proposed undertaking. The documents referred to in Exhibit 3 plus evidence of its witnesses, dealt with the proposed undertaking and proposed expropriation.

14. The documents disclosed that on November 16, 2011, City Council adopted the Transportation Master Plan which included the Pembina Highway Underpass and new Transit Corridors with the first being Stage 2 of the Southwest Transit Way (the "Transit Way"). On March 20th, 2012, Council approved an amendment to the Transportation Master Plan which identified the preferred alignment BRT II to be from the Pembina Highway Underpass through the Parker Lands for the North/South Manitoba Hydro Corridor switching to CN Letellier Subdivision track south of Gregoire Avenue to Markham and across Pembina Highway into the University of Manitoba. The Council ultimately decided,

following the preliminary design for the Pembina Highway Underpass, that the construction of BRT II and the Pembina Highway Underpass should proceed as the same project.

15. The Dillon Report (the alignment study, Exhibit 3, tab 2) examined four options, namely:

a. **Option 1A:** Option 1A extends the Southwest Rapid Transit Corridor from Jubilee Avenue over Pembina Highway on a structure just north of the Jubilee Avenue overpass. West of Pembina Highway, the Transit Way alignment passes under 2 CN tracks, at which point it continues west along the CN's main line. At the westerly end of the Parker Lands, the alignment turns in a south easterly direction, crosses Parker Avenue and then is located with the Manitoba Hydro right of way until it intersects with the CN Letellier Rail Line just north of Bishop Grandin Boulevard.

b. **Option 1B:** Option 1B, like 1A, extends from Stage 1 of the Rapid Transit Corridor from Jubilee Avenue over Pembina Highway on a structure north of the Jubilee Avenue Overpass. West of Pembina Highway, the transit alignment passes under the 2 CN rail tracks at which point it continues west paralleling Parker Avenue. At the westerly end of the Parker Lands, the alignment turns in a south easterly direction, crosses the existing Parker Avenue, and then is located within the Manitoba Hydro right of way until it intersects at the CN Letellier Line north of Bishop Grandin Boulevard.

c. **Option 2:** Option 2 extends the Stage 1 Rapid Transit Corridor from Jubilee Avenue, over Pembina Highway on a structure just north of the Jubilee Avenue Overpass. West of Pembina Highway and follows the east side of the CN Letellier Subdivision continuing south and crossing Byng Place, Windermere Avenue, Somerset Avenue, Waterford Avenue, Southwood Avenue, McGillivray Boulevard, Waller Avenue, Clarence Avenue, Chevrier Boulevard, Bishop Grandin Boulevard, Chancellor Drive, Markham Road, terminating at Bison Drive.

d. **Option 3:** Option 3 extends Stage 1 of the Southwest Rapid Transit Corridor from Jubilee Avenue along the centre median of Pembina Highway to Bison Drive.

16. The first witness the City called was Bjorn Radstrom, a Registered Professional Engineer with the Association of Professional Engineers and Geo Scientists, who has been with the City of Winnipeg for 8 years and Winnipeg Transit for 5 years. For the past 3 years, Mr. Radstrom has been the Manager of Service Development which has two aspects:

    a. Service Planning, which deals with route planning, infrastructure planning, and scheduling; and

    b. Marketing and passenger information.

17. Mr. Radstrom testified that his expertise with Rapid Transit was that he was a technical expert dealing with issues on Stage 1 and for Stage 2 of the Southwest Rapid Transit corridor, he has been the Project Manager from the outset of the alignment study, to the recommendation of the alignment study to the City Council. Mr. Radstrom referred to Exhibit 3, tab 2, the Dillon report, which was an engineer's study examining different alignment options and based upon different aspects of design, concept ability and cost, made a recommendation for Stage 2.

18. Mr. Radstrom described the complexity of BRT II around Pembina Highway and Jubilee Avenue. There were different options for the widening of Pembina Highway as well as for various bridge configurations for how the Transit Way would get across Pembina Highway. Initially, there were two separate projects:

    a. BRT II; and

b. The Pembina Highway Underpass (PHU).

19. At the outset, there was an attempt to keep BRT II and PHU as two separate projects, but as the design developed for both projects, it became apparent that the projects should be merged. It appeared that by combining the two projects, which were in close proximity to each other, it would minimize the throwaway costs, lessen traffic disruptions, disruptions to businesses, and the project costs would be less expensive.

20. There were two options, the so-called “Dog Leg” options, 1A and 1B, which were previously described. Mr. Radstrom testified that the Dog Leg option was chosen for the following reasons:

a. Affordability;

b. Fewer properties that had to be acquired;

c. Less impact on adjacent neighborhoods;

d. Buses can travel at a higher speed;

e. Less level crossing than the Letellier routing;

f. Also, the Dog Leg option meets the requirements for space that includes pedestrian facilities;

21. With respect to the Letellier option, it would be a very narrow corridor with the CN Railway being required to move their tracks to the west in order to construct the Transit Way. Mr. Radstrom indicated that the amount of railway that would be left would be insufficient to accommodate the railway, the access road, the Transit Way, the stations, and the Active Transportation Path

(ATP). Furthermore, Mr. Radstrom stated with respect to the Letellier option, it would:

a. require substantially more property;

b. require many more level crossings in the Beaumont neighborhood, south of McGillivray Boulevard, thus slowing down service; and

c. Additional costs and property requirements.

22. Mr. Radstrom indicated that the Dog Leg alignment allows for future construction towards the west, towards Hurst Way, Waverly Street and Kenaston Boulevard. This may, in the future, become an important connection in that it is a catchment area not only for the southwest quadrant, but for other portions of the City.

23. Mr. Radstrom went on to describe the Transit Way heading along the Manitoba Hydro corridor with two major Park & Rides, one just north of McGillivray Boulevard and one just north of Clarence Avenue and ties in nicely for serving events at Investor's Group Field. The alignment also provides at McGillivray Boulevard, that they do not have to stop at this major intersection and there would be two level crossings at Clarence Avenue and Chevrier Boulevard. The Transit Way will need to cross the CN Letellier Subdivision and the City is proposing a tunnel that goes essentially from Chevrier Boulevard, southerly underneath the two CN lines and then comes up on the east side of the railway. The Transit Way would continue on grade past Plaza Drive, crossing Bishop Grandin, Chancellor Drive and at that point the Transit

Way splits into two separate alignments, a short instep going to Markham Road for other service that is going further south and then further west along Southpark Drive and across Pembina Highway into the University of Manitoba.

24. Mr. Radstrom testified that there was a high degree of complexity at the intersection of Pembina Highway and Jubilee Avenue in that they are dealing with not only the widening of Pembina Highway by one lane so it ends up with three lanes in each direction, but it needs to be widened to provide an Active Transportation Path on each side of Pembina Highway. Currently, Mr. Radstrom testified, there is only a single narrow sidewalk on the east side of Pembina Highway through the underpass, which is not suitable for cyclists. The present design substantially widens the street so that it provides not only for adequate cycling, but for pedestrian movement on each side.

25. Mr. Radstrom testified that presently, the CN Rail Line crosses Pembina Highway just north of Jubilee Avenue which has an existing rail bridge there. The new bridge will be designed north of the existing one, taking down the existing railway bridge and building a new Transit Way bridge. This enables the design to maintain vertical and horizontal curves so buses can operate at 80 Kilometers per hour. This requires the flattening of the curve and thus some taking of property on Taylor Avenue. Mr. Radstrom described that the design will impact 850 Pembina Highway, 870

Pembina Highway, and 890 Pembina Highway and the 1500 Parker Avenue address which will be a complete taking.

26. Mr. Radstrom testified that in designing the Transit Way alignment, there was a requirement to take into consideration underground infrastructure, aqueducts, feeder mains and Manitoba Hydro communications infrastructure. Mr. Radstrom went on to describe how the Transit Way, as it heads southerly towards McGillivray Boulevard, widens slightly for increased land that is required for the overpass as well as the station north of Clarence Avenue and the Transit Way narrows as it heads south of Clarence Avenue and as the Transit Way crosses Chevrier Boulevard and goes further south, a wider right of way is maintained. As a result of the wider Transit Way, retaining walls have to be built and the construction of a tunnel.

27. Mr. Radstrom testified that there has to be room for stations to be accessed on and off the Transit Way near Chancellor Drive and at Southpark Drive and had commented in passing that Southpark Drive is currently a fairly narrow roadway with no sidewalks.

28. Southpark Drive, Mr. Radstrom testified, will be widened in order to allow for two lanes of travel so that buses can travel unimpeded, plus a parking lane and sidewalks on both sides of Southpark Drive and a Bicycle path on the north side of Southpark Drive would be created.

29. At both the intersections of Southpark Drive and Markham Road a small corner of land is required to reconfigure the intersection and separate the buses from traffic which is going straight across to the University of Manitoba from the regular traffic which turns either left or right.

CROSS EXAMINATION OF MR. RADSTROM BY MR. MERCURY

30. During the cross examination Mr. Radstrom indicated the objectives of Rapid Transit are to move a large number of people, as quickly as possible, so that both speed and reliability becomes important. When questioned, Mr. Radstrom indicated that the primary purpose of rapid transit is to spawn development and to serve existing development. On further cross examination, areas that Mr. Radstrom identified that would be sites for development would be at:

a. south end of the Rapid Transit Way;

b. Parker Lands;

c. Sugar Beet lands, also known as the Hopewell Lands; and

d. the Southwood Land that are now a part of the University of Manitoba.

31. Mr. Radstrom testified that the Parker route was always part of the Transportation Master Plan and the process had begun in about 2007 and completed in January 2013.

32. Mr. Radstrom confirmed the fact that there are two different routings through the Parker/Hydro Lands known as Options 1A and 1B.

33. Mr. Radstrom was questioned on the different routings, the Letellier Route (Option 2) and Options 1A and 1B.

34. Mr. Radstrom confirmed all Options, 1A, 1B, Letellier, and Pembina Highway were thoroughly examined.

35. Mr. Radstom was questioned on whether there had been analysis on increased property assessment, and he commented he had no knowledge of such an assessment being done.

36. Mr. Radstrom was questioned as to the fact that environmental concerns were not addressed. In response Mr. Radstrom indicated environmental concerns were addressed including environmental impacts on the lands themselves. Also, evidence was given that an environmental license to construct Stage 2 has been obtained. Mr. Radstrom was questioned about light rail transit and that the Letellier route would be the preferable route if it was from the commencement date. However, Mr. Radstrom qualified in terms of future development, BRT and LRT are very similar. As matters continued, Mr. Radstrom was questioned extensively about cost factors, environmental impact and licenses and the fact that there was no cost analysis done for the alternate route, namely the Letellier alignment.

37. Mr. Radstrom gave evidence with respect to Phase 1 of rapid transit and the development at different stations, but he was unable to give definitive evidence as to same.

38. Mr. Radstrom was questioned on the costs of BRT II utilizing the Manitoba Hydro Lands and he advised that there are two aspects to costs. There is always the costs of land acquisition and the costs of moving any utilities. Mr. Radstrom was questioned with respect to the negotiations between the City and Manitoba Hydro which he acknowledged have not been fully completed.

39. Mr. Radstrom, in comparing Options 1B and 2 (Letellier routing) indicated that Option 2's costs would be considerably higher than for 1B. Also, that 1B would provide the potential for increased taxes.

40. Mr. Radstrom acknowledged that the public, when consulted, found that 52% supported the Letellier option.

41. Mr. Radstrom on being cross examined over cost estimates indicated that in order to do a rail development, the City would require to build a very large storage yard, rail facilities, rail control centre, power overhead system, overhead capillary lines and that the startup costs for a single meter of in-service track would be in excess of $100,000,000.00.

42. Mr. Radstrom was cross examined further on concerns by City Councilors in routing and impacts upon their constituents. In that regard, Mr. Radstrom indicated that they had engaged in

stakeholder consultations of public housings and it was the Consultant's (Dillon's) advice that Option 1B was the preferable route. Mr. Radstrom went on to testify that there were actually three rounds of public consultations in each case. The City met with different group of people in small groups, thereby they would invite residents, property owners, and especially commercial property owners, developers and utilities industries for a series of meetings with them. Usually, there would be between 30 and 40 meetings leading up to a set of public open houses. Mr. Radstrom testified that there were two major rounds of public consultations and, at the request of City Councilors, a further round of consultations proceeded with those who lived along the alignment south of Bishop Grandin.

43. With respect to the expropriation of 1500 Parker Avenue, Mr. Radstrom indicated that the owners had been spoken to directly by representatives of the City as part of the functional design study and that the owners came out to at least one of the open houses where he spoke to them personally. Mr. Radstrom testified that in the fall of 2014, he explained to the owners that their property would be expropriated and that they would have been advised beforehand as this would have been done prior to a public open house.

CROSS EXAMINATION OF MR. RADSTROM BY MR. NEWMAN

44. Mr. Newman cross examined Mr. Radstrom on behalf of 6165347 Manitoba Inc. and First Nationals Financial GP Corporation,

McDonald Grain Company Limited and ACI Shoppers Southpark Ltd.

45. Mr. Radstrom testified that Winnipeg Transit was the lead department. As part of his function he worked with the City's Real Estate Department and initially, was not involved with external meetings with the stakeholders.

46. Mr. Radstrom's involvement with respect to Manitoba Hydro was after the alignment process, but was involved with the function design process. Mr. Newman put to Mr. Radstrom the portion of the Transit Way along Pembina Highway north of Bishop Grandin, but south of the intersection of the Hydro Corridor forms a "Y" intersection and as you proceed further south, at that intersection is where the Letellier Tunnel will be built. The main purpose according to Mr. Radstrom is to bring the Transit Way which is west of the Letellier Subdivision, over to the east side. At present, it was suggested that the bridge over Bishop Grandin that is being used will now become a bridge for the Transit Way. The witness said "no, the reason for the CN Letellier Railway is 99 feet and the existing rail line is in the middle of it, so there is no room on either side to build the Transit Way, so it is necessary to shift the rail line 5.7 meters to the west which allows for space on the east where we can construct a Transit Way where two lines come off the Letellier line and dead head in a western direction".

47. Mr. Radstrom testified as part of the public consultation, there had been discussions with the property owners, or at least contact with them and inviting them to meetings.

48. Mr. Newman showed Mr. Radstrom the proposed revisions to the intersection at Pembina Highway and Southpark Drive. At 2211 Pembina Highway is Shoppers Drug Mart and Mr. Radstrom was questioned as to the impact to Shoppers Drug Mart in terms of parking stalls. Mr. Radstrom acknowledged that the taking from Shoppers Drug Mart would be the loss of six parking stalls and a pylon sign that is going to be relocated.

49. Mr. Radstrom was shown Exhibit 9, a drawing of proposed taking of an area respecting 1833 Pembina Highway. The map discloses a triangular area which would be expropriated and that there would be a loss of approximately 11 parking stalls.

50. On Exhibit 10, a set of overhead photographs depicts a wide section where the Manitoba Hydro right of way meets the Letellier Line. The pictures depict Manahan Avenue below that, the first spur line and below that, the second spur line. Between both spur lines but to the east of the Letellier lines is the Golden Door Geriatric Centre and west of that is presently undeveloped land. Mr. Newman had Mr. Radstrom review the photographs to identify different business and organizations within the area and then, further south, identify the Capri Motel. Mr. Newman examined the witness as to costs of land for Option 1B. Mr. Newman examined the witness concerning the Transit Way, new technology for

Manitoba Hydro where towers are being raised where required. Mr. Newman examined the witness concerning a pumping station to be located at 1833 Pembina Highway and Mr. Radstrom acknowledged that whilst he does not know exactly what it is going to look like, there is a typical design. Mr. Radstrom was examined as to elevations for the pumping station and whether or not there had been any considerations into locating the pumping station at another location including the Capri Motel.

51. Mr. Newman, on questioning Mr. Radstrom, wanted to know the reason behind the decision of the City in the placement of the pumping station, and whilst Mr. Radstrom did not respond directly, Mr. Radstrom indicated that they relied upon their consultant.

52. Mr. Newman put to the witness the City of Winnipeg Assessment Department showing that 1833 Pembina Highway was valued at approximately $7,000,000.00 as opposed to the Capri Motel at a value of $1,996,000.00. On examination concerning the proposed pumping station, Mr. Radstrom advised that the pipe will be elevated and will leave the pumping station at Lot No. 16 and on that path, the pipe will travel between the pumping station on Lot 16 is along the Hydro right of way. So in essence, the pipe is continuously in the Hydro right of way except where it needs to make a left turn in an easterly direction to come into the pumping station and then it will come out of the pumping station and go back onto the Hydro right of way.

53. Mr. Newman examined Mr. Radstrom with respect to transmission lines along the Hydro right of way from Bishop Grandin to Harrow Street and had Mr. Radstrom explain the difference between a transmission line and a distribution line whereas a distribution line is where Hydro brings power to the actual consumer, whereas the transmission lines carry power over long distances to substations. Transmission lines are typically on towers and distribution lines more typically on poles or underground. Mr. Newman canvassed with Mr. Radstrom the right of way (ROW) and also the pipe that will be along the corridor.

54. Mr. Radstrom was questioned with respect to the use of Southpark Drive and Markham Road. There will be a station between Southpark Drive and Markham Road that will be used for the purpose of a Transit Way routing and Southpark Drive is being used as a means of egress from the Transit Way for buses that are going to the University of Manitoba. Mr. Radstrom testified that the use of Markham Road was the original plan but upon an intersection analysis of the intersection of Markham Road and Pembina Highway, the consensus was the congestion would cause the intersection to break down providing all the buses using the Markham route along with existing traffic would not meet the needs required.

55. The Evidence disclosed that Markham Road is presently a traffic signal controlled intersection and Southpark Drive is an uncontrolled intersection. Mr. Radstrom gave evidence that having

two consecutive streets with traffic control signals was feasible depending upon how the signals are timed and how they are coordinated. Furthermore, the decision to utilize Southpark Drive as opposed to Markham Road was the transport department's decision. The use of Southpark Drive will impact Shoppers Drug Mart and there was discussion as the loss of parking stalls.

56. Mr. Newman referred to the lands near east of Derrick, referenced the witness to retaining wall to be built to support the sides of the underpass. Mr. Radstrom was referred to Exhibit 15 (diagram depicting the parking lot) and an area that is highlighted in white. This is the eastern end of the Parker Lands. Within the section that is outlined in red, the land is being expropriated for Bus Rapid Transit. Mr. Radstrom was asked why the lands could not have come further south and not use the unused area of land within the area being expropriated. Mr. Radstrom answered essentially to move further south would change the curvatures on the Transit Way which would cause design problems and secondly, through the consultation process, there was a desire by the residents to maintain the distance between the Transit Way and the existing residences.

57. Mr. Radstrom testified that initial discussions found in Exhibit 3, tab 2, was that Markham Road was the better option for the bus route.

58. Mr. Newman examined the witness concerning new Hydro Towers that will be built by the Plaza Station which will be, whilst not

directly behind 1833 Pembina Highway but slightly to the south and east, tower lines will be behind 1833.

59. Mr. Radstrom testified that there had been high level discussions with both Manitoba Hydro and CNR with respect to the Transit Way crossways, but there have been no detailed drawing designs at the present time. Mr. Radstrom did testify that in whole, there have been no formal easements with Manitoba Hydro and CNR but have essentially agreed to work with the City and the final details will be worked out in conjecture with all utilities.

CROSS EXAMINATION BY MR. HACAULT OF MR. RADSTROM

1679 Pembina Highway, Pembina Care Services

60. Mr. Hacault, at the outset, indicated that there has been a tentative discussion to have a joint tenant recommendation but wish to explore the details of same. The proposed taking, initially, required taking through the centre of the property which was contrary to the personal care home's needs for expansion and continued access to Hudson Street. The tentative agreement that there be an easement for the Active Transportation Path to follow the north side of the property and the west side of the property and not interfere with the south of the property. Evidence was also given that the pathway on the CN right of way, but the evidence was it was not possible for any pathway on the CN right of way at this particular location, namely, Pembina Care Services.

75 Southpark Drive

61. Mr. Hacault sought to determine whether or not there had been any traffic studies or traffic analyses that discuss different options respecting the conclusion to use Southpark Drive as opposed to Markham Road. The witness and counsel for the City confirmed there was no such document in existence.

62. Mr. Radstrom was questioned in detail on the design as well as who would have discussed changing the routing from Markham Road usage to using Southpark Drive.

63. Mr. Radstrom in cross examinations dealing with 75 Southpark Drive testified that all building owners on Southpark Drive were invited to a stakeholders meeting as part of the public process, but acknowledged that he has not seen any proof or other communication from the City to the owners. The witness did testify that he had personally visited and examined 75 Southpark Drive. Mr. Hacault canvassed in depth the street alignment in front of the building, the parking areas, the loading signs and the entranceway. Mr. Radstrom further confirmed that he had not visited the property in the winter time, nor spoke to the owners directly.

64. With respect to parking issues, Mr. Radstrom testified to the taking of parking stalls being minimal and attempts were made to find parking spaces on City owned land. The issue concerned the widening of the street which would bring the street to a half-meter

past the first steps. Although Mr. Radstrom testified that the property line will not “hit” the first steps of 75 Southpark Drive which was shown on Exhibit No. 18.

65. Mr. Radstrom compared Southpark Drive to Markham Road wherein he characterized Southpark Drive as a local street and Markham Road is a collector street. Local streets are approximately 7 meters wide and collector streets are generally 10 meters wide, wherein a collector street is designed to have two lanes of traffic going each direction. At present, Markham Road does have existing bus stops on the street. Initially, the plans were for bus traffic to go down Markham Road to Markham Station and then proceed in a northerly direction along the new route. According to Mr. Radstrom, this would be approximately 350 buses per day, not including special events at the University of Manitoba. The number of buses for an event day would be approximately 75.

66. Evidence was given that prior to making a final choice, there was extensive discussion with the University of Manitoba and their requirements. With respect to event at the University of Manitoba, approximately 200 buses will leave Investor’s Group Field to follow through to Pembina Highway. Approximately 75 of those buses would continue across Pembina Highway to Southpark Drive and access to the Transit Way.

67. Mr. Hacault questioned the witness at length concerning intersection designs and traffic flows with the witness indicating

the design that was arrived at maintained the integrity of traffic flow at both intersections.

68. Mr. Radstrom gave evidence with respect to the transportation master plan and made references versus the Southwest Transit Way using the Parker alignment versus the Letellier alignment. There was considerable discussion over which roadway should be used and Markham Road was the preferred alignment over locations such as Bison Drive, an unnamed street, and one in the vicinity of Chancellor Drive.

69. During examination, Mr. Radstrom stated that dealing with transit there would approximately 200 to 250 buses per day on Southpark Drive. On further examination, Mr. Radstrom acknowledged that there would be approximately 280 buses on Southpark Drive, but that was not an exact number.

70. Mr. Radstrom acknowledged that the property located at 75 Southpark Drive would require the steps to the building to be moved in that it would not be safe for the steps to proceed directly into a bike path. Mr. Radstrom offered options. Mr. Radstrom was cross examined on the property line and how it would affect access to the property and whether or not there would have to be zoning variances and whether or not the loading zone currently at the front of the building could be moved. Mr. Radstrom was questions that generally the only individuals that were consulted with respect to changing from using Markham Road to Southpark Drive were the University of Manitoba, public open houses and

small group consultations. There were some issues as to when Southpark Drive as an option and whether or not they were available at an open house prior to the Notice of Intended Expropriation.

CROSS EXAMINATION OF MR. RADSTROM RESPECTING 850, 870 AND 890 PEMBINA HIGHWAY BY JAMES MERCURY

71. Mr. Radstrom testified that he was acquainted with the properties mentioned and that the proposed takings will impact parking stalls, narrowing of the lane affecting 870 Pembina Highway, property line will overlap the corner of 890 Pembina Highway. Also, the witness was questioned concerning an easement. Mr. Radstrom acknowledged that the buildings would be affected but there has been no preconstruction survey available.

DIRECT EXAMINATION OF DAVE KRAHN BY DENISE PAMBRUN

72. The City called Mr. Krahn who is a Partner will Dillon Consulting Ltd. and graduated from the University of Manitoba and is registered in Manitoba, Saskatchewan, Ontario and, until last year, in British Colombia. Mr. Krahn is an active member of the Transportation Association of Canada and a member of the Geometric Design Committee and has been involved with BRT as a consultant since approximately 1984 starting with cost estimates and working towards the functional design. Mr. Krahn was involved in the final design if Stage 1 transit corridor which he testified the project was completed on time and in budget in 2012.

73. Mr. Krahn testified that he was involved in the alignment study (Exhibit 3, tab 2) and the various design options and that he was part of a working group that consisted of various directors within the City of Winnipeg, Public Works, Transit, Water and Waste, Real Estate and also working groups with the Province of Manitoba, the University of Manitoba and also used Stevenson Advisors as consultants on property matters.

74. Mr. Krahn who is a Project Manager for Stage 2 was asked on direct examination about the evaluation of using either what is commonly referred to as the “Dog Leg” route, through the parker lands, or going along the CN Letellier Line. Mr. Krahn testified that in examining operational and implementation issues they look at:

a. Length of project;
b. Buildout;
c. Actuated intersections;
d. Number of structures affected;
e. Drainage;
f. Speed;
g. Reliability;
h. Safety issues;
i. Impact on traffic;
j. Project schedule; and
k. Costs.

75. Mr. Krahn compared the different options referring to Option 2 (Letellier) which would affect a significant number of businesses

and residential properties whereas Options 1A and 1B (Dog Leg) have less impact on residential implementation.

76. With respect to the implementation using the Parker Lands, it provides numerous opportunities for lay down areas, which is an area where the contractors puts up his filed shacks, lumber and steel, along with any prefab materials. This in fact facilitates construction. These aspect are available to Options 1A and 1B but no opportunity with Option 2 (Letellier). Option 1B provides more flexibility as it relates to the west part of the plan. Mr. Krahn went into detail as to why Options 1 (1A and 1B) were preferred over the Letellier Option.

77. Another issue that was raised was with respect to the Letellier Route. There would be a significant noise impact upon the residents of that area for a minimum of three years. During construction there would be significant issues with the residents and it would also restrict the schedule for working hours on the project. Mr. Krahn, in dealing with the Letellier project have restrictions that will not accommodate an Active Transportation Path. The pathway cannot accommodate 49.5 feet and the City would be obligated to meet the standards of CN for building retaining walls. Furthermore, the Letellier Subdivision would not accommodate Park and Ride facilities and the railway would not allow the City to build anything on their property.

78. Mr. Krahn indicated that if the Letellier option was chosen a noise wall would be required along the total length of the Letellier line.

Also, an ATP, which is critical and essential in all transportation projects could not be maintained without the anticipation of taking of specific lands that are right on the back of the CN Rail. Mr. Krahn indicated that there would be approximately 72 properties affected. Furthermore, there would be difficulty with the 99 foot right of way with having houses and garages backing into that right of way.

79. Mr. Krahn further testified that the construction along that route would definitely impact the residents in those properties. In discussing the alignment study, which was done first, was a conception study which would have Options 1A and 1B and Option 2, there are access points to the University of Manitoba. In any development, there needs to be concerns regarding impact of the Transit Way on the University of Manitoba. Mr. Krahn indicated that discussions took place for access at Bison Drive, Markham Road, Thatcher Drive and University Crescent. These discussion took place with the University, Transit and Public Works and found all of those options had their downfalls. Markham Road, as previously mentioned, had 4300 vehicles on it, whereas Southpark Drive has a quarter of that amount. Mr. Krahn testified with putting extra buses made more sense as it related to the University.

80. With respect to environmental concerns, Option 1A and 1B would have the same impact in that the consultant's opinion going along the Parker Lands and the Hydro corridor was more reasonable and would not have the same impact as on the Letellier Line.

Using the Letellier Line would have a significant impact on the residents, with 51 residents on the east side of the rail line that run parallel and 20 residents on the west side.

81. Mr. Krahn testified that on using the space the Parker Hydro development was favoured for a future space as there would be room for development but there is no vacant land anywhere that is available on the expanded Letellier Line whereas on the Parker Hydro Lands, the land is adjacent to, and can be built not within the corridor but right beside the corridor, which according to public feedback was positive.

82. The development itself is along the transit corridor but not inside it, except for the park and rides, which are permitted due to the need of relatively low clearance. Mr. Krahn was examined on public consultation and he indicated that there were a number of open houses that consisted of the alignment study, the Pembina Highway underpass, transit corridor alignment and there were open houses on September 19 and September 22, 2012. Also, Mr. Krahn stated the Pembina Highway Underpass had its own open house and these open houses attracted a considerable attendance.

83. With respect to open houses, an attempt was made to provide notice for all stakeholders meetings which went directly to property managers and home owners and for open houses, notices went to every household within a selected postal code. With the last round of consultation, Notices were posted on all apartment blocks. The

intention of the stakeholders meeting, was to meet with the people to determine how they were effected and hopefully answer questions before the open house. With respect to open houses, there were 3 in number and in round 1 stakeholder meetings took place in October and December 2013, were with individual land owners, prior to the open house (30 meetings). Some of those meetings were one-on-one, some had a group of people and Mr. Krahn testified that at one stakeholders meeting there were 100 people in attendance.

84. The public open house on November 18, 2013 and November 19, 2013 at The Canad Inns on Pembina Highway had over 300 people in attendance. Stakeholders were defined as anyone that would be impacted as it relates to their property.

85. In Round 2 of the open houses, in February 2014, there were 4 open houses, 2 of which were held on the 24th of February 2014, and 2 were held on February 2015.

86. Round 3 of Public Consultation for the Stage 2 project took place in the spring of 2015. There were 20 stakeholder meetings with approximately 80 people attending at an open house on May 28, 2015, where there were approximately 300 to 400 people in attendance. For the stakeholder meetings, there was an agenda which went through an introduction, the purpose of the meeting, brief description of the property, description of the process and explanation of the goals and a map route. At the stake holder meetings discussions about alignment and review were done.

Also, following which, those attending were free to answer any questions.

Evidence respecting 850, 870 and 890 Pembina Highway Properties

87. The buildings at 850, 870 and 890 Pembina Highway are on the east side near the Jubilee Avenue underpass and 850 Pembina Highway is the most northern property and 890 Pembina Highway would be the furthest south property. Mr. Krahn testified that at 890 Pembina Highway, there would be the necessity of a retaining wall with respect to the widening of Pembina Highway and to have current clearances under the rail lines which today are inadequate and the Pembina Highway roadway will be lowered approximately 1 meter to meet the clearance requirements. Thus, in lowering the roadway, there are issues with slopes and retaining walls. Mr. Krahn identified the retaining wall on the property being approximately 1/2 meter just east of the existing property line and left along the roadway is an Active Transportation Path which is 1 and ½ meters of sidewalk and this will be widened and explains why the retaining wall will be very close to the existing property lines. With respect to the completion of the development, no need for the above land other than to have access for emergency repair and in fact, an easement agreement. Also, access to the land would be needed for maintenance.

1679 Pembina Highway (Pembina Care Services)

88. Mr. Krahn identified the active transport pathway on Exhibit 4 and that the said Active Transportation Path runs from Pembina Highway through the Parker Lands through Hydro, Chevrier, along Pembina Highway to Hudson Street where it continues along Hudson Street and does an S curve to go through the personal care home and then proceeds again along the Hydro Corridor. Mr. Krahn dealt with the issues of cyclists and the safety of cyclists and also by limitation that the Active Transportation Path cannot be within 99 feet of the CN right of way. The Active Transportation Path is a standard 4.5 meter wide asphalt pass way which is above ground. The path way is relatively flat and is elevated above the service, usually from 1 to 1.5 feet. However, Mr. Krahn indicated that opposed to a taking, an easement may be possible.

1833 Pembina Highway

89. Mr. Krahn identified on Exhibit 4 in the left quadrant of the drawing after the Transit Way comes out of the Hydro corridor parallel with the rail line the back of the property is a sliver of land needed to accommodate a pump house for the Pembina Highway underpass. The piece identified is triangular in nature. Mr. Krahn went on to give extensive evidence as to why a pumping station was required and that it was a recommendation that it be done at the 1833 Pembina Highway location. Mr. Krahn, after reviewing requirements for sewers, gravity and what is required for outfall into the river was specifically asked to comment on why this

property was chosen. The evidence was the recommendation as most efficient and other locations were inappropriate for a number of reasons, where one cannot put a pump station between a spur line and the CN right of way, Hopewell Lands were too far away, and would be required to go under two sets of railroad tracks.

90. Mr. Krahn went on at great length to identify that there had been examinations of areas surrounding 1833 Pembina Highway for the actual pump station and, for a variety of reasons, determined that 1833 was the most logical positioning. Factors considered were the location to the spur line, distance for the pump station to be operative, whether it should be built on the other side of the tracks, and for engineering requirements.

91. Mr. Krahn gave evidence with respect to the decision leading the City to use both Southpark Drive and Markham Road as part of the project. Mr. Krahn testified the efficiency of the transit system was dependent on the fact that they are not impeded by traffic as much as possible. There was a requirement to have transit to the University of Manitoba and a number of alternative were looked at. Furthermore, the University has significant concerns about using Chancellor Drive and University Crescent. The University did not want their main through fare used and they were concerned about University Crescent which would have to be reconstructed. Initially, the alignment study indicated that Markham Road would have been the preferred alignment. Upon further detailed examination it appeared that Markham Road was also going to

create problems as the traffic flow on Markham Road would fail as there are approximately 4,300 vehicle to date.

92. Southpark Drive is a local residential street and there are no traffic counts that have been done by the City. The Southpark Drive services the apartment blocks and the businesses in that area.

93. Furthermore, there were engineering designs concerning the construction of a proper intersection at Markham Road and Pembina Highway and since there is no extension on Southpark Drive. There is the ability to correct the angle closer to a 90 degree angle.

94. Mr. Krahn testified that at open houses residents who owned condos on Markham Road were opposed to the construction and the increase in traffic on that street. The condominiums would be right on the property line.

95. Mr. Krahn opinioned that Southpark Drive “will gain” a new road, path ways, and generally be a better design.

96. There are two issues with respect to Southpark Drive; 2211 Pembina Highway and 75 Southpark Drive.

97. Mr. Krahn did a detailed analysis of Exhibit 37 which is a geometric alignment of Southpark Drive at Pembina Highway. The design discloses an adjustment for eastbound traffic off Southpark Drive to make a south turn onto Pembina Highway, a lane for traffic to continue east towards the University, a lane

accommodating southbound traffic to head west on Southpark Drive and a lane for northbound traffic. The impact on 2211 Pembina Highway according to Mr. Krahn is that there would be loss of parking stalls from 35 to 29, and a loss of space for signage.

98. Ms. Pambrun asked Mr. Krahn to comment on the impact of the taking on Southpark Drive. Mr. Krahn indicated that the whole length of Southpark Drive may need a 1 meter strip of property required to accommodate a sidewalk on the south side and an ATP on the north side. Furthermore, a parking lane would also be developed. As you move westerly on Southpark Drive from Pembina Highway, to where the Transit Way would exist, there needs to be radius improvements to allow buses to make left turns and right turns on Southpark Drive and a U-turn way.

99. Geomatic changes to accommodate more efficient traffic flow to both the south side and the north side as it relates to buses accessing the Transit Way.

100. Mr. Krahn testified that the widening of the street would not bring the street any closer to the steps of 75 Southpark Drive, however, with the development of a sidewalk, the measurements of 20 feet, 8 inches (or 20 feet, 6 inches) is from the curb to the first step. Mr. Krahn provided options that might be used to alleviate problems by having the steps go not directly in front of the building but to the side.

101. With respect to parking, the loss of parking stalls may be accommodated by the use of City property on the north side, parallel parking of two cars and if the City permitted an encroachment under the back lane would also alleviate some of the problems.

1500 Parker Avenue

102. With respect to 1500 Parker Avenue, Mr. Krahn indicated that after crossing Pembina Highway going in a westerly direction, the turn goes onto the Hydro Corridor. As the turn is made, in the middle of the property there is a residence at 1500 Parker Avenue which is the subject matter of this expropriation. The taking of 1500 Parker is the one residential property that the City requires and is required concerning restraints of curvatures and existing Hydro Towers.

1000 Taylor Avenue West - Shindico Property

103. The design of this project requires and AT Panel just south of Sparling Avenue. For this project there has been a widening of existing sidewalks from 1 and 1.2 meters to 4 meters and will be consistent on both sides of the road. There are more design issues in that Harrow was the chosen route and the witness pointed out the ATP path on Exhibit 44 at the end of Harrow Street. Ms. Pambrun asked Mr. Krahn as to the specific impact and continued on describing the design constraints respecting bicycle path, rapid transit pathway, and the fact that a retaining

wall has to be built. For design reasons, the curvature as pointed out, did not allow much adjustment because of curvatures and grade requirements to allow safe use for cyclists on the Active Transportation Path.

104. On Exhibit 4, Mr. Krahn pointed, at Exhibit 4, underneath there is a sliver of land Derek Street to the right of way at CN where land would be taken. The purpose of this taking is to deal with embankments, curvatures and new CN relocation. MR. Krahn testified the City may have an option for an easement to be used as opposed to a full taking.

105. Mr. Krahn again commented on that there would be a retaining wall required along the total length of both sides and that an ATP, which is critical and essential, could not be considered in this area. Furthermore, there would be significant land takings along the CN line.

CROSS EXAMINATION OF MR. KRAHN BY MR. NEWMAN

106. Mr. Newman cross examined Mr. Krahn on the fact that he was an engineer and gave evidence based upon an engineering perspective. Mr. Krahn confirmed that he is not a real estate evaluator and does not have a real estate background and, as consultants, he made the decision as Project Manager, to include Stevenson based on their experience and familiarity with respect to real estate expertise.

107. Mr. Krahn testified that he understood the cost of acquisition and construction, there was a component of the cost of properties.

108. Mr. Krahn testified that during the alignment phase of the development, Southpark Drive was not contemplated because its decision came out of the consequence of the functional design study. These stakeholders were treated differently than other stakeholders in as much as they were contacted by Dylan Consulting with a view to a meeting to discuss impacts. Mr. Krahn acknowledged that other than stakeholders meetings, there was no direct contact with Shoppers Drug Mart or 1833 Pembina Highway as they were not identified in the initial study.

109. Mr. Krahn further acknowledged that with respect to 1833 Pembina Highway, there was no direct discussion to alternatives in the function design study for the location of the pumping station.

110. Mr. Newman examined the witness as to alternative and the witness restated their options in regard to the pump station but it was within the CN right of way, the second one near the personal care home was dismissed due to requirements to run piping under three railway tracks, third was optimal lands but there were issues concerning fiber optic bands and also the Capri Motel so that was dismissed in that it required four buildings to be removed.

111. Mr. Krahn indicated that CN was resistant and would not allow a building or pump station in the CN right of way. Mr. Newman examined Mr. Krahn as to the function of a pumping station, power

failures, and the fact that the pumping station is also gravity driven.

112. With respect to the Capri Motel, Mr. Krahn acknowledged that from an engineering perspective, there was no reason why the pumping station could not go on the Capri Motel to the north of the property or immediately to the south of the property. The only concern was the Capri Motel was in close proximity of the Hydro Towers but that would have to be examined. There would be extra costs of about $125,000.00 for 50 meters of extra pipe. Mr. Krahn acknowledged that they did not cost out the economic damage or costs of taking from 1833 Pembina Highway as opposed to the Capri Motel. Mr. Krahn was examined as to the proposed expansion of the building at 1833 Pembina Highway, the loss of space and further suggestions as to relocation of the proposed pumping station as opposed to the present location.

113. Mr. Newman examined Mr. Krahn about locations of other pumping stations and whether hydro had ever been requested for pumping stations to be put on them. Mr. Krahn indicated that Hydro had indicated other than the stations, no other buildings were allowed but did acknowledge that there was not a specific request for a pumping station at this location. Mr. Newman had cross examined Mr. Krahn on the elevation of a pumping station being about 14.5 feet whereas the roof of the bus station would be approximately 19 feet. Mr. Newman had suggested that due to a

small size, that there was room within the corridor for a pumping station.

CROSS EXAMINATION OF MR. KRAHN BY MR. MERCURY

114. Mr. Mercury examined Mr. Krahn on Exhibit 53 which is a request for proposal issued by the City of Winnipeg Consulting Services for upgrading the Pembina Highway underpass. Mr. Krahn was examined as to what lands were examined and pointed out the extension in paragraph D3.3 referred to extension of the Southwest Rapid Transit Corridor in the Parker Lands, west of Pembina Highway, south of the CN Line, parallel to Parker Avenue. Mr. Mercury examined Mr. Krahn as to when in 2011 or in 2012, was there any consideration of an extension via the Parker Lands, to which Mr. Krahn acknowledged he was not aware of.

115. Evidence was that in the spring of 2013, City Council chose Option 1B which would include the taking of the property at 1500 Parker Avenue. The said taking would require the total taking and demolition of the property. In examining Options 1A and 1B (Dog Leg) there was a disadvantage to 1A according to Mr. Krahn, would have allowed continuation of the Transit Way in a westerly direction and a loss of considerable green space. Mr. Krahn testified that both Options 1A and 1B from a cost perspective, were less expensive than the Letellier route. Mr. Krahn was examined as to cost factors, the summary of the Winnipeg transportation master plan (Exhibit 65) and that costing with

respect to a potential acquisition would deserve a high level of examination. The examination of Mr. Krahn dealt with:

a. environmental concerns;

b. travel times; and

c. at the time of the master plan (Exhibit 55) and in 2011 there were two routes, one generally along Pembina Highway and the Letellier Route and the other being the Parker Land (1A).

116. The witness was cross examined extensively upon relative costs, different routes, and in 2013, Mr. Krahn acknowledged major costs would be land acquisition, comparing the Letellier Route to the Parker Lands Route and the construction costs as they relate to each option. Mr. Krahn was examined as to the fact that Mr. Radstrom had indicated that buses could travel up to 80 Kilometers in Option 1B but the average speed would be 40 kilometers per hour. Mr. Krahn was examined on build out costs at different alternatives and again confirmed there was little opportunity for build out on Option 2 (Letellier Line). Mr. Krahn was examined as to the design and scoring categories for different options. Mr. Krahn was asked if there was any consideration given to maintaining buses on Pembina Highway using express routes. In that regard, Mr. Krahn testified that they had examined six major quality corridors within the City and determined that Pembina Highway functioned at the very lowest level of service at the present time.

850 Pembina Highway

117. Mr. Krahn, on cross examination, stated that he had spoken to the owner of the properties consultant, Paige Lloyd, and there was a suggestion that there could be an easement as opposed to a taking. The actual procedure according to the City's lawyer was that the City would normally proceed with an expropriation. Once the expropriation is completed, would confirm it didn't require ownership of the land and convey it back to the owner and negotiate an easement for access.

118. Mr. Mercury and Mr. Krahn agreed that the base of the retaining walls underground are to the property line. Mr. Krahn further testified that the retaining wall, when first started is 2 feet in height, at half way through it is 8 feet and at the bottom it is 16 feet. The difference is there are different volumes of earth being held behind the retaining wall, which would require bigger foundations to accommodate that weight. Mr. Mercury and Mr. Krahn agree that the property line cuts very close to the corner at 890 Pembina Highway, but does not go through the building.

DIRECT EVIDENCE BY MR. KRAHN UPON BEING RECALLED

119. Mr. Krahn indicated that he has examined his records and advised that the Pembina Highway LDS costs (Land, Drainage, Sewer costs) are 20% of the LDS costs and that the Stage 2 LDS costs were 80% of the overall LDS costs. Furthermore, the cost of $590,000,000.00 for the project had been updated to

$598,500,000.00 due to some additions but testified the $598,500,000.00 is still within the budget.

RE-EXAMINATION OF MR. KRAHN BY MR. MERCURY

120. With respect to land acquisition costs of $11,602,015.00, the first number of $7,900,000.00 did have the costs for CN and Hydro. The new figure of $11,602,015.00 includes Cn and Hydro. These costs are based on estimates as the final negotiations have not been concluded.

CROSS EXAMINATION OF MR. RADSTROM BY MR. HACAULT – TAYLOR LANDS

121. Mr. Radstrom was cross examined with respect to the parcel of land identified as parcel no. 30 on Exhibit No. 5 and parcels that are owned by Shidico. The land that was so identified (Jubilee Avenue/Pembina Highway overpass) is to accommodate the CN Rail tracks. Mr. Hacault referred to Exhibit 62 which is an aerial photograph of, and this was reviewed in connection with the Taylor Redevelopment Master Plan. The parcel in question is on the south side pf Sparling extending west from Harrow Street where there are no homes. Exhibit 64 is a Pre-Con Builder's Plan dated October 2012 and Exhibit 65 was a revised site plan for the Taylor Lands. Dealing with parcel 30, the parcel is required for an Active Transportation Path and the land is required because the new slope, going under the underpass and sloping towards Pembina is that the City has do develop an S shape so the grade

will be more gentle for the people who will use that bike path and for cyclists and including people using wheel chairs.

122. The witness testified that apart from the Active Transportation Path, there was no use being proposed by the City for that land and it was suggested to the witness that as opposed to a taking, the land usage could be acquired by an easement. Mr. Hacault examined Mr. Radstrom with respect to the South Winnipeg Cycling Paths, Exhibit 66, with a blown up version of Jubilee Avenue and Pembina Highway. Exhibit 66, Mr. Radstom indicated there is a cycling facility along Harrow Street, the cycling facility runs southward and branches off through Harrow Street East. It continues south along Harrow Street and just north of Taylor Avenue and branches off at Harrow Street and meets up with Pembina Highway.

123. There is also a second cycling facility along Jubilee Avenue, if you are coming west on Jubilee Avenue, it meets up with the Jubilee Avenue overpass. In addition, the evidence was there are two parallel cycling facilities, one along Argue Street in the Fort Rouge area as well as a path way in Stage 1 of the Rapid Transit Way where they eventually meet at Pembina Highway and Jubilee Avenue. The evidence was the Southwest Transit Way and the Argue Street path and Jubilee Avenue path are isolated from the Pembina Highway paths and are not connected. The evidence was that there is a bike path that goes along Harrow Street in a southerly direction and then turns somewhat easterly to Harrow

Street and continues and branches off that there is a “Y” intersection on Harrow Street East and proceeds towards the Taylor Lands. Mr. Radstrom indicated, from an engineering perspective, dealing with Y intersections demonstrated on different exhibits.

124. Mr. Hacault asked if an easement would be sufficient to satisfy the City’s land requirements, to which the answer was yes.

CONTINUED CROSS EXAMINATION OF MR. KRAHN BY MR. HACAULT

125. Mr. Hacault questioned Mr. Krahn as to whether or not there were any traffic studies done for the East/West bound traffic from Gull Lake Road to Markham Road/Pembina Highway. Mr. Krahn indicated he has no dates to reflect that. Exhibit 69 was existing traffic counts from June 26, 2013 to Friday, June 28, 2013. Mr. Krahn acknowledged that, with respect to not using Markham Road was an option up until December 2013, and previous discussions, as recent as November 29, 2013, all referred to Markham Road. The December 6, 2013, memo (Exhibit 70) had preliminary drawings and initially, the expansion would not be the whole length of the street but, to which he replied no, and the buildouts were all on the north side. However, across from 75 Southpark Drive is 88 Southpark Drive, the design has changed so that 88 Southpark Drive will now have transferred from the City some land for parking.

126. Mr. Krahn acknowledged that the geometry has changed and the plan has a curve extending past 75 Southpark Drive to the public lane and that the design has been modified to allow garbage disposal vehicles to turn around at the rear of 75 Southpark Drive.

127. Mr. Hacault questioned the witness extensively as to issues concerning 75 Southpark Drive there had been a detailed response.

128. Mr. Krahn acknowledged that there had been discussions with the owners of 88 Southpark Drive which Mr. Hacault suggested led to reconfiguration to allow for parking and garbage removal to which Mr. Krahn could not reply.

129. Mr. Hacault examined Mr. Krahn as to bus routes that would travel, traffic flows, and the evidence was that Markham Road would have had to have been reconstructed from one end to the other to make it capable of handling additional buses. Mr. Krahn again indicated the intersection configuration would be difficult at Markham Road and Pembina Highway. Mr. Krahn responded to the questioning with respect to noise, parking and whether or not the City would accommodate 75 Southpark Drive the same way they accommodated 88 Southpark Drive to which Mr. Krahn could not answer. Mr. Krahn indicated that there was no need for any noise level reduction at 75 Southpark Drive and that there are at least 2 additional parking spots being allocated.

130. Mr. Krahn was examined as to the bus routings that would be servicing the south end of the city and the University of Manitoba. Mr. Krahn confirmed that everything that goes down Southpark Drive will go to the University and that would be 200 to 300 buses and all other buses would go down Markham Road. Mr. Krahn indicated that Markham Road is a slightly narrower street and would need to be widened by 4 to 5 meters.

131. Mr. Krahn was examined on parking both at the rear of 75 Southpark Drive and on the street, snow removal and that there have been no direct discussions with the owner or the property manager with respect to these issues. Also, Mr. Krahn did acknowledge that in preparing the designs, there had been considerable input from both the University of Manitoba and Investors Group.

132. Mr. Hacault also canvassed the witness concerning the impact of the buses on Southpark Drive, not only for the increased traffic flow which increases most generally, but there would be the acceleration and deceleration and whether or not noise barriers had been contemplated which he acknowledged they had not been.

RE-EXAMINATION OF MR. KRAHN BY MR. MERCURY

133. Mr. Mercury questioned Mr. Krahn on whether in Option 1B whether the Transit Way runs parallel to the residences, will there be any negative impact. Mr. Krahn responded that the distances

that are offset, which are over 100 feet, would not negatively impact the noise in the sense of increasing it. Mr. Mercury questioned Mr. Krahn on questionnaires respecting public consultation and that there were 331 survey respondents. According to the report prepared, alignment 1A was selected by 37% while 1B was selected by 62.5%.

FURTHER CROSS EXAMINATION OF MR. KRAHN BY MR. NEWMAN

134. Mr. Krahn clarified that the station will be outside the 15 meter right of way of Manitoba Hydro, but the roadway would be within the right of way.

FURTHER EXAMINATION OF DAVID KRAHN BY MS. PAMBRUN

135. Mr. Krahn was recalled as a witness and was able to advise that since he last gave evidence, he was able to obtain certain information relative to traffic counts at Markham Road and Pembina Highway. At present, Markham Road is considered a minor collector street which is designed to accommodate up to 5000 vehicles per day and the current counts are 4300. Unfortunately, traffic counts at the intersection of Markham Road and Pembina Highway are not available but he was able to extrapolate about 4300 vehicles on Markham Road, the number of turning vehicles on Markham Road eastbound, turning left, which is north on Pembina Highway would be 2400 vehicles per day. At present, Southpark Drive would have 10% or 20% of those vehicles.

136. The Southpark Drive option for vehicles movements would be eastbound Southpark Drive to northbound Pembina Highway and because there is no intersection on the opposite side, which is east on Pembina Highway, the design can reconfigure that intersection as close to 90 degrees as possible and that this design would not be possible at Markham Road.

137. With respect to Southpark Drive, at the west end of the street, at the back lane is a dead end. Currently, Mr. Krahn testified there is a turning angle of 125 or 130 degrees and the back lane would be significantly improved with a 90 degree curve other than a standard curve and the curvatures could accommodate vehicles at that location. Mr. Krahn indicated that in his view, vehicles such as garbage trucks, will have improved access in that the vehicles can continue going in a southerly direction and take a U-turn that has been accommodated for residents.

138. Mr. Krahn testified that if the Letellier line had been used, there would be less surplus available as it relates to getting off of the Transit Way and that the major exit from the Transit Way would be McGillivray Boulevard as compared to Options 1A and 1B.

139. Mr. Krahn also testified that he is acting as the City's advocate although he has yet to have a formal contract to that capacity.

EXAMINATION IN CHIEF OF DR. SCARLETT POLLOCK BY ANTOINE HACAULT – Respecting 1679 Pembina Highway

140. Dr. Pollock was called as a witness and she testified that she has a PhD in sociology of health issues and medical sociology. At present, Dr. Pollock is the CEO for Pembina Care Service who operates as the Golden Door Geriatric Centre. Dr. Pollock examined the parcels of land that would be affected and indicated that, the taking, if it proceeded though the Centre lands, would affect the long term sustainability of the property. At present, the care facility currently have plans to develop the care home and are considering either adjacent to the current property, or across from those two lots. The issue would be whether they would build an additional building, or expand the existing building.

141. One of the considerations on new construction is they could operate without closing the old one and it was pointed out that the facility is approximately 50 years old.

142. Dr. Pollock testified that in discussions with Manitoba Hydro, they have agreed to redesign their plans so that the pipe would cross Hudson Street, allowing the facility to continue over the roadway and to continue west along the property line on the northwest. The pathway would now take a different configuration, which would follow the same path as the Manitoba Hydro easement which would start the active transport path from the southerly end of Hudson Street to against Lot 5. Dr. Pollock indicated that there were possibilities, instead of the complete taking, that the witness'

understanding was that an easement would allow us the distance from our existing property line in improving the construction distance between the buildings that we would construct and the property line. This would allow the facility and the existing dimensions to work even though there would be a paved bike path and a walkway on top of it. It would also, according to Dr. Pollock, allow Hudson Street as an emergency route for vehicles and access to the facility.

CROSS EXAMINATION OF DR. POLLOCK BY MR. NEWMAN

143. Mr. Newman examined the witness and obtained clarification with respect to the evidence that was given. Mr. Newman suggested that whether it was possible that, on the corner of their property, for a small brick structure. Dr. Pollock answered no, because we do have plans for a shape and structure, and whilst the have not decided the final one, there are two main options. Dr. Pollock indicated that with the design options, there is not a fair amount of flexibility.

CROSS EXAMINATION OF DR. POLLOCK BY MS. PAMBRUN

144. Ms. Pambrun elicited from the witness different options that the City had been considering and the examination by the facility with respect to the different options for access to the facility. Dr. Pollock disagreed with Ms. Pambrun's suggestion that the project was in the preliminary stages in as much as the facility has received approval from the Winnipeg Regional Health Authority,

but have yet to work out the details with the City of Winnipeg, nor have any building permits been applied for or a construction date set. Dr. Pollock confirmed that there had been arrangements with Manitoba Hydro, but there has been no formal agreement signed with Manitoba Hydro.

DIRECT EXAMINATION OF SHAWN PARSONS BY MR. HACAULT (75 Southpark Drive)

145. Mr. Parsons testified that he has a trades background, property management background and some traffic engineering background as well from Red River Community College. Mr. Parsons has managed properties for 20 plus years and was responsible for 1500 apartments at 13 different locations. Mr. Parsons testified that he had been involved with the City with Stage 1 of Rapid Transit and had outlined his experiences in the past. Mr. Parsons testified that he had attended all of the hearings to date and had heard the evidence of Mr. Radstrom and Mr. Krahn.

146. Mr. Parsons was referred to Exhibit 18 which is a picture of the 75 Southpark Drive from the street and was also shown Exhibit 25 (aerial of Southpark Drive and expropriated area).

147. Mr. Parsons stated from personal experience, and examining pictures, he testified that in viewing the front of the building, there is the elimination of a loading zone which will restrict the ability of movement into the building and will push the loading zone further

down. This would result in an application to the City for a loading zone to be reinstated. Mr. Parsons testified that the loading zone should be moved and that some pad system be put in and that the loading zone be located where the Hydro vault is (see exhibit 25). Mr. Parsons testified that at the rear of 75 Southpark Drive, the construction and pad would not adequately accommodate large trailer type vehicles. Mr. Parsons also was concerned with parking as street parking will be basically eliminated and this would impact upon visitor parking. Mr. Parsons indicated that there would be a loss of parking stalls.

148. Mr. Parsons, in dealing with the new location of the property line, testified that the measurement comes approximately to the second step. Mr. Parsons gave evidence that there was no consultation and received no notification prior to the Notice of Expropriation being served. Mr. Parsons also raised concerns about increased noise and security and garbage pickup. Mr. Parsons testified that at present, Southpark Drive is a quiet street with no sidewalk and very little pedestrian traffic. The street itself has multiple family residence units. Mr. Parsons voiced the concern that very little interest was shown in their property as they were not consulted or being considered as a stakeholder, which was totally contrary to how the City had dealt with properties involved with Stage 1 of Rapid Transit.

CROSS EXAMINATION OF MR. PARSONS BY MR. MERCURY

149. Mr. Mercury confirmed for Mr. Parsons that he had been consulted by the City with respect to Stage 1 of Rapid Transit and the only property that he is involved in in Stage 2 would be the property at 75 Southpark Drive. Mr. Parsons confirmed that with respect to the properties at 3 Donald Street and 240 Stradbrook Avenue, he was approached by City officials prior to the Notice of Intended Expropriation so that a dialogue could be maintained.

CROSS EXAMNINATION OF MR. PARSONS BY MS. PAMBRUN

150. Mr. Pambrun elicited from Mr. Parsons that he did not see Notices in the newspaper and was not aware of any Notices being received by the tenants and his recollection was that he had contacted the caretaker who lives at 75 Southpark Drive and did not receive Notice. Mr. Parsons did not make any inquiries of other tenants.

151. Mr. Parsons testified that 75 Southpark Drive has 30 units which are a mixture of students and professionals, some labourers and the occasional senior. Mr. Parsons testified that the tenants all sign a 1 years lease and the lease is not necessarily short term because of the University Students renting. Ms. Pambrun asked him to compare 240 Stradbrook Avenue with respect to the demographics and advised that is was a pretty wide cross section of professionals, seniors, blue collar, white collar individuals, but does have fewer students. Mr. Pambrun examined issues that 240

Stradbrook and the witness acknowledged that there is no vandalism at 75 Southpark Drive, no break ins, no panhandling, and no people being harassed as they exit the building.

152. Mr. Parson confirmed that Southpark Drive consists of multi-family buildings and parking lots and a Shoppers Drug Mart and commercial at the Pembina Highway end. At the other end, away from Pembina Highway, the street, at present, basically dead ends at the CN Rail Line. Mr. Parsons confirmed that the street is the width of an alley and that two vehicles can get by one another, on the street and that the street has no dedicated parking and no sidewalk. Mr. Parson discussed the issue of loading zones, ramp ways being constructed and garbage pickup.

D. EVIDENCE ON BEHALF OF THE OBJECTORS

EXAMINATION OF DAVID SANDERS BY JAMES MERCURY

153. David Sanders was called as witness on behalf of the Objectors Catia Aparecida Macieira and Anderson Macieira and advised that he is not a property owner but has been involved in urban transportation. Mr. Sanders has 45 of senior executive experience in public administration and has post graduate training in political science, unban land economics, business administration, and was called to the bar of the Law Society of Manitoba in 2001. Mr. Sanders was a full member of the Commercial Division of the Winnipeg Real Estate Board from 1992 to 2004 and has conducted business tax assessment appeals for commercial and institutional properties throughout the City and has had many senior executive positions including Deputy Minister of Urban Affairs. Whilst being called as a witness on behalf of the Objectors, testified that he has not in fact been on the property and is only an interested citizen.

154. Mr. Sanders' testimony was very lengthy.

155. Mr. Sanders testified that in March 2013, he wrote to, then, Mayor Sam Katz that he was surprised that the Transit Corridor was being diverted along the Parker Lands route/ the Manitoba Hydro route, when it has always been planned to be a direct route down the Letellier Line beside Pembina Highway. Mr. Sanders went on to give evidence with respect to the Letellier route as opposed to

the Parker Lands, be it Option 1A or 1B. Mr. Sanders went on to detail his concerns about economic and environmental concerns and costs.

156. Mr. Sanders indicated that he had been in active communication with Manitoba Hydro and the City and had made applications under the *Freedom of Information and Protection of Privacy Act* to obtain further information. Mr. Sanders testified that he was surprised at the suggestion of the advantage of the Parker Land route as somewhat untied to the lands to the west of the part of the Transportation Master Plan for the City. Mr. Sanders was concerned with environmental issues, funding, future development, and that the design would not meet the future objectives of the City.

CROSS EXAMINATION OF DAVID SANDERS BY MS. PAMBRUN

157. Ms. Pambrun confirmed that Mr. Sanders is not a planner or an engineer, and has no degree recognized respecting engineering or biology.

158. Mr. Sanders acknowledged that the City of Winnipeg has no jurisdiction over rail lines and in response to Mr. Sanders suggestions that the CN Letellier Line runs parallel to Pembina Highway be relocated. Mr. Sanders acknowledged that the relocation of the railway line would affect other property owners and that he has had no discussion with CN since 1976 when he was a Deputy Minister for Urban Affairs.

159. Mr. Sanders was aggressively examined and acknowledged that there were no build outs of opportunities if they followed the Letellier Line and that there would be further grade intersections used in the Letellier Line. With respect to environmental, Mr. Sanders testified that there is nothing to be gained by taking the Dog Leg and a lot to lose, namely, the fact that there a few large green areas left in that part of the city. The concern is not only environmental for the private sector use.

CROSS EXAMINATION OF DAVID SANDERS BY MR. HACAULT

160. Mr. Sanders, on cross examination, agreed that there was an insufficient analysis done between the Letellier option and the Parker Lands. Mr. Sanders indicated that there should be a functional design study in order to justify the expenditure of approximately $590,000,000.00.

DIRECT EXAMINATION OF FRANK CALIGIURI BY ANTOINE HACAULT ON BEHALF OF 2114062 MANITOBA LTD.

161. Mr. Caligiuri is the president of the said company who is the owner of 75 Southpark Drive. Mr. Caligiuri was very gracious but did indicate that as a property owner, he did not receive any Notice of Bus Rapid Transit that would impact on his 30 unit apartment building on 75 Southpark Drive. Mr. Caligiuri indicated that the first Notice was on March 15, 2015 via a Notice that came to him through Quality Management Ltd. Mr. Caligiuri gave evidence that Southpark Drive is a very quiet street and the apartment block had

not been affected by vibrations, pollution or traffic noise, and was concerned about the ramifications on the property as outlined by Mr. Parsons.

CROSS EXAMINATION OF MR. CALIGIURI BY MS. PAMBRUN

162. The witness confirmed that it was until recently that he learned of the proposed expropriation and that information came from Shawn Parsons as opposed to any news announcements or notices received. Mr. Caligiuri gave evidence on cross examination about the location of the stairs and the fact that the City has indicated that they are prepared to move the loading area. Mr. Caligiuri indicated he was so aware, but that was only a partial solution. Mr. Caligiuri has owned 75 Southpark Drive for approximately 20 years.

CONTINUED CROSS EXAMINATION OF DAVID KRAHN BY JAMES MERCURY

163. On September 2, 2015, before this inquiry, Mr. Krahn had given evidence relating to the improvement of services on Pembina Highway and he has provided further information. Mr. Mercury, as a result of receiving further information, he questioned Mr. Krahn further. Mr. Krahn confirmed that Dillon Engineering had considered designating a lane for buses on Pembina Highway as one of the option for the improvement of transit service and had confirmed that that was not feasible. Mr. Krahn testified other measures that were considered were Q jumps for TPSIS. Q jumps

are where a bus get permission to go to the front of the line when the signal is a priority light. Also, they looked at traffic optimization along the street that makes the flow of traffic more efficient. So, in fact, it was a combination of those types of improvements as well as quality corridors. Mr. Krahn indicated that as a result of that, Q jumps priority signals and the optimization of traffic signals along Pembina Highway.

CONTINUED CROSS EXAMINATION OF DAVID KRAHN BY MR. NEWMAN

164. Mr. Newman confirmed that AECOM were sub consultants to Dillon Consulting and that their specialty was in respect to land drainage. The drawings prepared show that the proposed pumping station would be located within the transit corridor.

CROSS EXAMINATION OF MR. KRAHN BY MR. HACAULT

165. As a result of documents provided by the City, Mr. Hacault had questions relative to excerpts from the draft 2012 Transportation Standards Manual of the City. Mr. Krahn confirmed that Pembina Highway at the intersection of Markham Road and Southpark Drive as a major roadways and that the standards provided for typical traffic volumes are 20,000 vehicles per day and that evidence had been tendered that there is presently 30,000 on Pembina Highway. The witness was questioned on residential collector streets and the fact that if Markham Road is converted from a 2-lane to a 4-lane street, it would qualify as a residential

collector street and the response was that once it reaches 5,000 vehicles, the City considers the improvements to go along with that. The witness was canvassed concerning sections of the Transportation Association of Canada Manual (Exhibit 85) Intersection Design.

DIRECT EXAMINATION BY MR. NEWMAN OF MATTHEW NARVEY ON BEHALF OF MCDONALD GRAIN COMPANY LIMITED, 1833 PEMBINA HIGHWAY

166. Matthew Narvey was called as a witness on behalf of the property owner of 1833 Pembina Highway and he testified that he was President of Towers Realty Group which are the property managers. Towers Realty Group manages and develops commercial and multipurpose properties, mainly in Manitoban, Saskatchewan and manages approximately 4000 units. Towers Realty Group in involved in multifamily properties, condos, and rental properties. Mr. Narvey testified that he has been with Towers Realty Group for 5 and possesses a B.A and an M.B.A.

167. The subject property at 1833 Pembina Highway is a 7 storey concrete building constructed in 1973 and Towers Realty Group has managed it since the year 2009. In 2010, Towers Realty Group, at the request of the property owners, did an analysis of the property and a study of option to increase the value and the long term cash flows relative to same. The options that were considered were:

a. Maintaining the status quo;

b. Renovating the building completely; and

c. Adding units to the property.

168. Mr. Narvey indicated that in terms of the options, renovations commenced in 2011 and there was a complete renovation including plumbing, fixtures, cabinets, flooring, windows, mechanical units, air conditioning units, elevators, painting and fixing the parking lot. Also, the witness testified that new appliances, including dishwashers, fridges and stoves, were all improved upon. These renovations were completed in 2012. Mr. Narvey gave evidence that in managing units over the past 10 years, there has been a relationship between achieving higher rents and the availability and demand for parking.

169. Mr. Narvey was directed to Exhibit 9 which depict the property holdings of 1833 Pembina Highway and identifies a triangular piece of land that is designated as the pumping station required for the rapid transit. Based upon the evidence available. Mr. Narvey indicated 12 parking stalls would be lost and this is significant as there is no on street parking available. The witness testified as to the lost revenue they would have from the stalls and that there would be difficulties in renting units without the availability for parking stalls.

170. Mr. Narvey was shown Exhibit 50, which is a drawing showing the existing units and the addition directly to the west and darker greyish paths with respect to an addition with the drawing

signifying what is in existence marked in dark grey and the proposed addition marked in lighter grey to the west, directly attached to the building. The proposed addition would be a 7 storey structure with 42 units. Exhibit 87 is a series of drawings that depict the picture of the existing building and drawings for the proposed construction and unit designs.

CROSS EXAMINATION OF MR. NARVEY BY MS. PAMBRUN

171. During a very short cross examination Mr. Narvey acknowledged that the new construction proposed would be a taking of about 23 parking stalls and notwithstanding the taking, the expansion would be viable. With respect to the proposed expropriation, approximately 12 parking stalls, half of which would be for parking.

172. Mr. Narvey, on cross examination, indicated that he had had discussion with Manitoba Hydro in an attempt to obtain additional parking stalls.

DIRECT EXAMINATION OF CATIA APARECIDA MACIEIRA RE: 1500 PARKER AVENUE BY JAMES MERCURY

173. The witness testified that she, her husband, and her two children, ages 3 years and 2.5 months, have resided at 1500 Parker Avenue since 2005. The witness testified as to the park like settings with trees, privacy and what appears to be a park like setting. The present property is also convenient for both the husband and the wife to easily get to work. The witness testified that in 2013, she received a phone call from someone

representing the City of Winnipeg and made arrangements to come to her home and showed her two maps although the witness was not clear as to what designs were being shown, A or B, one was Parker Avenue, but she could not remember whether the second map was the CN proposal. At that time, the witness testified that the expropriation was other property and that her property would not be affected by the expropriation. The witness further attended an open house on November 8, 2013, the only open house she attended, and at that open house they were not advised that their property would be required. Subsequently, the witness followed up with City representative Donovan Toews, by emailing him and asking for an update and up until the spring of 2014, the witness testified, there was no indication that the property was being taken. The witness testified in January of 2015, they received a letter in the mail which set forth the intent of the expropriation.

CROSS EXAMINATION OF CATIA APARECIDA MACIEIRA BY MS. PAMBRUN

174. The witness confirmed that the only open house she attended was in the fall of 2013 and they did not attend subsequent open houses. The witness indicated that at the open in the fall of 2013 there was a display board which showed the Transit Way going through the property. The witness acknowledged having seen that drawing but thought it was an option but “we had no idea that was totally going to go completely”. The witness acknowledge that

seeing the taking going through her property but it did not trigger her to question Mr. Donovan Toews who was present. The witness acknowledged having received emails from Mr. Toews but did not interpret it to mean that all of their property was going to be taken.

DIRECT EXAMINATION OF JASON ZARNOWSKI ON BEHALF OF 3346234 MANITOBA LIMITED, REPRESENTING SHINDICO/TAYLOR LANDS BY MR. HACAULT

175. Mr. Zarnowski testified that he is the Legal Affairs Manager at Shindico Realty and that Shindico Realty is the manager for the property at 1000 Taylor Avenue, but the property in question is at Taylor Avenue and Pembina Highway. Mr. Zarnowski was called to the bar in 2008 and was employed by Shindico since May 2011.

176. The witness was shown Exhibit 62, a google map, which is a proposed alignment called the “Grant Park Pavilion” which includes lands commencing at the pavement on the west side of the Taylor Lands and extends to the north side of the railway tracks at Pembina Highway. Mr. Zarnowski was referred to Exhibit 64 which is a plan of development that is marked “Mixed Use DEV. And Grant Park Crossing Pre-Con”. The witness testified that a development plan was prepared in October 2012 and submitted to the City as part of a rezoning application.

177. In this case, the expropriation deals with the different lands identified as Grant Park Mews which was intended to be used for mixed use high density residential and some small service retail

and restaurants. The master plan was ultimately approved by the City of Winnipeg with a couple of small changes. The approval was done by the City Council on May 29th, 2013.

178. Mr. Zarnowski went over the design features, development process and that there was an issue as to the side yards on lands adjacent to Pembina Highway. The witness, as an aside, it is a question as to whether or not a side yard or front yard ought to be 50 feet from the other zoning district boundary. The evidence is, for use of the land near Pembina Highway, there would be a 50 foot front or side setback. The 50 feet would be measured from the edge of the property to the edge of the building so the present taking would be to the edge of the entire public right of way as opposed to the edge of Pembina Highway.

179. Mr. Zarnowski testified that the documents he referred to were conceptual plans but the property is all accounted for and a taking of any land impacts the development. Mr. Zarnowski indicated that there had been discussion with Mr. Krahn is not asking for any part that is required not for the CN right of way, but for a bicycles path, by way of an easement. The witness testified that they believe that their wishes could be accommodated on lands owned by Shindico as opposed to a taking of a fee simple. The Witness testified that their goal would be that instead of taking all of the lands to the right, requiring the buildings to move to the left, that the city take an easement to allow the Active Transportation path to continue on their lands. As a point of interest, the Transit Way is

not using the entire length of Pembina Highway, notwithstanding that there is a taking for that stretch.

180. The witness gave evidence and examples of how Shindico and the City have worked cooperatively, one in Transcona at the shops of Kildonan and the WHRA Quick Clinic on Burrows and Keewatin where easements were used as opposed to full takings.

181. Mr. Hacault drew to Mr. Zarnowski's attention, on Exhibit 4, the beige/light brown Active Transportation Path that currently belongs to the numbered company. The witness indicated the portion in orange is to be taken for the CN relocation but the objector could use this land for signage.

182. The witness also testified with respect to Exhibit 65 that as a part of the active transport plan, they realized they would not be able to use the property to park on, but would be used as part of their landscaping for the buffer from the right of way. Thus, if an easement is taken, proceeded by attractive landscaping, it would facilitate development.

183. It may cause a loss of 10 feet of parking for the entire length of the property.

CROSS EXAMINATION BY MR. PAMBRUN OF MR. ZARNOWSKI

184. Mr. Pambrun confirmed with the witness that in respect to the building, which is identified as a senior's complex, lines up basically to the property line and that this would be contrary to the

By-law that requires a 50 foot offset. Mr. Zarnowski confirmed that when they do their construction they build it with compliance to the city of Winnipeg Zoning By-laws.

185. Mr. Zarnowski was questioned on whether or not the complex could be reconfigured, but answered to the extent that the building would have to be moved and would impact the rest of the site, reducing the buildable area and thus reducing revenue and hence reducing taxes. Ms. Pambrun asked Mr. Zarnowski whether or not the evidence was that it was physically impossible to guild the 100 units in the space available with the 50 foot offset. Mr. Zarnowski responded that “as part of our design processes, we will ensure that we will maximize the buildable on the site. To the extent that land is being taken away from us, that will reduce our maximum and so will reduce our buildable.”

186. Mr. Zarnowski acknowledged that at this point he does not know how much square footage would be lost from the development and from a conceptual basis, they may lose 20 to 25 parking stalls.

187. Ms. Pambrun referred to Exhibit 44, the curve shape which has an 18 foot path from Pembina Highway and Harrow Street and advised the witness that there would be a retaining wall between the ATP path and the rest of the subject property. The question was that if the ATP path be of use if it was acquired by way of an easement. To this, the witness answered “absolutely, it would still assist us with our calculation of side yards and they give us more

flexibility to our buildings." With respect to the second piece on the south of the property. It is very steeply sloped and the witness indicated that that land, if it was taken by way of an easement, would still be of value to Shindico.

REDIRECT OF MR. ZARNOWSKI BY MR. HACAULT

188. Mr. Hacault put to the witness the suggestion by counsel for the City that there is a line that runs west of and parallel with the Active Transportation Path firstly going to the property line and then secondly, south of where the Active Transportation Path would go on the numbered company's property "starting just south of the curve again a retaining wall would run parallel with the west of the active transportation route going up to the required land." Then Mr. Hacault asked that the "retaining wall would go in a westerly direction to the south end of the curve which is required for the ATP and that retaining wall would head in a westerly direction and run parallel with the Active Transportation Path up to the required land" The witness indicated that if the land was not taken and an easement was granted, they would certainly allow maintenance work on the retaining wall in the same way it would on the Active Transportation Path.

DIRECT EXAMINATION OF PAIGE LLOYD ON BEHALF OF 850 PEMBINA HIGHWAY BY JAMES MERCURY

189. Mr. Hacault tendered Ms. Lloyd's *curriculum vitae* as Exhibit 94 and she confirmed she started her career as a Technical Drafter,

obtained her Master's Degree in Architecture in 2007 and in 2013 registered ARCCADD Architecture Inc. which she is the principal owner of. Ms. Lloyd indicated that she is familiar with the properties located at 850, 870 and 890 Pembina Highway on behalf of the principal owner Mr. Rick Schale. Ms. Lloyd described the buildings as follows:

a. 850 Pembina Highway, pre-existing building previous to the current ownership which is approximately 20,000 square feet and is leased by Ice Furniture's and B & L Homes for Children. Her company's involvement with this project came after the purchase with respect to renovations in 2008. The witness testified that one of the tenants has 19 parking stalls in their lease and B & L Homes has 90.

b. 870 Pembina Highway, structure newer that 850 Pembina Highway and is occupied by the Association of Professional Engineers, Granite Financial and Julie Wang Law Corporation. This building is 15,000 square feet, 2 storeys, and was completed in 2008.

c. 890 Pembina Highway, building that was occupied by the College of Registered Nurses of Manitoba, 15,400 square feet, 2 storeys and completed in 2005.

190. The witness testified that she had made inquiries with Dillon Construction with respect to movement of the property line. Her understanding was that the movement of the property would accommodate the retaining wall that would be constructed for the project. Ms. Lloyd's evidence was more voicing concerns regarding the front yard setback, access to the building, fire access to the building, fire lanes, landscaping and parking space. The proposed taking would cause a loss of 12 of 207 parking

stalls in the total property. The taking of these stalls would most impact the College of Registered Nurses and B & L Homes.

191. Mr. Hacault put to the witness that if the City took an easement as opposed to taking fee simple ownership, would this lessen the impact. Ms. Lloyd acknowledged that an easement would reduce many of the concerns but there would be concerns relative to the relocation of the rail track closer to the building, noise, lighting, and parking. Thus, the witness' final comments were "the concerns were dramatically reduced".

CROSS EXAMINATION BY MS. PAMBRUN

192. Ms. Pambrun had Ms. Lloyd acknowledge that Mr. Schale is only one of the owners and there is a property manager, Colliers. Ms. Pambrun inquired from Ms. Lloyd whether or not Colliers or the owners received any letters or notices respecting the expropriation or if they noticed any notices in the newspaper or whether they were invited to any of the 20 stakeholders meetings. Ms. Lloyd was unable to answer whether the owners or the property managers had received any of the foregoing or saw any of the foregoing. With respect to the tenants, Ms. Lloyd was also unable to answer whether or not they had received any notices or had been invited to any stakeholders meetings. Ms. Pambrun also asked the witness what her concerns were with respect to the railway track being located closer to which she acknowledged the CN Rail track would still be within the CN right of way and that CN certainly has a right to do same within their property. Ms. Pambrun

questioned the witness on issues raised by her with lighting, drainage, preconstruction report and whether or not land requirements at 850 would be grandfathered in with the expropriation.

193. Ms. Pambrun questioned the witness on the easement where the owner would continue to own the property and the City had the easement or if the City was a property owner and had an easement to which the witness testified that “it would definitely be more attractive for the owners to maintain ownership”.

E. REVIEW OF EVIDENCE

194. The evidence disclosed that the proposed expropriation is to develop a Bus Rapid Transit System from Jubilee Avenue and Pembina Highway, to the University of Manitoba and at the same time, to do the development of the Pembina Highway Underpass at Jubilee Avenue and Pembina Highway.

195. The City in November of 2011, had adopted a Transportation Master Plan that identified the two projects and caused Dillon Engineering, as a consultant, to review proposed Rapid Transit for the southwest corridor. Dillon produced a Report entitled Southwest Rapid Transit Corridor, Stage 2 Alignment Study, dated January 3, 2013, and in the Report, it examined 4 options; Option 1A, Option 1B, Option 2 and Option 3, all of which are described in detail in paragraph 15 hereof.

196. The City called two witnesses, Mr. Radstrom and Mr. Krahn.

197. Mr. Radstrom, a professional engineer who is employed by Winnipeg Transit, gave evidence as to the extent of the two projects being Southwest Rapid Transit Corridor and the Pembina Highway Underpass. The City, decided after examining various options for the Pembina Highway Underpass, and development plans for Rapid Transit Stage 2, decided to combine the projects.

198. The reasons for the combination of the projects were:

a. Close proximity to each other;

b. Reducing throw away costs;

c. Lessen traffic disruptions;

d. Minimize disruptions to businesses; and

e. Overall project costs would be less expensive.

199. Mr. Radstrom testified that the City chose Option 1B (previously described as “Dog Leg” option) for the following reasons; affordability, fewer properties that had to be acquired, less impact on adjacent neighborhoods, buses can travel at higher speeds and have less level crossings than the Letellier route, the Dog Leg option meets the requirements for space and includes pedestrian facilities.

200. Mr. Radstrom gave evidence that the Letellier Option as to 1A was examined and it was felt that the corridor for Rapid Transit along the CN right of way would be very narrow and would limit development, not provide proper access stations and pedestrian pathways. The preferred routing provides an opportunity for Park and Ride Stations.

201. The construction at the Pembina Highway Underpass is not only the widening of Pembina Highway and lowering it to meet code, but will improve the present pedestrian traffic which is very limited and will be developed to provide corridors on either side of Pembina Highway.

202. Mr. Krahn, a Professional Engineer and a partner of Dillon Consulting, as a representative of Dillon Consulting, gave

evidence to development with the alignment study and the fact that it would work cooperatively with various City departments, outside partners, including Manitoba Hydro, the University of Manitoba, Stevenson Advisors. Mr. Krahn outlined the issues and examined issues both with the application and implementation. These issues are:

a. Length of project

b. Buildouts;

c. Actuated intersections;

d. Number of structures affected;

e. Drainage;

f. Speed;

g. Reliability;

h. Safety Issues;

i. Impact on traffic;

j. Projected schedule;

k. Costs.

203. Furthermore Mr. Krahn testified that there was a comprehensive comparison relative to the Letellier Option as opposed to Option 1B.

204. The witness gave evidence as to public consultation and as to the notices that were sent out for open houses, stakeholders meetings, and public meetings. The evidence was that there were three rounds of consultation. In November of 2013, February 2014, and the spring of 2015.

205. The evidence shows that at the outset of the Inquiry there were initially 11 objectors but the objectors at 555 Hervo Street (GBR International Inc., R.S. Harris Transport Ltd., and North American Food Ingredients Inc.) represented by Vincent Bueti, withdrew their objections during the course of the Inquiry.

The evidence as to specific properties is as follows:

850 Pembina Highway

206. Evidence respecting the taking of 850, 870 and 890 Pembina Highway was addressed as the land was required for the construction of a retaining wall for the support for the Pembina Highway Underpass and also, movement of the property lines for an Active Transportation Path. The impact would affect parking and traffic flow. Evidence was given by both of the City's witnesses and Paige Lloyd and there was a consensus that the City's requirements could be achieved by an easement as opposed to a full taking.

1679 Pembina Highway

207. The proposed taking at 1679 Pembina Highway is where Pembina Care Services operates a seniors' facility. The proposed taking of the active pathway would effectively cut the property into two sections, impacting their proposed development, reducing access to other streets, and would impact the operation stability of the company. Dr. Pollock on behalf of the personal care home had given evidence as to proposed expansion and had received

approval from the Winnipeg Regional Health Authority. The evidence disclosed that upon this being provided to the City and Manitoba Hydro a new design was effected which would run along the perimeters of the property and any taking could be included by way of an easement.

1833 Pembina Highway

208. The property at 1833 Pembina Highway is to be affected by a proposed taking for a pumping station at the rear of the property. The existing apartment block (Drury Manor) has recently completed major renovations and is planning to expand. The objectors argued that the proposed taking will not only affect parking but the expansion and the other locations near where the pump station could be located. The City maintains their position that other options are not viable or available. Furthermore, the Objector argues that the City had failed to do a proper analysis of the properties in the surrounding area to consider the economic impact of the taking upon the City.

2211 Pembina Highway – ACI Shoppers Southpark Ltd.

209. The actual taking of the property would affect the corner of the property on the southwest side of Pembina Highway and Southpark Drive. The effect of the taking, in order to do construction around Pembina Highway, would require the taking of a number of parking stalls. The discussion centered around the loss of parking stalls configuration of the lot, but for the most part,

the discussions centered around the decision to use Southpark Drive as access point from Rapid Transit to the University of Manitoba as opposed to Markham Road which had initially been the designated route. The decision was made late in the development plans in December 2013.

Takings No. 30 and 39, 1000 Taylor Avenue

210. The proposed taking would affect the 50 square foot yard requirement for the property located at Taylor Avenue and Pembina Highway. The purpose of the taking is for a CN development and also for the Active Transportation Path and related retaining walls.

211. The position of the Objector is that, with respect to No. 30, there is no Objection *per se* and no objection to No. 39, provided the property is taken by way of an easement as opposed to a fee simple taking. The evidence of the Objector is that if the property was taken, it would affect their front/side yards and force the owner to move the planned and proposed development further to the west, thus denying it of room for development. The taking of the land would affect development, and in the words of Mr. Zarnowski: “space is the most important commodity for development”. The Objector indicated that the owner had worked cooperatively with the City in two other locations within the city where easements were given as opposed to a full taking.

1500 Parker Avenue – Catia Aparecida Macieira and Anderson Macieira

212. The Objector, in the present circumstances, has filed an Objection with respect to the taking of the property and the proposed routing. The proposed taking, using the preferred route (1B), would require the taking of the property and the demolition of the residence. This would be the only residence that would be expropriated under the proposed plan 1B. The evidence further disclosed that if the Letellier option was followed, the property at 1500 Parker Avenue would not be needed but 72 other residences would be affected by the taking.

213. The Objector raised the question of the City choosing 1B as opposed to the Letellier option. The City had presented significant evidence as to why Option 1B would be the preferred route and the Objector, on cross examination, and by witness David Sanders, challenged the positions of the City *inter alia* land acquisition costs, speed and travel times, buildout costs, lack of investigation into future development, property resale, environmental impact and funding.

75 Southpark Drive

214. Southpark Drive, the evidence disclosed, is a short residential street that is bounded by the CN Line on the west and Pembina Highway on the east. The decision to use Southpark Drive was developed by the consultants in December 2013 and prior to that date, the proposal and design had been to use Markham Road

from the Transit Way through to the University of Manitoba. The Evidence disclosed that the proposed taking was to cause the street to be widened along with an ATP. The street will not be any closer to the entrance to 75 Southpark Drive but the ATP will encroach upon the present stairs to the building and will require the stairs to be reconfigured. The taking would also adversely affect parking, garbage pickup and the nature and quality of the apartment.

215. Critical to the proposed taking was whether the proposed taking had fully considered the impacts upon Southpark and the alternate use of Markham Road. Evidence disclosed that the owner had received no direct contact from the City with respect to the proposed taking until it received the Notice of Intended Expropriation and although there had been Notices and public advertising, they had not received or seen same.

F. POSITION OF THE PARTIES

216. The parties, through their respective counsel made submissions both orally and written.

POSITION OF THE CITY OF WINNIPEG

217. The City in their position, pointed out that the City called professional engineers. The other witnesses, the City argued, had vested interests, whereas the consultants and City staff had no axe to grind. The consultants and their employees were not affected whether the proposed transit line went down the CN Letellier Line or through the Parker/Hydro Lands. Also, the City consultants and engineers have kept an open mind and have made changes when they are required.

218. The goal of the Transit Way is to provide a high order of transit service to southwest Winnipeg: high speed, high availability, high frequency, real time passenger information, state of the art buses, outstanding public works, beautiful stations and smooth rides on a quality running way. The proposed Active Transportation Path (ATP) which provides for separate lanes for cyclists and pedestrians, will be built along the length of the Transit Way including connections to existing path and sidewalks through the Pembina Highway Underpass at Jubilee Avenue.

219. It is submitted that with the projected growth in population in southwest Winnipeg, and limited opportunities to expand roadways, the Transit was is essential to accommodate the

increase in traffic and to shift more travel to public transportation and active transportation.

220. It is projected that Transit Way will provide transportation at 45 Kilometers per hour as opposed to 20 Kilometers per hour mixed service. The Rapid Transit Way, when completed, will include service for events at Investor's Group Field and park and ride lots at two Transit Ways in order for fast convenient service. Furthermore, the completed Transit Way will provide access and frequency for development of the Fort Rouge Yards, Parker Lands, Sugarbeet Lands and the former Southwood Golf Course lands at the University of Manitoba and thus making transit more competitive and attractive for ridership.

221. The City submits that based upon receiving advice, there had to be a fundamental decision made with respect to using the Manitoba Hydro right of way/Parker Lands (Dog Leg option) and the CN Letellier alignment option. These two options were two of 4 options that were considered, one including another Hydro/Parker Lands development and the other was using Pembina Highway. The City, in their analysis, came to the decision that the best option was the Manitoba Hydro/Parker Lands option. The City submitted that there were 9 primary reasons for why the City chose this route. This was canvassed not only in Exhibit 3, tab 2, but in the evidence given by Messrs. Krahn and Radstrom. The 9 primary grounds have sub issues and they are stated as follows:

a. Speed and reliability;

b. Traffic safety;

c. Property requirements;

d. Active transportation;

e. Construction;

f. Park and Ride;

g. Transit Way development;

h. Capital costs;

i. Transit service.

222. The City examined these options and made these points as follows:

a. **Speed and Reliability:** The City acknowledges that the preferred option is in fact approximately 900 meters longer than the Letellier alignment. However, the preferred alignment has 5 level crossings whereas the Letellier alignment has 11 crossings. The evidence of the City's witnesses would indicate that at every intersection, there is a restriction on speed. Furthermore, the preferred option also has the space to construct transit overpasses and underpasses (buildouts) as opposed to the Letellier option, which is space confined between Jubilee Avenue and Chevrier Boulevard. The position of the City is that by having a lower number of level crossings and overpasses, this will result in travel times on the preferred route being shorter and with less delays than the Letellier option. Also, it is important to note that at the crossing, there would be signalization issues which would stop the flow of traffic.

b. **Traffic Safety:** The City submitted that the location in which the Transit Way and CN Letellier track run off the same street, runs higher risks and require complex signaling and cross gates. With respect to the preferred route, there are only 2 such locations for the Manitoba Hydro right of way; one at Chancellor Drive and one at Markham Road whereas there would be 11 such intersections on the Letellier alignment.

c. **Property Requirements:** The evidence the City submits is that between Jubilee Avenue and Chevrier Boulevard, there is insufficient space within the Letellier alignment to reposition rail track for a Transit Way and an Active Transportation Path. The Evidence of Mr. Krahn was the CN Letellier option would require the City to acquire property from 72 adjacent properties. Furthermore, the evidence was that there would be the requirement for noise attenuation walls, which would not be required on the Manitoba Hydro right of way. Furthermore, the City's evidence disclosed that there would be considerable noise during the construction period and this would limit the daily workable hours for the project to be worked on. Also, with respect to the Parker route, the lands were flanked by undeveloped lands in the Manitoba Hydro corridor, a water main right of way which provides sufficient right of ways between Chevrier Boulevard and Markham Road for all project components.

d. **Active Transportation:** The proposed routing would provide the ability for an ATP for cyclists/pedestrians which the Letellier Option does not provide for.

e. **Construction:** The Letellier alignment would require the removal and relocation of 6.4 Kilometers of rail line, while the preferred route would only require the relocation of 3 kilometers of rail line. Furthermore, it is submitted that the Letellier alignment requires a complete underground piping system to address land drainage and storm management, while the Manitoba Hydro/Parker Lands alignment addresses this issue, with over half of the transit drainage being addressed with raised ditches along the corridor at a significantly lower cost.

f. **Park and Ride:** The Hydro/Parker Lands alignment is available for large Park and Ride lots at the intersection of McGillivray Boulevard and Clarence Avenue Stations. These Park and Ride facilities are critical for daily commuting and for transit access to Investor's Group Field. The Letellier route, there are no opportunities for Park and Rides.

g. **Transit Way Development:** The City submits that Transit Way development can be served by the Parker alignment, whereas the Letellier alignment raises some limited development potential near Pembina Highway between Jubilee Avenue and McGillivray Boulevard. The Letellier alignment between McGillivray Boulevard and Chevrier Boulevard is quite distant from Pembina Highway and flanked by existing residential

developments. There is a common portion of the two lands between Plaza Drive and the University of Manitoba. TOD is a plan for the former Sugarbeet lands and the former Southwood Golf Course.

h. **Capital Costs:** The City submits that the Parker alignment had lower base capital costs than the Letellier alignment. Much of the work in the Parker right of way is undeveloped land and the cost of construction is lower. This is contrasted with the Letellier option which has significantly higher costs for property acquisition (approximately 4 times the City submits), costs of rail line relocation and no noise attenuation. The City submitted that the land costs as a percentage of the construction for Stage 1 of BRT were just over 10%. The Letellier alignment estimated costs would be 10.5% while the right of way alignment would cost closer to 3% of the total construction costs.

i. **Transit Service:** It was submitted that BRT permits very flexible service schedules with both rapid transit routes operating on the Transit Way, frequent intervals between Pembina Highway and the University of Manitoba, Route 60 would operate on the street via Pembina Highway, Osborne and Graham Avenue and Route 160 will operate on Pembina Highway between the University, Jubilee Avenue and the Stage 1 Transit Way to downtown. Furthermore, the Parker right of way alignment will increase connectivity to the southwest quadrant of the City.

223. The City submitted that with the process of acquiring the lands, there was a public consultation process which had different segments. There was the alignment study open houses on September 19, 2012, and September 22, 2012. Once the alignment study was completed, there were three rounds of open houses, one being November 18, 2013, and November 19, 2013 with Round 2 occurring on February 24 and 25, 2014 and Round 3 on May 28, 2015.

224. The City submits that there was a decision made with respect to the choice of the Southpark Drive and Markham Road connections to Pembina Highway versus Markham Road only connections to Pembina Highway. The City argued the decision to use Southpark Drive entrance to the University of Manitoba was based upon bus operational issues and increase in traffic and Markham would be a reduced level of service. Southpark Drive has considerably less traffic volume and that MM Group (Exhibit 75 – Transit Way Development opportunities for the Southwest Rapid Transit Corridor) indicated the Markham Road route was not acceptable. The City addressed the specific concerns of the objectors as follows:

THE CITY'S POSITION RELATING TO SPECIFIC PROPERTIES

McDonald Grain Company Limited, 1833 Pembina Highway

225. The City argues that a pumping station is required for the Letellier Tunnel to drain water that gathers during any storm event and the

taking is at the back of the lot and affect 6 parking stalls of visitors. The city gave evidence by Mr. Krahn that other locations were reviewed but were not considered acceptable for reasons that the relocated Manitoba Hydro property, CN property would cross significant underground existing structures and would have more sever impact. Manitoba Hydro has confirmed that a pumping station cannot be located within the Hydro right of way. The City submits that any taking that affects parking could be, and has been reduced by Hydro agreeing to release further lands and thus should not hamper the proposed expansion.

Pembina Care Services Limited – 1679 Pembina Highway

226. The original proposal for taking consisted of the entirely of the northern lot to accommodate a new Active Transportation Path. The evidence the City submitted was that there had been a future expansion of Pembina Care Services Limited and the taking would not permit same. The City submits there has been an agreement in principle that has been reached to accommodate the ATP with an easement to the City of Winnipeg that would parallel the existing property lines and to use as little of the owner's property.

3346234 Manitoba Limited (Taylor Lands – Taking Nos. 20 and 39)

227. This piece of expropriation is of vacant land on the north side of the CN rail on the west side of Pembina Highway. The City submits that this property is required to accommodate a new retaining wall along the west side of the new Pembina Highway

Underpass to connect ATP from Pembina Highway to Harrow Street. The City acknowledged that the owner has prepared a conceptual plan which proposes a seniors home at the east end and that requires a 50 foot set back from the property line that may require reconfiguration of the conceptual plan.

ACI Shoppers Southpark Ltd. – 2211 Pembina Highway

228. The actual property is disclosed in Tab 10 of Exhibit 3 and is commonly described as 2211 Pembina Highway and is a Shoppers Drug Mart store. The City submits that improvements are required along Southpark Drive and the Pembina Highway and Southpark Drive intersection for the new Transit Way. These improvements are needed to accommodate the buses along Southpark Drive and to accommodate proper bus turning radian and regular traffic at Pembina Highway and Southpark Drive. The City submits that the property owner will lose 6 parking stalls and the relocation of existing advertising signage, but is working with Shoppers Drug mart to reconfigure the parking lot to minimize the impact and argues that from a zoning perspective, the loss of parking stalls will be grandfathered pursuant to the City Zoning by-law.

6165437 Manitoba Inc.

229. This is disclosed as a taking at Tab 11 of Exhibit 3, which is vacant land for which a pumping station is required.

Catia Aparecida Macieira and Anderson Macieira

230. The proposed taking is 1500 Parker Avenue, which is a residential property and is a single family home occupied by the homeowners and the Transit Way will run through the property. The City submits the residents were at an open house where information was available and were aware of the impact.

2114062 Manitoba Ltd. – 75 Southpark Drive

231. This property is disclosed at Exhibit 3, tab 13 and is commonly described at 75 Southpark Drive. The lands that will be expropriated will be additional meter of land along Southpark Drive (from the west end of the property drive lane which runs parallel to the railway tracks east of Pembina Highway) to accommodate reconstruction of Southpark Drive which will provide a lane for parking, an Active Transit Pathway on one side and a side walk on the other side. Also, the radian approval of Southpark Drive to accommodate entrance and exit to and from the new Transit Way. The City indicates there would be a net loss of parking spaces and that the ATP will be close to the building and will affect the existing steps to the front door. Concerns that were raised were including loading zones, relocation of front steps, snow clearing, garbage pick-up, noise and vibrations. The City submits it is prepared to move the loading zone in a westerly direction and has to be located directly in front of the building and that two lost parking stalls can be repositioned and included in the eastern end of the lot. The City is looking toward reconstruction or relocation of the

front steps of the apartment block, but is not relocating the location of the garbage pick-up. The City will undertake to do a noise analysis.

850 Pembina Highway Limited Partnership, 850, 870 and 890 Pembina Highway

232. This property is identified in Exhibit 3, tab 14, and related to the properties at 850, 870 and 890 Pembina Highway. These three addresses are office buildings and the lowering and widening of Pembina Highway will require additional properties of varying width to accommodate retaining walls. Also, the taking is required to accommodate construction procedures. The City has indicated that it is prepared to grant an easement to the owner of the respective properties between the post-property line and the retaining wall at the conclusion. The City submits that contractors bidding on this project encourage Innovative Construction Tech Inc. to carry out building inspections prior to construction, as well as vibration studies throughout and a noise study will be undertaken.

POSITIONS OF THE OBJECTORS

233. The position of the Objectors will be dealt with in groupings of their counsel representatives for said objectors; namely those represented by Mr. Newman addressed first, then those by Mr. Hacault, then those by Mr. Mercury.

Position of the Objector McDonald Grain Company Limited – 1833 Pembina Highway, represented by Mr. Mark Newman

234. The position advanced is that the purpose of the Inquiry is a search for whether all reasonable alternatives have been considered for the placement of the proposed pumping station so as to minimize the impact on the private land owner and reduce, if possible, the extent of the land expropriated and minimize the exposure of the City whilst at the same time allowing achievement of the objectives of the Authority. Counsel referred the Inquiry to the case of ***Parkins v R.,* (1977)**, 1977 CarswellOnt 1245, 13 L.C.R 306 (Ont. HCJ), affirmed: 14 L.C.R. 327, 19 O.R. (2d) 473 (ONCA) (Tab1), and also to the case of ***Walters et al. v. Essex County Board of Education (1971)***, [1971] 3 O.R. 346, 20 D.L.R. (3d) 386, affirmed: [1974] S.C.R. 481, 38 D.L.R. (3d) 693 (Tab 2).

235. It is submitted that the obligation of the Inquiry Officer is to ensure that City Council for the City of Winnipeg has all of the information and can make an informed decision and in order to do so, it is necessary that the Confirming Authority consider:

a. The cost of the expropriation of the Owner and all consequential damages that may flow as a result;

b. The cost of the various alternatives to expropriation of land from the Owner and their cost;

c. The extent to which the various alternatives will achieve a result that is as good, better, or the best alternative necessary to achieve the objective.

236. This Objector submits that the present expropriation, as others over the past 15 months, have been engineer driven and do not

take into account potential exposure and does not follow common sense and good business practice and does not consider a cost benefit analysis to determine different alternative. Counsel for this Objector made a point of stressing the following:

> "A distinction must be made between evidence of the potential exposure of the City for the purpose of payment of compensation, and for purposes of the necessary cost benefit analysis."

237. This Objector submits that the consultant, Dillon Consulting, recognized this concept during the alignment study but abandoned it on the selection of alternative routing. Dillon's consultants, Stevenson Advisors, did not do a proper analysis of land acquisition costs.

238. The Objector argued that not only in the present circumstances (1833 Pembina Highway) but also with respect to Golden Door Geriatric Centre (another objector who will be dealt with later), the City's lack of knowledge of the property being taken was evident. The Objector pointed out that the City had initially designed an Active Transportation Path which would have effectively destroyed the Personal Care Home's development plans. A decision, after reviewing the impact on the property, has been reached, where the property in question may be dealt with by not a taking of a fee simple, but by an Easement Agreement.

239. The present matter (1833 Pembina Highway) the owner has given evidence as to rehabilitation of the present property and proposed expansion. The rehabilitation, which was dealt with in some detail,

has been removed from rent controls for 5 years and the 42 unit expansion would not be possible with the placement of a pumping station. The City was unaware of the proposed expansion of the apartment.

240. The Objector was critical in that the City does not have the knowledge necessary to expropriate because there has been no direct communication. The Objector contends that open houses are inadequate, and there should be direct discussions with the property owner. In the present circumstances, it is argued that the City did not consider all alternatives.

241. The City, it is submitted, proposes to expropriate the most valuable piece of real estate on Pembina Highway where the pumping station could be located, this assertion is based upon the City's own assessed values. Mr. Newman pointed out that the property north of the owner's property is the Capri Motel and its assessed value is $2,000,000.00 whereas the value of the Objectors property is just under $17,000,000.00. The Objector submits that the evidence submitted by the consultant for the City, David Krahn, testified that from an Engineer's perspective, the pumping station can be relocation to the Capri Motel land, to land south of 1833 Pembina Highway, and within the transit corridor.

242. The Objector did an analysis of the three properties and, with the Capri Motel, referred to Mr. Krahn's evidence that it was not appropriate as three structures would have to be removed. The same considerations arise in the lands to the south of 1833

Pembina Highway. The objectors position therefore is that there was no proper analysis done by the City in choosing 1833 Pembina Highway, as opposed to the other two sites.

243. The Objector submits that it is quite clear that the pumping station can be built within the transit corridor, notwithstanding assertions by Mr. Radstrom and Mr. Krahn, expressing their opinion that Manitoba Hydro would not allow such development. There was a detailed analysis by the Objector that this was not so, and construction is possible for a number of reason and referred to issues relating to Manitoba Hydro intending to raise transmission line to a height of 30 to 40 meters and that being the case, there would be no prohibition on any type of construction within the transit corridor.

244. There were a number of other objections raised which again refer to drainage matters, piping, costs, economic consequences with respect to the expansion not being taken into consideration. The Objector reviewed in some detail the evidence of Mr. Radstrom respecting transmission lines.

245. The Objector stated that the impact of the expropriation of taking 11 to 12 parking stalls from the owners land will have consequential effects:

a. “Expose the City of Winnipeg for loss of land;

b. Expose the City of Winnipeg to a claim for loss of the existing improvements – parking and electrical plugs;

c. Expose the City of Winnipeg to a claim for lost revenue associated with the parking stalls;

d. Most significantly, expose the City of Winnipeg to a claim for lost opportunity to expand the apartment building by 42 units as contemplated – a “7 figure claim”;”

246. The Objector submits that the economic impact on the property will be the same as the Golden Door Geriatric Centre where the City modified its position and asks that a recommendation be made to the City of Winnipeg to pursue relocating the pumping station in the Transit Way corridor and that no expropriation of lands of the owner occur.

Objection of 6165347 Manitoba Inc. and First National Financial GP Corporation

247. Mr. Newman represents the owner of the property identified as Holding No. 29 identified at Exhibit 15, Tab 1, outlined in red which has a yellow line running through it.

248. It was submitted that if the Parker routing is not chosen, then no expropriation of the owner’s land would be required. Similarly, if the Letellier line was chosen, no tunnel would be required and the pumping station would not be required to drain the tunnel. The evidence of Mr. Radstrom was that after construction, there would be dead land, and if such was the case, that this Inquiry Officer recommend that all reasonable efforts be used by the City of Winnipeg to return the land which was not being utilized to the owner.

Objection of ACI Shoppers Southpark Ltd. – 2211 Pembina Highway

249. The proposed expropriation is outlined at Exhibit 3, tab 1 and impacts the land that would be in the northeast corner of the property. The Objector states that “no quarrel is taken with the objective, but rather, the means by which the objective will be achieved.”

250. The Objector takes issue with the decision of the City to utilize Southpark Drive as a means of bus transit for the Rapid Transit Way as opposed to Markham Road which was the original route. This Objector, with respect to the purpose of the Inquiry, adopts the argument set out in the submissions on behalf on McDonald Grain Company.

251. The Objector points out the fact that Markham Road is residential and a major collector street, while Southpark Drive is a residential street which is not usually travelled by buses. The Objector examined the Southpark Drive option’s design and submits that the decision to proceed with Southpark Drive was a function of satisfying the needs of the University of Manitoba’s future development on the former Southwood Golf Course, and that there has been no proper traffic studies and no proper rational for the development of Southpark Drive as opposed to continuing the use of Markham Road.

252. The position of this Objector is that there be a recommendation to the City of Winnipeg to utilize the Markham Road route and not Southpark Drive.

Objection on behalf of Catia Aparecida Macieira and Anderson Macieira – 1500 Parker Avenue

253. At the outset, Mr. Mercury submitted that the Inquiry Officer has the obligation to examine alternate routes. The Inquiry Officer was referred to the case of *Karn v Ontario Hydro, Ontario Court of Appeal* (1977), 79 D.L.R. (3d) 256 (Ontario CA) wherein Mr. Mercury summarized "it is submitted that Karn provides the Inquiry Officer to consider reasonable alternatives to the proposed undertaking".

254. Mr. Mercury acknowledged that there is always a balancing act between public interest and private interest and the Macieira's do not challenge the objectives of the City of Winnipeg to build the Transit Way, but to carefully examine what those objectives are. Mr. Mercury referred to the case of *Progressive Developments* (1978) Ltd. v. Winnipeg (City), [1982] M.J. No. 139 (Court of Appeal) and submitted that the case represented that in determining whether an expropriation is "fair and reasonably necessary requires a contemplation of the specific purposes for the expropriation in question and not with respect to any purposes whatsoever:" (Mr. Mercury's written argument, page 2)

255. The Decision in the Progressive Case (SUPRA) stated:

> "During oral argument, however, The City advanced the position that the word "purposes" may refer to some other purposes which the City may have for the land in the future. According to this proposition the abandoning of the Fort Garry land assembly scheme in itself did not render the land unnecessary for the purposes of the City. With respect, I am entirely unable to agree with this proposition. The purpose for which an **expropriation** is undertaken is of key importance. Schedule A of The **Expropriation** Act provides for an enquiry "whether the **expropriation is fair and reasonably necessary** for the achievement of the objectives of the expropriating authority…(see s. 6(2)). The Act contemplates that expropriations shall not be simply for the general purposes of an authority but for specific purposes which must be set out in the documents initiating such expropriations. Otherwise it would be impossible to determine by inquiry whether the **expropriation** is **fair and reasonably necessary** for the achievement of the objectives stated by the expropriating authority." (Emphasis added by the Objector)

256. Mr. Mercury suggests and clarifies the objectives be not for the Objectors at large, but for the specific purpose. (Emphasis added)

257. Mr. Mercury referred to the City By-law, Exhibit 3, tab 6, which stated that the purposes of the expropriation were "for the purpose of construction of the Southwest Rapid Transit Way, Stage 2, and the Pembina Highway Underpass project in the City of Winnipeg, in Manitoba." Thus, Mr. Mercury submits that the objective is not some vague concept of transit oriented development but for the broader purpose of City of Winnipeg policies, the object is not to facilitate the development of one area over the other, but the objectives of this expropriation "is to build a Transit Way".

258. Mr. Mercury submitted that the Objectors, in these present circumstances are asking the Inquiry Officer to recommend:

> "To be very clear, we are asking that the City of Winnipeg refuse or modify the Declaration of Expropriation as it relates to 1500 Parker, and suspend any expropriation proceedings as it relates to that property until such time as a Functional Design Study has been conducted with respect to the original alignment of the Stage 2 route from Jubilee to the University in a direct line south along the Letellier subdivision, which is known as Option 2, and thereafter critically examined. As well as a proper Cost-Benefit Analysis for each option, comparing one route to the other, has been obtained and presented to City Council and to the public for consultation, and finally that any expropriation of property be suspended until such time as the conditions of any Environmental License with respect to this project have been fully satisfied."

259. Mr. Mercury, in his argument, reviewed that the present goals are outside the mandate of *The Expropriation Act*, and involves some "vague concept of TOD but to build a Transit Way in accordance with the City of Winnipeg documents."

260. In his argument on behalf of the Objectors, Mr. Mercury stated that the Inquiry Officer should recommend:

> "The City of Winnipeg refuse or modify the Declaration of Expropriation as it relates to 1500 Parker and suspend any expropriation proceedings as it relates to that property until such time as:
>
> "a. A Functional Design Study has been conducted with respect to the original alignment of the Stage 2 route from Jubilee to the University on a direct line, south, immediately east of the CN Letellier Subdivision, Option 2 (Letellier), and thereafter critically examined;
>
> b. A proper cost benefit analysis *for each option*, comparing one route to the other, has been

obtained and presented to City Council, and to the public, for consideration;

c. The conditions of any environmental licence with respect to this Project have been fully satisfied."

261. Mr. Mercury argued that the objectives of the City should be those of the City and not the objectives of the University of Manitoba, Province of Manitoba, and groups of interest of cyclists, developers, working groups or Dillon Constructing.

262. Mr. Mercury also alluded to an analysis of the Dillon study and pointed out that same was not a truly independent study, was to choose between two possible routes. Mr. Mercury commented that the Dillon Report had difficulties with the weighting system and issues with ridership statistics, and left many unanswered questions.

263. Mr. Mercury points out that the City's witnesses were not qualified to aspects of the report and questioned the choice of the selection process between Parker and Letellier when in fact, Mr. Krahn's testimony said future development may be LRT. Mr. Mercury pointed out that there had been faulty assumptions with respect to land requirements and costs. Mr. Mercury challenged the findings of the Dillon Report at page 36:

> "Option 1A/1B option has the greatest potential for increased ridership over Option 2, <u>mainly due to Parker Lands TOD, connectivity to the west, and the slower operating speeds for the Letellier alignment</u>"

in that there were no studies to support these statements and there was no analysis moving away from Pembina Highway and no studies provided to connect with the west. Mr. Mercury made reference in his argument to consultations with land owners and their positions. These arguments were advanced based upon written responses. Mr. Mercury refers to comments from Gem Equities, Shindico, Manitoba Hydro, and CN.

264. Mr. Mercury referred to Exhibit 3, tab 2, page 48, which disclosed 52% has favored the Letellier alignment and 48% preferred the Parker Options. Mr. Mercury referenced and analysis of operational implementation environmental property assessments. Mr. Mercury submits that there has been a lack of credible evidence submitted and in fact, Mr. Krahn acknowledged the problems with the weighting system on different matters as outlined in the report.

265. In his summary, Mr. Mercury submitted that with the present routing (1B), there is insufficient evidence that this expropriation is fair and reasonably necessary for the achievement of the City's objectives and furthermore, why there has not been a modification of the Declaration of Expropriation, a Function Design Study, and a proper costs benefits analysis.

266. Mr. Mercury referred to the evidence of Mr. Sanders with respect to a number of issues including the cost benefit analysis. Mr. Sanders had pointed out that the cost benefit analysis or "a Class D" estimate, which were +25%. Thus, all projected estimates are

well within this range. Mr. Mercury commented again that there is a lack of cost benefits analysis and only through the effort of Mr. Sanders was a costs benefits analysis tendered at the hearing.

The Position of the Objectors of 850 Pembina Highway Limited Partnership and FWS Pembina Ltd.

267. The issue with respect to this taking is the strip of land fronting Pembina Highway owned by the Objector. The purpose of the taking is for retaining wall to be built as a result of the new Underpass and widening of Pembina Highway. The Objector does not oppose the expropriation *per se* but does oppose the taking of a fee simple which is not "reasonably necessary". It was submitted that the City has the power to expropriate less than a fee simple and that the parties have worked towards an agreement and that the City would work towards an easement agreement once construction had been completed. It was submitted that by an easement, it would**:**

"a. Eliminate the need to redevelop the fire lane access (850 / 870 Pembina);

b. Potentially result in the preservation of mature landscaping (850 / 870 Pembina);

c. Preserve the set-backs from existing property lines;

d. Preserve several parking spaces (approx. 12 in total) which are critical to 850's tenants, and to 850's overall operation;

e. Allow the outriggers on the buildings to remain in place;

f. Alleviate the need to relocate the Manitoba Hydro gas meter or, alternatively, the need for an easement agreement to allow access to the meter;

g. Alleviate the need to relocate the monument sign (for 890 Pembina) or, alternatively, the need for an easement agreement in respect of the sign; and

h. Preserve or facilitate 850's ability to construct an addition to 890 Pembina"

268. The Objector requests that the Declaration be amended to reduce to an easement taking only that would allow the City of Winnipeg to construct, and, if necessary, to maintain the retaining wall.

Position of the Objector Pembina Care Services Limited, 1679 Pembina Highway

269. The Objector, Pembina Care Services Limited, is the owner of the properties identified as holdings 22 and 23 in the Council Minutes of February 25, 2015, and marked as Tab A in Exhibit 3. This property is commonly known as 1679 Pembina Highway. The present position of the Objector with respect to the taking is as follows:

a. The takings be changed from a fee simple taking to the taking of an easement;

b. The takings be reduced and that those reduced takings for holdings #22 and #23 be no more than what is shown on Exhibit 16 to this hearing;

c. The taking be reduced so as to ensure continued access by Pembina Highway Care Services Limited to its properties via Hudson Street;

d. That plan of Works bearing WLTO Deposit No.: 0002/2015 (see Tab 4, Ex.3) be amended accordingly.

270. The proposed taking of property at 1679 Pembina Highway was to in fact the holdings of Pembina Care Services Limited and the nature of the taking would dramatically impact the viability and operation of the personal care home. At the hearing, the representative of the City, Mr. Radstrom, stated:

> "From what I understand, we have an agreement, principle, with the property owner to – for the, for the Active Transportation Path, to the alignment that you described before, it would stay close to the north side of the and the west side of the property and not through the centre of the property. So the, in principle, is in place. The drawing by Mr. Krahn, that is Exhibit 16, is the drawing that has come out of that agreement, principle."

271. The Objector has requested that the easement be kept to 4.5 meters width as close as possible because they are working with restricted space.

Objector 3346234 Manitoba Limited, Taylor Lands

272. The Objector, 3346234 Manitoba Ltd., being the registered owners of properties identified as W30 and W39 in Council Minutes of February 25, 2015, Tab A, Exhibit 3, seek the following findings:

a. That, considering the undertaking by the City which is set out at Tab 18 of the Objector's Argument, the Inquiry Officer is of the opinion that the taking for the purpose of a CN right of way identified as taking #30, is fair and reasonably necessary;

b. That the Inquiry Officer is of the opinion that the taking identified as #39 is not fair or reasonably necessary;

c. That, in the alternative, the Inquiry Officer is of the opinion that a modified taking #39 whereby the fee simple taking be limited to the portion is required for the CN right of way as described and shown on a diagram at Tab 19 of the Objector's Argument;

d. That, in the alternative, the Inquiry Officer is of the opinion that the remaining part of the taking identified as #39 be reduced and limited to an easement as described and shown on part of Exhibit 93 and attached at Tab 19 of the Objector's Argument;

e. That, in the alternative, the Inquiry Officer is of the opinion that the remaining part of the taking identified as #39 be limited to the taking of an easement instead of a fee simple.

273. The Objector with respect to Holding No. 30, agrees that it is reasonably necessary. The recommendation with respect to No. 30 is that it is reasonably necessary for the taking, which is required for the CN right of way realignment for the basis of the City's undertaking to attempt to mitigate the impact.

274. The Objector through its witness Mr. Zarnowski, also acknowledged that part of Holding No. 39, or a part thereof, was required for the CN right of way, but put forth the proposition that the Objector could work cooperatively with the City, by the City not taking a fee simple, but in fact by way of an easement. Mr. Zarnowski gave evidence where this Objector and the City had worked cooperatively at two other locations where a fee simple was not needed and the use of an easement resolved the issues. The taking of an easement would not impact the land usage needed by the developer to maximize his development. Furthermore, no evidence was submitted showing that all of the subject lands need to be taken. Furthermore Mr. Zarnowski confirmed that the Objector would allow the City to build the ATP and related retaining walls and allow the City to maintain them as

required. Furthermore, no evidence was submitted showing that all of the subject lands be taken.

Objection of 2114062 Manitoba Ltd. commonly known as 75 Southpark Drive

275. The Objector, 2114062 Manitoba Ltd., being the registered owner of the holding identified as #9 in Council Minutes dated February 25, 2015, marked as Tab A in Exhibit 3, and commonly known as 75 Southpark Drive seeks the following findings and recommendations:

a. That the Inquiry Officer is of the opinion that the City of Winnipeg has not demonstrated that the extent of its proposed expropriation and plan is fair and reasonably necessary as it relates to the newly identified Southpark Drive routing now being preferred over the previously preferred Markham Road routing for buses going to University of Manitoba.

b. That the Inquiry Officer recommends that a full traffic analysis and report, transit analysis and report and a cost benefit analysis be conducted prior to making any decision on changing the preferred access point from Markham Road to Southpark Drive.

c. Accordingly, that it is the opinion of the Inquiry Officer that no takings on Southpark Drive occur at this time and that initially preferred route of Markham Road be used as the main access point for University of Manitoba until the recommended reports and analysis are completed.

d. In the alternative, that the Inquiry Officer recommends that the City of Winnipeg ensure that the 2114062 Manitoba Ltd.'s concerns numbered 1 to 8 as outlined in the attached summary (Tab 16 of the Objector's argument) be part of the issues set out in the requirements to be dealt by the City of Winnipeg during construction phase of the works.

276. The Objectors position was that with respect to the proposed taking, there was a lack of notice, or insufficient notice, to the

Objector. That at the public open houses, up to November 19, 2013, there was no argument that Markham Road should be maintained as the preferred routing. The Objector points out that the City has not provided traffic studies, administrative reports by the City on the issue, any evidence of any normal intersection traffic analysis at Markham Road and Pembina Highway. Also, the only traffic count available in the MMM Report (Exhibit 75 prepared for the University of Manitoba) showed to the public at open houses on November 18th and 19th, 2013. Ultimately, the preferred route was changed from Markham Road to Southpark Drive on December 16, and was confirmed by Senior Executives on December 13.

G. JURISDICTION OF THE INQUIRY OFFICER

277. The Jurisdiction of the Inquiry Officer is set forth in Subsection 6(2) of Schedule A of *The Act* which 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.

278. 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.

279. The City, by a Declaration of Expropriation (Exhibit 3, Tab 5) and City of Winnipeg By-law 33/2015 (Exhibit 3, Tab 6) commenced proceedings to expropriate lands as previously set forth. The stated purposes in both documents were:

"For the purpose of construction of the Southwest Transit Way (Stage 2) and the Pembina Highway Underpass Project in the City of Winnipeg, Manitoba."

280. As a result of the aforesaid documents, a Notice of Intended Expropriation was sent out to the parties being affected by the expropriation. The said Notices, in the body of same, contained the same stated purpose as set forth in the By-Law and the Declaration of Expropriation.

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

a. 850 Pembina Highway Limited Partnership and FWS Pembina Ltd.;

b. 2114062 Manitoba Ltd. c/o Quality Management Ltd.;

c. Catia Aparecida Macieira and Anderson Macieira;

d. 6165347 Manitoba Inc. and First Nationals Financial GP Corporation;

e. McDonald Grain Company Limited;

f. ACI Shoppers Southpark Ltd.;

g. Pembina Care Services Limited;

h. 3346234 Manitoba Limited, 100 – One Evergreen Plance;

i. R.S. Harris Transport Ltd.;

j. GBR International Inc.; and

k. North American Food Ingredients Inc.

282. The hearings were commenced on August 4, 2015, and continued on August 6, 2015, August 7, 2015, August 10, 2015, August 11, 2015, August 12, 2015, August 25, 2015, September 2, 2015, with final arguments and written submissions made on September 4, 2015.

283. During the course of the Inquiry, the Objectors R.S. Harris Transport Ltd., GBR International Inc. and North American Food Ingredients Inc. withdrew their Objections.

284. The purpose of the proposed expropriation extends over an extensive period of lands for a Transit Corridor for Stage 2 of the Southwest Rapid Transit Way and the Pembina Highway Underpass. The evidence was that the two projects BRT II and PHU, initially, were two separate projects but due to the extent and the complexity of the projects, the projects were combined into one project as both designs for each project developed. The rational for the amalgamation of the project was due to:

a. Close proximity;

b. Minimizing throwaway costs;

c. Lessening traffic disruptions;

d. Lessening disruptions to businesses; and

e. Reducing the over project costs.

285. The PHU and BRT II are complex in that Pembina Highway, at Jubilee Avenue was being increased by a land lane and Pembina Highway itself was being lowered to maximize design requirements, and for an Active Transportation Path on either side of Pembina Highway replacing outdated sidewalks which cannot adequately service pedestrians or cyclists.

286. The second part of the expropriation was the Transit Way which along with the Pembina Highway Underpass, has issues of underground infrastructures, aqueducts, feeder mains and Manitoba Hydro infrastructure and designs to deal with Railway lines.

287. The evidence of the City, both by Exhibit 3, Tab 2 and by their witnesses was that there were 4 options:

a. Option 1A (Parker/Manitoba Hydro Lands parallel to CN Rail Line)

b. Option 1B (Parker/Manitoba Hydro Lands parallel to Parker Avenue, “Dog Leg”)

c. Option 2 (CN Letellier Route which would parallel CN Letellier Line from Pembina Highway to Bison Drive, which required the movement to the west of the Railway tracks and the Transit would occupy the easterly half of the existing Railway tracks)

d. Option 3 (Pembina Highway centre median which would follow Pembina Highway from Stage 1 to Bison Drive)

288. The City filed the Dillon Report (Exhibit 3, Tab 2) which was entitled “The Southwest Transit Corridor Stage 2 Climate Report,” Final Report, dated January 3, 2013. City Council, on March 20th, 2013, amended the Transportation Master Plan to proceed with BRT II to Option 1B (Dog Leg option). The Pembina Highway Underpass segment of the proposed expropriation has met with little, or any, opposition. The main objections to the proposed takings relates to the Transit Way.

289. The Inquiry was presented with not only objections to the specific sites, but also to the choice of Option 1B over other Options, and the validity of the proposed taking. It was submitted that the Inquiry Officer in discharging his duties, must also consider the various options.

290. There is common ground by the Objectors and the City that the Inquiry Officer shall, in order to make an informed decision, consider the alternatives to the proposed expropriation. Authority for this proposition was stated in *Parkins v R.,* (1977), 1977 CarswellOnt 1245, 13 L.C.R 306 (Ont. HCJ), affirmed: 14 L.C.R. 327, 19 O.R. (2d) 473 (ONCA), which states**:**

> “37 It must be borne in mind that the hearing before the inquiry officer provides the property owner with an opportunity for putting forward alternatives. The report to the expropriating authority may refer to those alternatives and give an opinion with regard to them. The inquiry officer’s report is in no way binding on the expropriating authority and that authority need not follow the advice or opinion set out in the report. Nor does the hearing before the inquiry officer in any way fetter a claim for full compensation for the land expropriated by the property owner.
>
> …

> 47 I repeat once again that it is important to consider the purpose or purposes of the hearing. It is to permit a person whose property it is proposed to expropriate to investigate the position of the expropriating authority and to put forward alternate proposals."

291. Also, Ball v Ontario Hydro (supra) and *Karn v Ontario Hydro* (1977) 79 D.L.R (3d) 256 (ONCA) provided direction that an Inquiry Officer must consider alternate routes or alternatives.

292. The Inquiry Officer, in dealing with the tests at Subsection 6(2) of Schedule A of *The Act*, which 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."

293. 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.

294. In the case of *Bourbounniere et al. v. The Queen in right of Manitoba et al., 39 L.C.R. 225; T*he 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".

295. 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."

296. 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."

297. 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 Lectures 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.”

298. *Parkins* (supra) in dealing with the balancing act between public versus private interests set the appropriate tests. 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.”

299. The test in *Parkins* has been followed by this Inquiry Officer in the past and by other Courts. *Kowal v. Ontario (Ministry of Transportation)* 200 CarswellOnt 6023, 70 L.C.R. 70 (Ont. Bd. of Inquiry) which states:

> “He (speaking of the inquiry officer) may want to consider aspects of comparable costs, aesthetics, environmental impact or safety to mention just a few. What constitutes fairness, justness, and reasonable necessity will vary with the circumstances of each proposed expropriation…”

300. *Progressive Developments (1978) Ltd. v. Winnipeg (City),* [1982] M.J. No. 139 (Man. C.A.) stands for the proposition that "fair and reasonably necessary" requires a contemplation of specific purposes for the expropriation in question and not for any other purpose:

> "During oral argument, however, the City advanced the position that the word "purposes" may refer to some other purposes which the City may have for the land in the future. According to this proposition the abandoning of the Fort Garry land assembly scheme in itself did not render the land unnecessary for the purposes of the City. With respect, I am entirely unable to agree with this proposition. The purpose for which an expropriation is undertaken is of key importance. Schedule A of the Expropriation Act provides for an enquiry "whether the expropriation is fair and reasonably necessary for the achievement of the objectives of the expropriating authority…" (see s. 6(2)). The Act contemplates that expropriations shall not be simply for the general purposes of an authority but for specific purposes which must be set out in the documents initiating such expropriations. Otherwise it would be impossible to determine by inquiry whether the expropriation is fair and reasonably necessary for the achievement of the objectives stated by the expropriating authority."

H. DETERMINATION OF FACTS AND ISSUES

Objection of Catia Aparecida Macieira and Anderson Macieira as occupiers

301. Mr. Mercury, on behalf of other counsel, took the lead in questioning the city on issues of alignment, various options, and the choice of 1B as the preferred route. This Objector's objection raised the specter of the fairness and reasonableness of the proposed expropriation as the enabling By-laws and Declaration of Expropriation lack specificity.

302. The evidence of the issues concerning the decision to proceed with Option 1B over the other Options, have been reviewed in detail in this report. Specifically, evidence was called by the City in relation to the alignment options in light of both in Exhibit 3, Tab 2 and with respect to their professional witnesses.

303. The City gave evidence that all options were considered, and the final choice, which was Option 1B. The evidence of Mr. Krahn with Option 1A or 1B provided better choice than with the Letellier proposal. The preferred option provides opportunities for stations, Park and Rides and future developments to the southwest quadrant of the City.

304. The proposed taking will impact upon the Objector(s) and will require a full taking of the property. The Objectors have argued that the object of the City should be that of the City of Winnipeg,

not those of the University of Manitoba, the Province of Manitoba, developers and special interest groups.

305. The analysis, it is submitted by all of the Objectors, that was done by Dillon, was fundamentally flawed as there is not sufficient statistics, cost benefit analysis, proper weighting as to various options, lack of real evidence as to property costs and to environmental issues.

306. Evidence was called as to the impact of the taking on Catia Aparecida Macieira's and Anderson Macieira's property and it was confirmed that there would be a full taking.

307. Catia Aparecida Macieira gave evidence as to her property and she was of the opinion that there was inadequate consultation.

308. One witness was called, Mr. David Sanders, in opposition to the proposed expropriation, route and design. Mr. Sanders was critical of the due diligence of the City, the lack of environmental impact studies, property costing and cost benefit analysis. Mr. Sanders was only able to pose questions, concerns, and criticisms, but did not provide and specific evidence that would counter these reports. The Objectors, like Mr. Sanders, argued that the Dillon report and the decision of City Council was flawed, but were unable to provide any concrete evidence.

309. The Objectors argue that the objective of the expropriation lack specificity as to objectives as they were vague and did not include concepts of development.

310. The Objectors, in the present circumstances asked**:**

"The objector states that the proposed taking is neither fair nor reasonably necessary for the achievement of the City's stated objectives and askes that the City refuse or modify the Declaration of Expropriation as it relates to 1500 Parker Avenue, and any expropriation proceedings as it relates to the property until such time as:

a. A functional Design study has been conducted with respect to the original alignment of the Stage 2 route from Jubilee to the University on a direct line, south, immediately east of the CN Letellier Subdivision, Option 2 (Letellier), and thereafter critically examined;

b. A proper cost benefit analysis for each option, comparing one route to the other, has been obtained and presented to City Council, and to the public, for consideration; and

c. The conditions of any environmental licence with respect to this Project have been fully satisfied.

311. The evidence of Mr. Krahn is that he was involved in the concept of Rapid Transit since 1984, initially, with cost assessments, alignment, function design, and became more involved with BRT Stage 1 study in 2007/2008. Stage 1 of Rapid Transit, under Mr. Krahn, came in on time and on budget. Neither of these two facts were challenged by the Objectors.

312. Mr. Krahn was questioned extensively and provided as much detail as he could, but was not always able to provide specific answers to all questions of the Objectors.

313. With respect to the issues of alignment (routes) the evidence of the City's choice was challenged, as were the matters surrounding same, the particulars of which have been canvassed throughout this Report. The only witness who challenged the project in general was Mr. David Sanders. Mr. Sanders has an impressive *curriculum vitae* but unfortunately, his evidence was not helpful, and the basic thrust of his evidence that the choices were wrong and required further studies to be conducted.

314. The City, or any expropriating authority, have an upper hand in having reports, studies, and experts readily available. The Objectors are disadvantaged as not having those reports, studies, and experts readily available and thus, the Inquiry has to grant to the Objectors considerable leeway to make inquiries, to challenge, and read evidence as to alternate options. As previously stated, the Inquiry is obligated to consider all alternatives to any proposed expropriation. The Inquiry process allow the public to participate and hold the Expropriating Authority, in this case the City of Winnipeg, accountable.

315. In reviewing the evidence of the City, the evidence of the Objectors, and the extensive objections with respect to the choice of route (alignment) and specifically 1500 Parker Avenue, this Inquiry Officer finds that:

a. The objectives of the City has provided sufficient specificity in light of the documents before City Council which included the Administrative Report re: Expropriation of Lands, dated January 26, 2015 (Exhibit 3, Tab 1), the Dillon Consulting Southwest Transit Report Stage 2 (Exhibit 3, Tab 2);

b. The City has considered alternate concepts, routings, costs, and the impacts upon the community, and therefore, this Inquiry Officer finds that the proposed taking of the preferred route, Option 1B, to be fair and reasonably necessary for the achievement of the goals of the Expropriating Authority and the City has met the tests of balancing public versus private interests.

c. The taking of the Objectors property, Catia Aparecida Macieira and Anderson Macieira, at 1500 Parker Avenue, has met the tests establishing that it is fair and reasonably necessary and that the Expropriating Authority has met the tests of balance between public versus private interest.

850 Pembina Highway Limited Partnership and FWS Pembina Ltd.

316. The properties being affected are 850, 870, and 890 Pembina Highway. These building are office building and are in close proximity to the intersection of Pembina Highway and the underpass to Jubilee Avenue. The takings are necessary due to the lowering and widening of Pembina Highway and the property will be required to accommodate retaining wall and to accommodate construction.

317. The Objector does not object *per se* to the expropriation, but objects to the fee simple taking as not being reasonably necessary. The Objector submits that the taking of an easement satisfy the City's requirements. The evidence discloses that the easement would have significantly less impact upon the property owner.

318. In the present circumstances, this Inquiry Officer finds that the proposed taking of a fee simple is not fair and reasonably necessary and that the taking, by way of an easement, would be appropriate and that the City amend its Declaration of Expropriation to reduce the taking to an easement taking that would allow the City to construct and maintain the retaining walls.

Objector Pembina Care Services Limited

319. Pembina Care Services Limited is the owner of the property at 1679 Pembina Highway. There was evidence called by both the City and the Objector. The initial taking would have effectively divided the property into two sections and impeded on the ability of the owner to expand the personal care home and would also interfere with access to Pembina Highway.

320. The Objector and the City have reached an agreement of principle that the new Active Transportation Path can be accommodated by an easement being granted to the City that would parallel the owner's property lines. In the circumstances, This Inquiry Officer would find that it is not fair and reasonably necessary for a fee simple taking and that the issue be resolved by an easement as outlined and such a taking would be found to be fair and reasonably necessary and would satisfy the tests of public versus private interests.

Objection of 6165347 Manitoba Inc. and First Nationals Financial GP Corporation

321. The Objector has filed an Objection with respect to the vacant land which the Objector states that if Rapid Transit were to proceed down the Letellier Line, there would be no need for the taking. The Objector submits that if the land is in fact taken, the City utilize all reasonable efforts to return the lands which are not utilized to the owner so as to minimize the consequential economic loss to the owner. The Objector and that City with respect to this taking, made no significant submissions. In light of the foregoing, this Inquiry Officer finds that it is fair and reasonably necessary for the proposed taking and the Expropriating Authority has met the tests of balancing public and private interests.

Objector 3346234 Manitoba Limited, owner of Holding Nos. 30 and 39 – identified in City Council Minutes of February 25, 2015 and referred to as the "Taylor Lands"

322. There are two small pieces of land that are being taken by the City, and whilst they are small, they do have a substantial impact upon the use of the property to the Objector. Both of the holdings are for the CN right of way alignment.

323. The Objector is in fact not objecting to the taking no. 30, and suggested it is fair and reasonably necessary. The Objector does make a recommendation to qualify same by asking that the City work with CN to mitigate the amount of lands being taken. In an email to Denise Pambrun (excerpt from transcript of August 11, 2015), which reads as follows:

> "The City of Winnipeg will use its best efforts to acquire the right to purchase the lands outlined in blue on the plan attached as schedule A (the land) from Manitoba Hydro. Upon acquiring such right, the City of Winnipeg will transfer the right to purchase the land to 3346234 Manitoba Limited as an undertaking to mitigate the impact of the expropriation of the Taylor lands and the City of Winnipeg will pay all costs related to the subdivision and rezoning of the land applicable to a rezoning to PDO2 Taylor redevelopment area and the land will be subdivided as directed by 3346234 Manitoba Limited acting reasonably."

324. The Objector's witness, Mr. Jason Zarnowski, gave evidence as to the taking and how the 50 foot front/side yard alignments can dramatically affect the development. The Objector explained that the proposed high density individual residential development, and different approvals received to date. The witness suggested that the solution to the present matter was for the City to take an easement over the property as opposed to the taking being a fee simple.

325. The witness went on to describe how this Objector had worked cooperatively with the City at two other development projects within the City. The witness confirmed that the developer would cooperate with the City for such an easement to allow the City to attend on the lands to do the construction work and maintain the work.

326. Furthermore, the Objector stated that it was their view that all of the land is not needed for the taking.

327. The objectors witness was not significantly challenged as to his own evidence and in fact, the City's consultants, Mr. Krahn and

Mr. Radstrom, both agreed that a taking of an easement would be sufficient.

328. In light of the foregoing, this Inquiry Officer finds as to:

a. Taking of Holding No. 30:

The taking of Holding No. 30 is fair and reasonably necessary and that the proposed taking has balance issues of public versus private interests. It is also noted the undertaking of the City with respect to use their best effort to minimize the taking.

b. Taking of Holding No. 39:

This Inquiry Officer is of the opinion that the proposed taking of a fee simple interest is not fair and reasonably necessary, but the taking of an easement upon the lands would be fair and reasonably necessary and would satisfy the City's objectives and meet the amount of the taking. There is no evidence before this Inquiry Officer that an easement would not be sufficient.

McDonald Grain Company Limited – 1833 Pembina Highway

329. The Objector raises concerns about the process the City has followed in the expropriation. The proposed taking, it is submitted, was done without the City having knowledge of the property, and failed to consult with the owners, and to consider other options. Mr. Narvey, on behalf of the Objectors, gave evidence as to the

property (Drury Manor) in that it had been extensively renovated and there were future plans for expansion. The expansion, Mr. Narvey testified, was for another 42 units, additional parking, and that the owners had made arrangements with Manitoba Hydro for additional parking, but the expansion would not be possible with the placement of the pumping station on the property.

330. It was submitted that the City had little, if any knowledge of the property as in the case of the expropriation of the Golden Door Geriatric Centre property at 1679 Pembina Highway, which if an agreement had not been reached, would have effectively destroyed the future development of that site.

331. The Objector had offered three possible sites for the placement of the pumping station; the Capri Motel, land to the south of the property, and within the Transit corridor itself.

332. The Objector examined the three objectives, the first being the Capri Motel. The evidence of Mr. Krahn was that this was not viable as there were three or four structures that would have to be taken down. It was submitted that, what was not considered, was the fact that the property at 1833 Pembina Highway is assessed for tax assessment at just below $20,000,000.00 and the Capri Motel has been appraised at just under $2,000,000.00. Mr. Newman suggested that the land to the south could have the same analysis.

333. The Objector was forceful in its submission that the pumping station can be built within the Transit Corridor. Both Mr. Krahn and Mr. Radstrom had argued that the pumping station could not be built within the Transit Corridor, but this Objector submitted, is contrary to Exhibit 48, Minutes of Hydro Meeting No. 2, but this Inquiry Officer, upon review, does not find that these Minutes support that proposition.

334. The City maintains that all reasonable options were canvassed, that the taking is necessary and could not be built within the Transit Corridor.

335. It would appear that the Objector is in fact correct in submitting that there was inadequate consultation or investigation of the placement of the proposed pumping station. At the time, there was no adequate discussion with the Objector, or it appears, any site visits. This Inquiry Officer did attend at 1833 Pembina Highway and the Capri Motel, and examined the properties. Whilst mindful that this Inquiry Officer is not a property evaluator, one can easily observe the buildings on the Capri Motel site which could be used for the placement of the pumping station, are old, run down, and do not appear to be maintained. A visit to the site may well have affected the placement of the pumping station.

336. There was significant evidence by Mr. Krahn and Mr. Radstrom as to design and location of the pumping station and limitation to design relative to the Hydro Lines and was steadfast in their view that the location they chose, was in fact the proper one. This was

despite evidence that was tendered, Exhibit 48, being the Minutes of Manitoba Hydro Meeting No. 2. The evidence, it is suggested, that the pumping station may be located within the corridor, but the evidence and analysis is not determinative at the present time.

337. It is this Inquiry Officer's opinion that the City has failed to examine and pursue options, failed to do due diligence concerning the taking and has not satisfied the onus that it is fair or reasonably necessary in the circumstances for the taking, and has failed to establish the taking would balance the private versus public interests. The proposed taking is denied.

338. This Inquiry Officer would urge the City to explore alternate sites and/or arrange a meeting with the City, the Objector, and Manitoba Hydro.

Objector 2114062 Manitoba Ltd. – 75 Southpark Drive

339. The Objector is the owner of 75 Southpark Drive and the Principle of the Company is Frank Caligiuri. The property is on a residential street that runs from Pembina Highway at the east to a back lane at the west that runs parallel to the CN Rail Line.

340. The proposed taking will be approximately a 1 meter strip to accommodate the sidewalk, an ATP, and parking lane. The evidence of the use of the street would be to access traffic from the Transit Pathway to Pembina Highway and then onto the University of Manitoba. The direct impact on the property would

require changes to the loading zone, location of the front steps, snow clearing, garbage realignment, and relocation of parking.

341. The Objector and his witness Mr. Parsons testified that the first notice they received with respect to the taking was when they received the Notice of Intended Expropriation. Mr. Parsons testified that this was surprising in that, as a property manager for the properties affected by BRT Stage 1, the City had been in contact with the property owners and were very proactive. In Fact, it should be noted that the City had been in contact in dealing with the property across the street at 88 Southpark Drive.

342. As proposed, Southpark Drive, a local street which buses are not normally on will become a main conduit of buses to the University of Manitoba, with approximately traffic of 250 to 350 buses per day. Other buses using the Transit Way will use Markham Road to access other parts of the City. The proposed use of Southpark Drive as an access route for Rapid Transit was a rather recent decision (in Rapid Transit History) and post-dated the alignment study open houses of September 19 and September 22, 2012, and the functional design open houses of November 18, and 19, 2013. In fact, it was not until December 2013 that Southpark Drive became an option and Dillon Consulting until November 2013 was still proposing Markham Road as being the access route.

343. It is suggested by the Objector that the choice of Southpark Drive over Markham Road was a result of the last open house in November 2013, when the condo owners of Markham Road

properties voiced their concerns. In any event, Southpark Drive was the new route and development plans proceeded. As stated, the routing of Southpark Drive was to facilitate a redesign of Southpark Drive and the intersection of Southpark Drive and Pembina Highway to accommodate the realignment and better flow both east and west and north and south on Pembina Highway. The Objector pointed out and stressed that there was no proper traffic analysis, no studies, and little or no attention was paid to engineering practices. It was submitted that the use of Southpark Drive as opposed to Markham Road was the result of satisfying needs of the University of Manitoba to accommodate future development of the Southwood Golf Course.

344. The City maintained that there was more than adequate notice to this Objector and the concerns relative to the lack of consultation were unjustified. The City points out that there were mail outs and the Notices were mailed to all interested parties, ads in newspapers and public meetings after the routing was changed.

345. The City gave evidence that it was prepared to do some modifications in relocating loading zones, reconfiguring of the front steps, repositioning parking for the spaces that would be lost, and doing a noise study.

346. It is clear that the nature and design of Southpark Drive is being dramatically altered. The proposal would have it go from a quiet residential street to a major thoroughfare. The change of design was developed late in the design process. The Objector has asked

and submitted that this Inquiry Officer not approve Southpark Drive over the previously approved Markham Road and has submitted that no approval be given until there has been full traffic analysis, costs benefit analysis and transit analysis.

347. In reviewing the submissions of the City, the Objector, and the material filed, this Inquiry Officer is very sympathetic to the present property owner. The impacts upon his apartment block and neighborhood are significant. It is unfortunate and disappointing that the City, in making a basic change to the routing after the November 13 open houses, would have not contacted the owner of this property which will be significantly impacted.

348. The City is entitled, if not obligated, to continue to examine and develop new plans and designs. In the circumstances, the City had continually examined, designed, and routing and made a fundamental change to use Southpark Drive as Transit Corridor to the University of Manitoba, over Markham Road. The evidence of the City's witnesses were clear, and no expert evidence was called to rebut their design or choice.

349. In the circumstances, this Inquiry Officer finds that the proposed taking is fair and reasonably necessary and that the City has balanced private versus public interests.

350. Mr. Hacault, on behalf of the Objector has submitted a series of recommendations to the City. This Inquiry Officer cannot compel the City to follow those recommendations requested, but

encourages the City to use their best efforts to work with the owner of the property. The owner, Mr. Caligiuri, and the property manager, deserve to have their issues addressed in a professional manner and both of these individuals appeared to be both reasonable and sincere and willing to work with the City.

Objectors ACI Shoppers Southpark Ltd. – 2211 Pembina Highway

351. The Objectors have adopted in part the arguments of the Objectors of the owners of 75 Southpark Drive, pointing out that Markham Road is a residential major collector street whilst Southpark is only a local street. The proposed taking of Southpark Drive will affect the northwest corner of the property with a consequential loss of space for parking and signage. The position of the Objector was not against the objectives of the City, but was against the means by which the objectives were to be achieved.

352. In as much as the issue of the Southpark Drive taking has been dealt with, in the present circumstances, this Inquiry Officer finds that the proposed taking is fair and reasonably necessary for the objectives of the Expropriating Authority and has met the test of balancing public versus private interests.

CLOSING COMMENTS

353. The City has undertaken the development of Bus Rapid Transit II and the Pembina Highway Underpass Projects, which are both significant projects in their own right. Rapid Transit has been an issue for some time and Mr. Krahn, in his testimony, has indicated

that he has been involved conceptually and practically since 1984. The submission of Ms. Pambrun indicated that there were 34 properties affected, and over 1000 served with the Notice of Intended Expropriation. As a result of the takings and the Notices, there were 11 Notices of Objection filed. Three of the Objectors withdrew their Notice of Objection during the public hearing process and during the course of the hearing, two other Objectors advised they have reached an agreement with the City with respect to the City taking an easement as opposed to a full taking of the land. The fact that there are a minimal number of Objectors, and of those who did object, agreements were reached by a number of them, is laudable.

354. There are however, issues that need to be mentioned. Firstly, there ought to be better communication from the City to those who are being directly impacted in order that the land owner is aware of the proposed taking, and also that the City can fully inform itself of the specific property being required. Five of the Objectors, and the City, reached an agreement with respect to easements after there had been a dialogue and after there had been a full appreciation of the impact on the property owner. The taking of property, involuntarily, from a land owner, is contrary to the history of property rights and should be done so carefully. If there had been more consultation between the parties, public hearings would be reduced. The property owners must cooperate with the City, or any expropriating authority, to the extent that they should

set forth in their Notice of Objection, the specifics of their Objection as opposed to a general statement that it is not “fair or reasonably necessary”.

355. Secondly, this Inquiry Officer disagrees with the position of the City that the expropriation process is an engineering exercise. The process is in fact a process between the Expropriating Authority and land owners. The taking of a piece of property is not drawing a line between two points, but rather to engage in a discussion as to know the impact of the taking and how the taking may be modified to reach a consensus. As an Inquiry Officer, I have conducted Inquiries which include, the Moray Street taking, Norwood / Main Street Bridge construction and the Disraeli Freeway Project. These hearings were all attended by and participated in by representatives of the Property Department of the City of Winnipeg. In the past 18 months, there has been no involvement at the hearing process from the Property Department. Representatives of the City of Winnipeg Property Development Department have not been called as witnesses, nor have they attended to monitor the hearings. Their attendance, in fact, may have been beneficial at the hearing process for an opportunity for direct discussions with the Objectors.

356. Thirdly, the hearing process and transparency generally would be facilitated if requests for information would be shared more readily. In fairness, the City may not always know what documents the

Objector requires, but reasonable requests should be responded to.

357. Finally, the public should be encouraged to participate and the process should be "user-friendly" towards the person. The Inquiry is not bound by the strict rules of evidence and the hearing process should be as non-confrontational as possible. We do not wish to deter interested parties because of fear of the process and the hearing. The goal of the public inquiry is to engage the public and not to scare them off.

Date: November 16, 2015

Submitted by G.E. Ulyatt

Inquiry Officer.

SCHEDULE A

FIRSTLY,

THE LANDS TAKEN FOR MARKHAM ROAD AND SOUTHPARK DRIVE AS SHOWN ON PLAN DEPOSIT 2119/2014 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

SECONDLY,

THE LANDS TAKEN FOR CHANCELLOR DRIVE AS SHOWN ON PLAN DEPOSIT 2122/2014 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

THIRDLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCELS A AND B ON PLAN DEPOSIT 2137/2014 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

FOURTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCEL A ON PLAN DEPOSIT 0002/2015 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

FIFTHLY,

ALL OF THE LAND CONTAINED WITHIN LOT 5, PLAN 22602 WLTO;

SIXTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCELS A AND B ON PLAN DEPOSIT 0144/2015 WLTO, PREPARED BY KENNETH MAX YEREX, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

SEVENTHLY,

THE LANDS TAKEN FOR SEEL AVENUE AS SHOWN ON PLAN DEPOSIT 0142/2015 WLTO, PREPARED BY KENNETH MAX YEREX, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

EIGHTHLY,

ALL OF THE LAND CONTAINED WITHIN LOTS 17, 18, 19 AND 20 IN BLOCK 56, PLAN 276 WLTO;

NINTHLY,

ALL OF THE LAND CONTAINED WITHIN LOTS 9 AND 10 IN BLOCK 6, PLAN 1295 WLTO;

TENTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCEL A ON PLAN DEPOSIT 0054/2015 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

ELEVENTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCEL A ON PLAN DEPOSIT 0036/2015 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

TWELFTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCELS A, B AND C ON PLAN DEPOSIT 0141/2015 WLTO, PREPARED BY KENNETH MAX YEREX, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

THIRTEENTHLY,

THE LANDS TAKEN FOR PEMBINA HIGHWAY AS SHOWN ON PLAN DEPOSIT 0001/2015 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

FOURTEENTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCEL A ON PLAN DEPOSIT 0035/2015 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

FIFTEENTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCEL A ON PLAN DEPOSIT 0055/2015 WLTO, PREPARED BY DONALD NEIL BOURGEOIS, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;

SIXTEENTHLY,

THE LANDS TAKEN FOR WORKS AND SHOWN AS PARCEL A ON PLAN DEPOSIT 0143/2015 WLTO, PREPARED BY KENNETH MAX YEREX, OF THE CITY OF WINNIPEG, MANITOBA LAND SURVEYOR;