

THE REGIONAL MUNICIPALITY OF YORK

REPORT NO. 2 OF THE REGIONAL SOLICITOR

**For Consideration by
The Council of The Regional Municipality of York
on June 25, 2009**

**1
APPROVAL TO EXPROPRIATE LAND
DAVIS DRIVE, VIVA PROJECT 90760
TOWN OF NEWMARKET**

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council, as approving authority, receive and consider the report of Gillian M. Burton, Inquiry Officer, attached as *Attachment 1*, with respect to the inquiry held on May 12, 13, 14, and 15, 2009 under section 7 of the *Expropriations Act* with respect to the proposed expropriation of lands for road and intersection improvements on Davis Drive in the Town of Newmarket.
2. Regional Council, as approving authority, approve the expropriation of the lands and interests in lands in the Town of Newmarket, more particularly described in Schedule "A" attached, for the reasons set out in Schedule "B" attached.
3. Regional Council authorize the Region to enter into Section 30 agreements or Permission to Enter and Construct agreements as described herein, as an alternative or supportive means of achieving the land requirements prior to filing the Plans of Expropriation, and not to proceed with filing such Plan if no longer required, such agreements to be completed in accordance with the delegation granted to Regional staff during the summer recess.
4. Regional staff be authorized to execute and serve any notices required by the *Expropriations Act*.

5. The lands being expropriated and otherwise acquired for road purposes be dedicated as public highway.
6. The necessary bills be introduced in Council to give the effect to these recommendations.

2. PURPOSE

The purpose of this report is to obtain Council's approval to expropriate the required lands from owners along Davis Drive (D1) in the Town of Newmarket in order to implement certain road and intersection improvements and to provide designated lanes for the Viva transit system along the corridor.

This report submits for Council's consideration the report of the Inquiry Officer with respect to the hearing of necessity held in this matter and recommends that the proposed expropriation proceed with some modifications.

3. BACKGROUND

Regional Council approved an application to expropriate lands along Davis Drive for the purpose of improvements to road infrastructure and construction of dedicated lanes for Viva buses

On January 22, 2009, Regional Council authorized an application for approval to expropriate lands along Davis Drive in the Town of Newmarket. The lands are required for improvements to road infrastructure and the construction of dedicated lanes for Viva buses along Davis Drive between Yonge Street and the Southlake Regional Health Centre. These lands will accommodate designated east and west lanes for the Viva buses, streetscaping and boulevards. Construction is anticipated to commence in the fall of 2009. Negotiations for property acquisition are currently being conducted, however, in order to ensure timely acquisition, it is necessary for the expropriation process to proceed concurrently.

Requests for an inquiry were received from 24 property owners and a hearing was scheduled to commence on May 12, 2009

Following the approval of the application, the required notices were served on the owners of the affected lands and a copy of the notice was published in The Banner/The Era on February 12, 19 and 26, 2009. In response to these notices, 24 requests for a hearing before the Inquiry Officer were received and forwarded to the Chief Inquiry Officer. A hearing was scheduled before the Inquiry Officer from May 12 to 15, 2009. The purpose of the hearing was to determine whether the proposed expropriation is fair, sound and reasonably necessary to achieve the Region's objectives as an expropriating authority.

Mr. Stephen Waqué of Borden Ladner Gervais LLP represented the Region at the hearing.

Meetings were held with individual property owners to provide further details of the proposed takings

Because of time constraints, reference plans were not fully completed at the time the notices were served. As a result, the proposed takings were described by way of a drawing attached to the notice. Property owners were given an opportunity to meet with Regional staff and consultants, if desired, to discuss in greater detail the Region's requirements. As draft reference plans were completed, they were provided to property owners to confirm the extent of the proposed taking.

4. ANALYSIS AND OPTIONS

Hearing of Necessity commenced on May 12, 2009 and proceeded with respect to 7 individual properties

Many parties who had requested a hearing of necessity withdrew their requests prior to the hearing. In some cases, agreements had been reached prior to the hearing, which may obviate the need to expropriate. The hearing proceeded with respect to the following properties:

- 496 and 498 Davis Drive, (the "Di Cecco" properties), (a law office and flower shop)
- 560 Davis Drive (Mrs. Illyes)
- 291 Davis Drive, at the north east corner of Davis Drive and Hill Street, (a medical building with parking spaces)
- 16 Main Street South, at the south west corner of Main Street and Davis Drive, (commercial plaza with parking)
- 432 Davis Drive at the south east corner of Davis Drive and Main Street (owned by Save It Holdings Ltd., which operates a gas bar)
- 438 - 442 Davis Drive, to the east of Save It Gas Bar, (two commercial buildings)
- 166 Davis Drive at the south east corner of Parkside Drive and Davis Drive, (owned by Shell Canada, gas station and car wash)

Modifications are required to the description of lands to be expropriated

In all cases, the extent of the proposed takings is now described by means of reference plans rather than parts on a conceptual layout plan. Descriptions on the reference plans correspond substantively to the dimensions of the lands originally set out in the application for approval.

Some modifications are required to the description of the lands which were the subject of the original application. These modifications fall into two general categories:

- (a) Properties where revisions have been made to specific descriptions either because the lands required have been modified by agreement with the property owner or as a result of evidence at the hearing.
- (b) Properties which are subject to an agreement made under Section 30 of the *Expropriations Act* whereby the owner has consented to the taking. If these agreements are completed and clear title is conveyed prior to registration of the plan, it may not be necessary to proceed with formal expropriation. For the most part, however, authority to expropriate these lands is requested pending completion of these transactions. In some cases, permissions to enter have been negotiated in lieu of formal easements, in which case it is equally not necessary to proceed with expropriation.

The following summary sets out those individual properties where the Region's requirements have been modified for the reasons set out above.

(a) The Region's requirements with respect to certain properties have been modified as a result of negotiations with property owners, engineering redesign or as directed as a result of the hearing of necessity. These are as follows:

- (i) The requirements for Reference Nos. 29 to 38 listed on Schedule "A" on the north side of Davis Drive have been reduced, in particular, Reference No. 37A has been reduced to a temporary easement only. This is due to the removal of a left turn U-turn on Davis Drive at Lorne Avenue.
- (ii) With respect to Reference Nos. 86, 87 and 88 listed on Schedule "A", the Region has reduced the requirement from a fee only taking to a fee taking with a permanent and temporary easement within the originally proposed area. This is due to removal of the said left turn U-turn. This modification will still allow the engineers to design the necessary requirements to widen the road.

- (iii) The Inquiry Officer recommends that the whole of the property at Reference No. 104 listed on Schedule “A” be acquired instead of just the front portion in fee simple and a permanent and temporary easement. Due to significant injurious affection on the remaining property, staff recommends the entire property be expropriated.
- (iv) The property known as 175 Deerfield Road, Reference No. 126 is no longer a requirement for this project due to the redesign of the realignment of Parkside Drive. Therefore, the portion of this property originally included in the application will not be expropriated and has been removed from Schedule “A”. In addition, Reference No. 125 has been reduced due to the design of the Parkside Drive realignment.
- (v) Reference No. 85 on Schedule “A” was originally shown as a fee and temporary easement taking. The Region’s engineers have determined a fee and permanent easement taking is required over the same area. The notice served on the owners did indicate this requirement. Therefore, we recommend the approval of the fee and permanent easement taking.
- (vi) Reference No. 116 on Schedule “A” shows a reduced temporary easement requirement to avoid conflicting with the location of an underground garage at this property. The Region’s engineers agree this revision is acceptable and will still meet the requirements of the project.

(b) Section 30 agreements and Permissions to Enter and Construct, or Other agreements

A Section 30 agreement is a form of consent to expropriation which can secure the land requirements of the Region by agreement. A Permission to Enter and Construct gives the Region the rights it would have under a temporary easement by consent. As discussed above, negotiations to achieve these agreements are still underway and will in a number of cases result in modifications to the usual expropriation process which is mutually beneficial to the Region and the owner. Rather than terminate these discussions at the time this report is being submitted, Recommendation 3 will allow those discussions to continue to attempt to reach a satisfactory resolution right up to the time a Plan of Expropriation must be filed. Discussions toward the said form of agreements with interested parties concerning Reference Nos. 13, 39, 48, 53, 61, 65, 72, 77, 95, 106, 110 and 112 are ongoing at this time. Reference No. 115 is a property where a road widening is to be dedicated pursuant to a site plan agreement. The dedication has not been conveyed at this time and has been included in Schedule “A” to ensure it is acquired as part of the project. It is expected that it will be conveyed prior to the registration of an expropriation plan.

Property where expropriation will not proceed

Reference No. 102 in the original application is owned by the Town of Newmarket. Accordingly, formal expropriation will not proceed. Staff anticipate acquiring the property through co-operation with the Town.

The *Expropriations Act* requires the Region to consider the report of the Inquiry Officer

The Act requires the Regional Council as approving authority to consider the Inquiry Officer's report and to approve or not approve the proposed expropriation or approve with such modifications as it considers proper.

In considering the Inquiry Officer's Report and the outstanding objections to the proposed expropriations, Regional Council is performing a separate function from the role it undertakes as expropriating authority. Members of Council are asked to consider both the objections raised and the Report and make the determination Council finds appropriate, whether to approve, not approve or approve with modifications.

The Inquiry Officer concluded that all of the proposed takings meet the test in the Act and recommended that the Region proceed with the expropriations. As discussed, the descriptions of the lands to be expropriated have been modified to reflect completion of reference plans. In some cases, requirements have been revised through discussions with owners, or as a result of the hearing, to reflect the revised scope of taking recommended by the Inquiry Officer. In addition, in those cases where satisfactory agreements have been concluded with land owners, it is recommended that the Region have approval from Council to proceed with expropriation as an option to ensure clear title.

5. FINANCIAL IMPLICATIONS

The compensation payable for the expropriated lands will be reported to Council for approval at the time offers are served on the registered owners.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal impacts directly associated with this report.

7. CONCLUSION

It is recommended that Regional Council grant the necessary authority to proceed with expropriation of the lands required for road intersection improvements along Davis Drive and to provide designated lanes for the Viva Rapid Transit system in accordance with the

report previously authorized, subject to the modifications noted in this report. The description of the lands and interests in lands to be expropriated is attached as Schedule "A".

For more information on this report, please contact Elizabeth Wilson, Senior Counsel at Ext. 1402.

(The attachments referred to in this clause are attached to this report.)

Respectfully submitted,

**June 22, 2009
Newmarket, Ontario**

**Joy Hulton
Regional Solicitor**

(Report No. 2 of the Regional Solicitor was adopted without amendment, by the Council of The Regional Municipality of York at its meeting on June 25, 2009.)

Expropriations Act, R.S.O. 1990, c. E.26 (as amended)

IN THE MATTER OF the proposed expropriation by the Regional Municipality of York of the following lands for the purpose of implementing road and intersection improvements along Davis Drive in the Town of Newmarket, and to provide designated lanes for the VIVA transit system and works ancillary thereto:

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(Reference No. 1, Notice of Application for Approval to Expropriate Land, Schedule A)

Part of PIN: 03578-0903 (LT)

A fee simple interest in Part Lot 96, Conc. 1, East of Yonge St., Township of East Gwillimbury designated as Part 1 on Drawing No. 1 dated January 19, 2009

A three-year temporary easement in Part Lot 96, Conc. 1, East of Yonge St., Township of East Gwillimbury designated as Part 3 on Drawing No. 1 dated January 19, 2009

A permanent easement in Part Lot 96, Conc. 1, East of Yonge St., Township of East Gwillimbury designated as Part 2 on Drawing No. 1 dated January 19, 2009

(Ref. No. 2)

Part of PIN: 03578-0129 (LT)

A fee simple interest in Part of Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury, designated as Part 1 on Drawing No. 2 dated January 19, 2009

A three-year temporary easement in Part of Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury, designated as Part 3 on Drawing No. 2 dated January 19, 2009

A permanent easement in Part of Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury, designated as Part 2 on Drawing No. 2 dated January 19, 2009

(Ref. No 16)

Part of PIN: 03574-0175 (LT)

A fee simple interest in Lots 259, 260 and 261 on Plan 492, East Gwillimbury designated as Part 1 on Drawing No. 16 dated January 19, 2009

A three-year temporary easement in Lots 259, 260 and 261 on Plan 492, East Gwillimbury designated as Part 3 on Drawing No. 16 dated January 19, 2009

A permanent easement in Lots 259, 260 and 261 on Plan 492, East Gwillimbury designated as Part 2 on Drawing No. 16 dated January 19, 2009

(Ref. No. 38) Part of PIN: 03574-0925 (LT), known municipally as 291 Davis Drive:

A fee simple interest in Lot 16 and part Lots 7, 8 and 9 on Plan 112, Newmarket, designated as Part 1 on Drawing No. 38 dated January 19, 2009; and

A three-year temporary easement in Lot 16 and part Lots 7, 8 and 9 on Plan 112, Newmarket, designated as Part 2 on Drawing No. 38 dated January 19, 2009.

(Ref. No. 97) Part of PIN: 03603-0064 (LT), known municipally as 16 Main Street South:

A fee simple interest in Part Lot 1 and Lots 2, 3 and 4 w.s. of Main St. Plan 78, Town of Newmarket, designated as Part 1 on Drawing No. 97 dated January 19, 2009;

A three-year temporary easement in Part Lot 1 and Lots 2, 3 and 4 w.s. of Main St. Plan 78, Town of Newmarket designated as Part 3 on Drawing No. 97 dated January 19, 2009; and

A permanent easement in Part Lot 1 and Lots 2, 3 and 4 w.s. of Main St. Plan 78, Town of Newmarket designated as Part 2 on Drawing No. 97 dated January 19, 2009.

(Ref. No. 98) PIN 03609-0003 (LT), known municipally as 432 Davis Drive:

A fee simple interest in Part of Lots 12 and 13, south side of Huron Street, Plan 78, designated as Parts 1, 4 and 6 on Plan 65R-16637, Town of Newmarket.

(Ref. No. 99) PIN 03609-0005 (LT), known municipally as 438 – 442 Davis Drive:

A fee simple interest in Lot 11, south side of Huron Street, Plan 78 Newmarket, Town of Newmarket.

(Ref. No. 103) PIN 03609-0060 (LT), known municipally as 496 Davis Drive:

A fee simple interest in Part of Block F Plan 262 as in Deed No. R190109, Town of Newmarket.

(Ref. No. 104) Part of PIN: 03609-0061 (LT) - vacant land, south side Davis Drive:

A fee simple interest in Part Block F on Plan 262 and Part Lot 5, ss of Huron St., Plan 78, Town of Newmarket, designated as Part 1 on Drawing No. 104 dated January 19, 2009;

A three-year temporary easement in Part Block F on Plan 262 and Part Lot 5, ss of Huron St., Plan 78, Town of Newmarket, designated as Part 3 on Drawing No. 104 dated January 19, 2009; and

A permanent easement in Part Block F on Plan 262 and Part Lot 5, ss of Huron St., Plan 78, Town of Newmarket, designated as Part 2 on Drawing No. 104 dated January 19, 2009.

(Ref. No. 110) PIN 03610-0007 (LT), known municipally as 560 Davis Drive:

A fee simple interest in Part of Lots 39 and 40 on Plan 125 Newmarket, as in Deed No. R647798, Town of Newmarket.

Dates of Hearing	May 12 - 15, 2009
Appearances:	
The Region of York	Stephen F. Waqué Frank J. Sperduti
480770 Ontario Ltd., 2018523 Ontario Ltd.	Kenneth C. Hill
1344459 Ontario Ltd.	Robert A. Leck
Dr. Lincoln R. Hew	Paul Butler, Agent
Michael O'Rourke, June O'Rourke, Drosan Corp., Alessandro Di Cecco, Carolyn Jones	Alessandro Di Cecco Carolyn J. Jones
Erzsebet Illyes	Beth A. Turner

REPORT

This inquiry was held pursuant to section 7 of the *Expropriations Act*, R.S.O. 1990, c. E.26 (as amended) (the "Act") to determine whether the proposed takings by the Regional Municipality of York of either the whole, or portions of the properties owned by the requesters is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority" as the Act states, or is "reasonably defensible" as the courts have interpreted this test.

PARTIES

Many of the parties who had requested a hearing of inquiry in this matter had withdrawn their requests before the commencement of the hearing, having reached agreements with the Region respecting the proposed takings. Some of those reflected above did so at the hearing, either after or without making submissions. Mr. Waqué presented statements on behalf of some of these owners respecting the solutions that he requested that I recommend to the Region.

The parties who appeared at the hearing by counsel or agents are listed above. Because there may be confusion as to the status of some of them, I have retained some of the property descriptions if they attended, or where there were withdrawals at the hearing.

THE PROPERTIES

The parcels affected by the proposed expropriations are located on both sides of Davis Drive in the Town of Newmarket. Those involved in this hearing lie primarily between the GO station on the north side of Davis Drive, just to the west of the Keith Bridge over the East Holland River, and the Southlake Regional Heath Centre to the east. The Region proposes to take the properties or parts of them on a fee simple basis; or permanent and temporary easements, or a combination, from each of them. The only parcels where the taking was seriously challenged at the hearing were the "Di Cecco" properties (the other owners are listed above), Reference Nos. 103 and 104, with addresses at 496 and 498 Davis Drive, and that owned by Mrs. Illyes, 560 Davis Drive, Ref. No. 110.

The Di Cecco land consists of two parcels. Number 496 Davis Dr. (area about 700 sq. m.) is located on the east side the East Holland River which runs south – north in this area. Davis Drive is presently carried over the river via the Keith Bridge, just to the north and west of the property. There is a building on number 496 in which law practices and a flower shop are located. The parcel is owned by Mr. O'Rourke and Drosan Inc., with the Di Cecco, Jones law office as tenant.

Mr. Di Cecco and Mrs. O'Rourke own Number 498, a vacant parcel of about 205 sq. m, now used as a parking facility for the building next door. Ms. Jones is a tenant on both parcels. They are located within a flood plain as designated by the Lake Simcoe Region Conservation Authority.

Mrs. Illyes has long owned and resided at 560 Davis Drive, a relatively deep and narrow parcel (approximately 18 m x 50 m) on which a residence is located, close to the roadway, with a workshop to the rear of the parcel. The land is also within the identified flood plain, but is close to the eastern edge of this designation.

Other properties considered at the hearing:

291 Davis, owned by Dr. Lincoln Hew and Ms. Amy Hew, is at the northeast corner of Davis Drive and Hill Street. A medical building is located thereon, together with parking spaces. There is a stair on the eastern side for access from Davis Dr., as the grade up from the existing sidewalk is pronounced.

16 Main Street South, at the southwest corner of Main and Davis, is owned by King Fei Investments Ltd. and contains a commercial plaza with parking.

432 Davis Drive, on the southeast corner at Main, is owned by Save It Holdings Ltd., and it operates a gas bar there.

438 – 442 Davis Drive to the east of Save It, is owned by Chuang Holdings Ltd. It contains two commercial buildings.

Shell Canada owns 166 Davis Drive, the southeast corner of Parkside Drive and Davis. A gas station and car wash are located there.

THE OBJECTIVE OF THE EXPROPRIATING AUTHORITY

The Region of York intends to construct a comprehensive network of rapid transit facilities, eventually linking its four designated regional centres. A rapid transit option had been proposed in detail in the Region's 2002 Transportation Master Plan. Such a network is considered to be necessary to meet regional, interregional and provincial policies that encourage the use of public transit over expanded automobile use (Exhibit 15, P. 13-1.) One method of reaching this goal is by supplying appropriate and attractive roadway design and pedestrian amenities.

The major design feature for the affected roads is a two-lane dedicated rapidway, located where feasible in a segregated median. This would accommodate Bus Rapid Transit initially, and permit possible conversion to Light Rail technology in the future. During an Class Environmental Assessment (EA) as is required for such projects, in this case an individual one for the North Yonge Street Corridor, the widening of Davis Drive from Yonge Street to Roxborough Road to the east was evaluated. This would permit the incorporation of rapid transit and other design options within the roadway right of way along this major east-west street, with station structures at 1 km distances. The rapidway would be within a segregated median in the area in question, then proceed in mixed traffic east of the Southlake Regional Health Centre to Highway 404.

Thus the Region's specific objective for these proposed expropriations is to widen the existing right of way to accommodate the preferred design features. It has selected a new alignment for a portion of the right of way in the area of the present Keith Bridge. Thus its objective now includes its construction in this new location. The takings are considered necessary to this goal.

Respecting the Di Cecco lands, the Region wishes to take the entire riverside parcel in fee simple, and had proposed each of a fee simple, a permanent and a temporary construction easement from the parking lot next door. Meeting its goal of expanding the bridge and the roadway in the approved location would necessitate the demolition of the building on the riverside parcel.

The Region proposes to take all of the Illyes parcel in fee simple, for reasons outlined in the evidence.

MOTION FOR ADJOURNMENT

Mr. Di Cecco and Ms. Jones brought a motion for an adjournment at the commencement of the hearing. They submitted that there had not been sufficient disclosure of the Region's proposal for their land, despite their many requests for details of how the recent revision to the location of the right of way close to their parcels would affect them. They had participated in the June 2008 public meeting during the EA process, when the proposed route would have affected the properties but would not have resulted in the taking of their building. They discovered as of November 20, 2008 that a change had been proposed to the placement of the bridge close to the property. This resulted in a southerly dip in the right of way that would now bisect their office building and require its demolition. A protest letter was followed by an explanation for the change. A period of negotiation came next, with no resolution, as the Region did not supply them with engineering drawings they considered necessary to verify the rationale for the southerly dip in the right of way. They required more details about the bridge design in order to hire appropriate experts. Thus they were unable to properly prepare for this hearing. Mr. Di Cecco suspected favoritism in the Region's decision to commence the whole rapid transit project in this location, merely to benefit the new Cancer Centre. He expressed a wish for some of the politicians who made the decisions to attend to respond, with copies of supporting reports. His requests to Mr. Mota of the Region for specific witnesses to be present today, and to Mr. Waqué for his witness list were not answered to his satisfaction. Therefore he made a request for information under the Freedom of Information legislation (FOI) on April 6. He also studied the Notice of Grounds dated May 1 with care, to glean the desired details or rationale. He still feels unable to properly present his case today, and is supported in this view by Ms. Jones. She submitted that engineering drawings were essential to determine if another option, which they preferred, was fair and defensible. Failure to supply the requested documents resulted in unfairness to the requesters, who were unable to hire appropriate witnesses to review the Region's drawings. There was even unfairness in selecting this early date for the hearing of inquiry without consulting them. She requested an adjournment to obtain judicial review of these factors.

In his reply Mr. Waqué empathized with the requesters, in that there had been a change in the accepted alignment that had a more deleterious affect on their property, now requiring the removal of their commercial building. The new bridge over the East Holland River would be constructed to the south of the existing, rather than to the north, as had been the plan at the public meetings in June. However, the release of this information was not as recent as they suggest. They have known since the end of December that this proposal (bridge structure to the south side of the road rather than the north) would be put forward, and the clear reasons for it. A bridge to the south allows for protection of significant heritage features just to the north of the existing bridge, and also prevents a conflict with the operations of the GO Transit train in the station just to the west of the river. The historic dam and canal feature immediately north of the existing bridge was identified as a Cultural Heritage Landscape (CHL) in the Environmental Study Report (ESR), conducted during the environmental assessment (EA) process (Ex. 15, p. 7-13). Thus these issues had been raised as potential concerns or impediments, and witnesses could have been hired to address them. Testimony from engineers as to the type of structure to be built would not be relevant to the basic issue in this hearing for these requesters, i.e. whether the bridge should be built on the north or the south. Nor could politicians address this issue as witnesses, since the question before the hearing is not one of the policy decision to expand Davis, or whether the bridge should be built to on the south or the north, but whether the proposed takings in furtherance of this new objective (bridge to the south) meets the statutory test of "fair, sound and reasonably necessary" to its achievement.

In support of these points he provided case law (Ex. 4.) In *Grey (County) Hydro Corridor Committee v. Ontario (Minister of Energy)*(1977), 18 O.R. (2d) 170 (Div. Ct.), Mr. Justice Grange stated that the inquiry officer has no power to consider the merits of the objectives of the authority, that this consideration was for the politicians. It could only determine whether the proposed taking to satisfy the authority's objectives meets the statutory test. Madam Justice Van Camp in *Ball v. Ontario Hydro* (1974), 6 O.R. (2d) 631 (Div. Ct.) reiterated earlier authority that the original decision to expropriate was not subject to judicial review, absent bad faith (para. 12.) Therefore, he said, it would be irrelevant to call politicians as witnesses.

In para. 22 of *Ball* the Court also deals with the argument that there had been insufficient disclosure of relevant documents. It concluded that the authority need not supply all relevant documents, only those it intends to use at the hearing to show the case that the owners must meet, i.e. to prove its contention that the specific taking as proposed is reasonably defensible. Therefore even when the Di Cecco request for further documents was made after the Notice of Grounds was served, there was no obligation to supply more than the Region intended to use at the hearing to make its case. Henry, J., in his concurring decision in *Ball* states at para. 33 that, apart from subsection 7(4), there is no other mechanism in the Act for formal production of documents, or for discovery of any person. Mr. Doig as Inquiry Officer in *Ontario (Ministry of Transportation) v. Gjos*, (1999), 67 L.C.R. 154, concluded that if documents considered essential by the requesters were not forthcoming, the solution would be to mention this in his report, together with a full representation of the objection made by the requesters.

Respecting the argument that the hearing should be adjourned to await the results of the FOI request, there was a finding to the contrary by the Divisional Court in *Bezic Construction Ltd. v. Ontario (Minister of Transportation)* [2006] O.J. No. 542. It was not a denial of natural justice where it was found that the owner had sufficient knowledge of the proposal without the requested documents (and whose relevance was questioned, in any event.)

Mr. Waqué also argued against the motion for adjournment on the basis of both private and public interests that would be negatively impacted. Other parties to this hearing had all respected the process, and resolutions of their issues would be delayed should there be an adjournment. There was some urgency to deal with an existing substandard condition at the GO station north of Davis Drive, and if Mr. Di Cecco's alternative were chosen, the GO trains would be forced to stop in the middle of a traffic lane on Davis. Another public interest affected is that of the transportation needs of the future Southlake Regional Cancer Centre. However, the truly critical factor is that of funding for these transportation projects. The only infrastructure projects to have been guaranteed funding by the province for 2009 are this one and the Highway 7 expansion in Markham. They must be ready to proceed so as to get the economy moving again.

He also said that he had added certain witnesses to provide testimony that would respond to Mr. Di Cecco's concerns.

Ruling on the motion:

I denied the motion for adjournment. Regarding the recent FOI request, I conclude from much of Mr. Di Cecco's letter (Ex. 5, Tab 2) that many of the documents sought were not relevant to the question on which I must give my opinion. Mr. Waqué emphasized that he had been fully aware of the rationale for the proposed changes in the alignment – the existence of the heritage features and the GO constraints - for some time. In addition, witnesses would provide the evidence and answers that Mr. Di Cecco was seeking. I rely on the statement by Henry J. in the *Ball* case respecting the purpose and scope of a hearing of inquiry or necessity. In para. 32 he said,

“...The function of the inquiry officer is to hold an inquiry under s. 7(5) of the *Expropriations Act* which is designed to allow objecting landowners to present their objections in an orderly manner. **The case they have to meet, if I can term it that, is provided by subsection 7(4); [notice of grounds and documents intended to be used at the hearing]**...The inquiry officer decides no rights and liabilities but submits a report which the Minister must consider. The primary objective of this proceeding is to ensure that the Minister shall know and consider the case submitted by the objectors and the opinion of the impartial inquiry officer on the merits of the application for approval of the expropriation in the light of the submissions of the objectors...” (emphasis added.)

This is therefore not like a formal court proceeding, but an informal inquiry. Some procedural rights such as examination, cross-examination, and submissions are guaranteed, but the legal rules of evidence do not apply (the Act, clause 7(9)(c).) Subsection 7(4) of the Act provides the mechanism for an objector to obtain the essence of the case it must meet. The time frame is admittedly brief, but the objector has many opportunities within the expropriation notice process to obtain details of the authority's proposal prior to a hearing of inquiry (here this was made

available by notice and request for comments in November 2008). I therefore concluded that there was no reason to delay the hearing in this matter based on non-disclosure of all of the documents requested by the owners. As in the *Bezic* situation, the owners here were provided with almost as much information on the alteration proposed to the bridge placement as the Region had in its possession at the time, since no detailed construction drawings had yet been prepared. This is the normal mode of proceeding in expropriation matters following approval of an EA Report, and is in no way evidence that there was any stonewalling of the requesters as was submitted. There was an opportunity for them to engage expert engineering or other witnesses to review what was known prior to the hearing, should they so desire. The Region met the disclosure requirements as set out in subsection 7(4) of the Act, and even went beyond them by supplying Mr. Di Cecco directly and by personal delivery with relevant witness statements in advance of the hearing (Ex. 5, Tabs 7 and 9). Mr. Waqué also offered to supply any needed documents at the hearing where possible, and requested that it be noted in my report if this could not be done, as in the *Gjos* case above.

I have no authority to summon witnesses, and those politicians and staff requested by Mr. Di Cecco I found to be irrelevant to his making a case against the proposed expropriation. Most were involved in the process of reaching the decision to expropriate, either as politicians or staff. I have no jurisdiction to deal with any part of that process, but only the narrow issue of the reasonable necessity of these proposed takings to meeting the Region's stated objective, as set out in *Ball*. I found from the submissions that the Region had no hidden agenda as the owners appeared to be suggesting, and even if it did, that policy decision is beyond the scope of this inquiry. I agree with Mr. Waqué that the remedy for such a concern lies in the ballot box.

As Mr. Waqué argued, there are no real losers in the expropriation process. Compensation will be provided to the owners, and there is no economic reason for delay. In fact, I see only possible economic loss for the public interests if there is further delay. For this reason I do not accept that it was necessary to obtain the approval of all parties respecting the date of the hearing. Of course in an ideal world all parties would be able to accept or reject a proposed date. However, in this situation with many requesters, both public and private interests are best served by proceeding expeditiously. I also acknowledge that there are some situations in which monetary compensation does not seem to suffice for owners deprived of their land. Mr. Di Cecco said that this was true for him and his fellow owners and tenants. However, here there were too many factors in favour of continuation of this hearing on the date selected, and I found that the Region had met the statutory test for disclosure to him, which seemed to be the principal concern.

SUMMARY OF THE EVIDENCE

Regional Municipality of York

We proceeded to hear from several witnesses for the Region, and determined to deal with the individual properties in the order listed above, if practical. I accepted all of the Region's witnesses as experts, without challenge. Because negotiations are still ongoing with many of the requesting parties, I will deal with as much information and evidence as was provided, either by the owners or by Mr. Waqué on their behalf.

Mr. Michael Larkin of Larkin and Associates is a planner and project manager of long standing, with half of his experience in York Region. He highlighted the policies at all levels of government that were supportive of this project. The Provincial Policy Statement under the *Planning Act*, now binding on all planning decisions by governments, promotes in Part V designated growth areas, and necessary infrastructure (Ex. 8, Tab 5, p. 4.) Yonge Street at Davis Drive in Newmarket is within an Urban Growth Centre (UGC, Tab 6) under the Places To Grow provincial policy. This promotes intensification together with appropriate transportation facilities. Also critical are rapid transportation links between designated Growth Centres within the GTA.

The Region's Official Plan sets out policies for Regional Centres. Even before this area became an UGC, it was to become the hub of business, government and social activities in Newmarket (Ex. 8, Tab 7, Section 5.3, p. 54). The plan called for "pedestrian-friendly and transit-supportive" infrastructure in such Centres. Detailed design policies for such infrastructure are found most

recently in the December, 2008 Design Guidelines for 6-lane Regional Streets (Tab 2) and the Pedestrian and Cycling Master Plan, April 2008 (Tab 3). In the former, there was high importance given to the streetscape design: the treatment of a median and boulevard, for example, so as to promote visually interesting streets. (Tab 2, policy 5.10, p. 58.) Thus importance is placed on pleasing streetscapes for pedestrians, as well as on actual transit needs.

An additional factor in favour of many of the proposed takings in this immediate area is its identification and protection by the Lake Simcoe Region Conservation Authority as a floodplain. While the province's Greenbelt Plan 2005 (Ex. 9) does not directly affect these lands, they are connected to the river systems within its reach, as well as to Oak Ridges Moraine water resources. In this Plan, "external connections [should be] maintained and/or enhanced." (Policy 3.2.5, Ex. 9, Tab 1, p. 20.)

Mr. Jason Unger, Assistant Director of Planning with the Town of Newmarket, testified about the events and his role in the dissemination of information about this proposal to the affected owners. Letters had been sent outlining both the EA process and the new Official Plan policies in December 2007 (Ex. 10, Tabs 2-5), and requesting their participation. The Council had already informed the Region of its Resolution of November 2007 supporting a rapid transit system along Davis Drive as a priority project, in order to receive available provincial funding (Tab 7). It was also crucial to support the Southlake Regional Health Centre, a hospital and regional cancer care centre at the east end of this segment, both for health promotion and because it forms the highest concentration of employment in the Town. An "attractive, comfortable and safe pedestrian environment" was stressed. Mr. Unger also mentioned the importance of an identifiable and continuous image for the whole (examples may be seen in the EA, Ex. 15, Figures 10-3 to 10-5). Improved transit facilities would encourage economic development and implement other official plan policies. He gave examples of ongoing development pressures in this UGC area as evidenced by Council resolutions (Ex. 10, Tabs 20-26.)

A public meeting was held in February 2008 at which a design for this segment of Davis Drive was put forward that closely resembled Alternative 1 in the resulting Environmental Study Report (ESR), part of the environmental assessment process. (Ex. 15, p. 9-11 et seq.) This would have placed the Davis Drive right of way to the north of its current proposed alignment in the area of the Di Cecco property, and thus would have created less of a dip to the south than is presently proposed. (The present plan would require that the new sidewalk be placed mid way through the current building, and thus it would have to be demolished.) During the consultation process that followed, affected public agencies expressed some quite serious problems with Alternative 1. In September 2008 the Council recommended to the Region a realignment of this section, for the following reasons:

- to preserve the historic turning basins that formed part of the heritage lock system on the Holland River (as recommended by the Community Services Commission of the Town);
- to provide for a landscaped centre median east of the bridge and to retain landscaped areas on the north side of Davis Drive. (Ex. 10, Tab 8 – which also contains a summary of the background and rationale for the recommendations);
- to ensure that there is a smooth integration of VIVA buses with GO trains. (After consultations with GO Transit, staff had noted that this northerly alignment could reduce the capacity of the GO station platform and leave trains blocking traffic when stopped); and
- to provide environmental benefits. (Staff had pointed out the positive effect a southerly alignment would have from an environmental perspective. There could be a green corridor along the river following removal of buildings in the floodplain. This was envisaged by both the Town's Official Plan and the Conservation Authority (CA) (Tab 8, p.7.)

Town Council supported a more southerly alignment by resolution of October 15, 2008 (Tab 9.)

Mr. Unger provided his professional opinion that the proposed takings from the properties were
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reasonably necessary to implement the Region's objectives for the evolution of this major investment area, and that they also met the UGC and Official Plan policies. Land use and transit had to be developed hand in hand, he said.

Mr. Di Cecco and Ms. Jones, Ms. Turner for Mrs. Illyes, and Mr. Butler for Dr. Hew, conducted the only cross-examination of the witnesses.

Mr. Di Cecco asked Mr. Unger for clarification of the existing landscaped area of the properties on the north side of Davis. Mr. Unger responded that this included segments in front of the Dixon Medical Building (DMB) and the conservation lands sitting area. Moving the alignment to the south preserved more of this, he said, and also permitted continuation of the proposed landscaped median. He was then asked many questions about physical items to the north and south of the Keith Bridge. He had little familiarity with the specific locations or the detailed history of the bridge. He was then asked about the process by which this proposal was developed, which was outside of his experience. Ms. Jones too asked many questions about the developments leading up to the recent route change. He reiterated that this rapid transit proposal has been reflected in planning documents for several years, and that impact of the northern routing on the heritage features and GO led to the changes in the alignment, and not any change in emphasis. An additional factor had been discovered: construction staging difficulties, given the need for four lanes of traffic over the bridge at all times. The owners had had many opportunities to examine the details. However, specific engineering designs had not yet been completed and thus could not be provided. She then asked for specific differences between Exhibit 12, a representation of Alternative 1, and Exhibit 13, the now-favoured Alternative 3. While the new proposal would take less from the Dixon Medical Building on the north side, it would take far more of their parcel next to the river, she said. Instead of a minor gain as for the DMB, the result would be demolition of their building. She suggested that the Mabel Davis Park, located on the north side of Davis Drive along the river, was sufficiently deep that a portion of it could be taken instead, with the more northerly alignment. All told, Exhibit 13 would have a more negative effect on their property than on others because of the demolition. Mr. Unger did not agree that Exhibit 13 should be rejected on this ground. In his opinion the realignment was required so as to reduce the negative impacts that Exhibit 12 would have had. Over all, it has succeeded in this aim in his opinion.

Mr. Steve Mota, Program Manager, Infrastructure Planning for the Region, has responsibility for and a great deal of experience in major transportation projects in the Region. He is a civil engineer, and has been involved in most of the Region's recent EA processes and approvals. Respecting the process followed for this EA, he testified as to the many formal Public Information Centres held as well as informal meetings in June and August 2008 prior to the Notice of Completion in December. In the interim it became increasingly obvious that four lanes of traffic would have to be maintained over the bridge, and this construction staging became a critical factor in the proposed alignment. Added to this were the heritage concern and the impact of Alternative 1 on the GO station, as well as the desire to avoid adverse effects on other properties on the north side of Davis. The alignment was then altered to Alternative 3. This shift resulted in the proposed complete taking of the Di Cecco parcel at 496.

A specific notice was provided on Nov. 20, 2008 to the affected landowners that the EA was nearing completion, and that their review and input on the attached plans was requested (Ex. 14, Tab 7, Di Cecco at Tab 8.) This is the usual practice. Mr. Di Cecco was provided with a comparison between Exhibit 12 and Exhibit 13. He responded by email to Mr. Mota on December 3, 2008 outlining his objections (Ex. 14, Tab 14A). Mr. Mota later offered assurance that these concerns were considered in the decision to carry Alternative 3 forward. Following the Notice of Completion of the EA (Dec. 4, 2008) there were 4 requests to the Minister of the Environment for a Part II order for the Davis Drive properties in this area. All were denied, and the EA was approved on April 2, 2009. This permitted the Region to proceed with the more southerly alignment (Ex. 13). The Region had approved the necessary expropriations on January 22, 2009 (Ex. 1, Vol. 1, Tab A) although it is clear from the attached report that negotiation was the preferred method of acquisition (*ibid*, p. 39.)

Mr. Mota then provided more detailed evidence as to the Region's rationale for the decision to favour Alternative 3. The factors leading to this change were set out in the ESR on pp. 9-24 and 9-25, the table evaluating the three options. He first described the advanced design features of

the VIVA rapid transit system that will enable it to provide not only rapid, but also premium service. The design standards are used consistently throughout the Region to create user familiarity and comfort, and thus encourage transit use. The design parameters for this segment were considered again in the ESR – Ex. 15, p. 8-1 and 9-1 *et seq.* The lane configuration proposed here is shown in a cross section (also seen in Figure 10-3 of the EA – Ex. 15, p. 10-2.) The boulevard design width of 5.4 m is already narrower than in any other part of the EA project, thus minimizing property requirements (Ex. 15, p. 10-3.)

Mr. Mota then addressed the GO Transit Strategic Plan – GO 2020, Ex. 14, Tab 9, in which the GO station in the old Tannery is identified as a “Gateway Hub” – one that is a significant transfer point between transit services, here, GO and VIVA. It is expected that for this Barrie GO line, train size (from 8 to 10 cars) and frequency (all day and at rush hour) will increase. This adds to the existing operational and safety concerns for trains arriving in the station. With Alternative 1 as proposed, it was virtually certain that trains would stop about 5.7 m within the Davis Drive right of way. In redirect he added that a relocation of the station to the south side of Davis Drive, even if GO desired it, may not be feasible, as land purchase and sufficient parking would be required.

Mr. Di Cecco suggested to Mr. Mota that if Davis Drive were shifted 7 metres further north than now proposed (essentially the Alternative 1 alignment as illustrated on Ex. 12) there would be no safety concern for GO trains. Mr. Mota rejected this contention, especially for a 10-car train. He was then asked many engineering questions, which Mr. Mota left to the engineering witness for response, and questions about the evaluation and decision-making process. While he agreed with Mr. Di Cecco that the existing straight alignment of Davis was the ideal, there were constraints that made this impossible in some places. There had to be a new bridge over the Holland River, for example. He reiterated previous testimony that once the decision in favour of Alternative 1 had been reached, other problems were identified: the effect on the heritage structures, and the construction staging to deal with traffic and economic issues. The design could not be cantilevered – this would overhang the supports, and the new bridge had to be supported on abutments and a load-bearing wall. Overbuilding would be necessary so that it could carry four lanes, and this could not be done on the north, or it would encroach on the heritage features. Even at this stage, Mr. Mota stated, one cannot assume either the appropriate staging or its method of implementation. The issue of staging had been considered in the EA process, and the preferred alternative resulted from a balancing act of all of the effects on properties nearby.

Mr. Wayne Morgan provided professional evidence concerning the heritage features on the north side of the bridge that factored into the decision to move the alignment to the south. He has expertise as a heritage planner at all levels, and is especially knowledgeable about Newmarket issues since he chaired its LACAC for twenty years. His brief, Exhibit 21, provides the details of his testimony. As he explained, there was a proposal in 1904 by Sir William Mulock, a Cabinet minister in the Laurier government, to construct a canal along the Holland River to link Newmarket to the Trent-Severn Waterway. This was to facilitate commerce and avoid high railway freight rates for his constituents. The project is outlined in memorable fashion at Tab 10 of Ex. 21. Although construction was almost completed, the canal was never used. The project was cancelled in 1911 because of cost overruns and, ironically, lack of a water supply. However, a turning basin had been completed at its southern terminus, just to the north of present Davis Drive, by October 1911. This was constructed with retaining walls to the east and west, with docks above them, and a dam at the southern end to control the basin’s water levels (plans at Tab 3A-E, and Tabs 6 -8, with details of the dam structure at Tab 10, pp. 17 and 18, and photos of the remnants at Tabs 21 to 23 and 25 to 27.) The retaining walls were built of reinforced poured concrete, very new in Canada at the time. The westerly portion of the retaining wall is probably now located beneath the parking lot for the GO station at the Tannery (part of it may be seen at Tab 20.) However in his opinion the remnants of the easterly wall, as well as those of the former dam and related piers, remain directly north of the existing bridge. (This can be seen in the sketch at Tab 3E, and in photos – the second at Tab 27 shows the slot where the logs of the dam once fit into the wall.) At the time a trestle bridge in approximately the same location as the present bridge carried traffic on former Huron St. (now Davis) over the river.

The Conservation Authority removed the dam down to the water level at some point between 1957 and 1979. Flooding had occurred during Hurricane Hazel and the dam had prevented its

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escape. However, the dam foundation still exists, and water can be seen flowing over its edge. The remnants were identified as a Cultural Heritage Landscape in the ESR (p. 7-13.) From the plan drawings he estimates that the distance from the northerly edge of the present bridge to the edges of the walls is 15 feet on the east, and 10 feet on the west.

Mr. Morgan testified that the federal government has established standards and guidelines for the conservation of historic places, consistent with UN charters, which are now used by all heritage planners. These require that any physical change to an historic place respect its heritage value (Tab 14, p. 5). The governing principle is the “do the least damage possible.” In addition, section 2 of the Ontario *Planning Act* requires the preservation of “cultural heritage landscapes”, defined as a “geographical area of heritage significance which has been modified by human activities and is valued by a community...”. The Region and Town Official Plans support this policy of preservation (Tabs 16 and 17.) The canal in the Holland River, with its many alterations and enormous cost increases, famously became one of the two main factors in the defeat of the Laurier Government in 1911. Thus it has a direct association with an historical event of national importance (Ex. 21, Tab 11, p. 275, “Mullock’s Madness”.) From his supporting evidence in Ex. 21 Mr. Morgan expressed his professional opinion that the remnants of the turning basin, its walls and the dam constitute a “cultural heritage landscape” as defined in the 2005 Provincial Policy Statement under the *Planning Act* (which now requires they be considered in any development.) As such, the remnants must be left undisturbed. The federal guidelines require that no new built features be placed so as to cause damage to or be incompatible with the historic character of the landscape. It is unique, he said, and its integrity is unusual for a heritage structure. Thus he is in favour of the proposed southern alignment of the replacement bridge (Ex. 13), as a northerly one would interfere with them merely by placing the bridge above the dam and wall remnants.

Mr. Di Cecco and Ms. Jones challenged the location, the extent and the importance of the remnants of the dam and retaining walls. They pointed to the Town’s failure to enact an historic designation for the turning basin and dam even after the Heritage Newmarket Committee made such a request on Jan 30, 2008. (Ex. 21, Tab 18.) Mr. Morgan interpreted this request as evidence that the community had recognized their historic importance, drawing support for this view in the Council’s resolution of Sept. 16, 2008 (Ex. 10, Tab 8, section 1 (a).) Its failure to designate might be the result of other priorities, he said, and does not lessen their value as heritage features. He was taken through many photographs but repeated his previous testimony about the location and extent of the components, and their good state of preservation. Some old steps can even be seen at the top of the east wall (Tab 21). He confirmed his measurements from the bridge to the remnants. He estimated that a bridge built on the north side would extend out 13 metres and cover them, a result proscribed by the guidelines. He had not confirmed the extent of the dam remnants below the water level, but stressed the importance of maintaining the integrity of the whole of an existing cultural heritage landscape, no matter its present state.

Mr. Mitchell Smith, Senior Project Manager with Delcan Corporation, part of the York Consortium PPP which is doing the detailed design work for the York Region transitway projects, provided testimony about the proposed design for this segment. He has had a great deal of experience with transit hubs, and D1 at the GO location is one of these. He addressed the proposed design elements in the cross section of Davis Drive, as illustrated in Ex. 27, Tab 7, document 3, and the signalization of traffic movements. He outlined the plans for the VIVA stations, and the need for consistency across the system for purposes of successful branding and user familiarity. He stressed that at this point, however, no detailed design work has been performed. There is still some flexibility in this regard.

He further described the problem that would be caused at the GO station by longer trains as proposed in the future. As shown at Tab 6 of Ex. 27, there would be very little distance between the edge of the sidewalk and a train in the station, even with Alternative 3 as proposed. This difficulty is caused by the placement of the station and the impossibility of altering the present track curvature to the northeast. In his opinion if Alternative 1 (Ex. 12) were to be built as first proposed, the train would overhang the sidewalk by 5.7 m., causing a lane of traffic to be blocked. Pedestrians would walk on the roadway to get around the blockage. Railway rules would be breached. Thus from every aspect, he said, a northerly alignment of the right of way at the Go station would be wrong.

He considered whether relocation of the station platform would resolve this problem. In his opinion it would not, as the station needs to be on a tangent section for safe stops, and here the tracks curve significantly to the east at the station's north end. The platform is substandard already, and is superelevated in some places, making vision difficult. The station is as far north as possible on these facts, and GO is unwilling to move it.

Mr. Smith took actual measurements from the edge of the existing bridge to the heritage elements. He agrees with Mr. Morgan that Alternative 1 would cover over the heritage features, and that Alternative 3 would better protect them. As far as the type of bridge required for the replacement, he said that in order to maintain the grade, a rigid frame structure (RFS) is required. He rejected other types such as a girder and deck system, which would require the grade to be raised and would be more costly. If an RFS were to be built on the more northerly side, the heritage wall would actually have to be removed.

He then considered the impact of a northerly alignment on the private properties involved in these proposed takings. Without going into the details he provided, the impact was substantially reduced for owners on the north side of Davis Drive with the choice of Alternative 3. As one example, had Alternative 1 been chosen, the gates at the Tannery station would have to be relocated, and grading would be pulled back into the parking lot. He has been discussing compromise solutions with all of the affected owners.

In his cross examination Mr. Di Cecco took Mr. Smith through all of the design elements of the proposed right of way near his property in the ESR document, shown on Ex. 31, Tab 3. Mr. Smith testified that the preferred southerly alignment required that more of the parcel at 496 Davis (Ref. No. 103) be taken, resulting in the need to demolish the building. This led to the proposed acquisition of the entire parcel (he confirmed in redirect that even if not the whole, a significant temporary taking would be required in order to demolish the building and restore the property.) The parcel is now illustrated on a draft reference plan, Ex. 28 at Tab 5, as Parts 59 and 60, both proposed to be taken in fee simple. The parcel at 498 (Ref. No. 104) now used for parking, would be subject to the taking in fee of Part 56 on the plan, a permanent easement over Part 57 and a 3-year easement over Part 58 (See Tab 8). Grading was required on this parcel.

Much time was expended in challenging Mr. Smith's observations, or eliciting further speculation from him on the subject of the GO station. Mr. Smith had observed the arrival of a northbound train into the station. Mr. Di Cecco had taken many pictures and a video of a train arriving (Ex. 33) and he requested Mr. Smith's responses to them. Mr. Smith repeated his assertion that the existing track is substandard, and a more northerly alignment of the road right of way, if added to the existing curvature, would make it even more substandard. Alternative 3, the southern positioning, was in his professional opinion much preferred. Alternative 1 would not be possible for GO's operations as they had stated, and they were unwilling to extend the platform to the north.

Respecting the bridge design and staging, Mr. Smith reiterated that the detailed design work had not yet been done. Only schematics had been completed, a concept only, to ensure that the proposed construction can actually be built. However, there was very little scope for altering the position of either the support walls or abutments for the required RFS design. The excavation for the foundation of the piers or abutments would affect the heritage wall. As well, the RFS format would no longer be economically or structurally feasible. In his opinion, even placing a support wall so that one portion was located on the north side of the dam remnant, and one on the south (as Mr. Di Cecco had sketched on Ex. 35), would still result in undermining the footings for the heritage wall. He accepted Mr. Morgan's evidence on the extent of the remnants and their distance from the present bridge. In addition, it would be impossible to place a bike path beneath a northerly bridge because of overhang. The existing bike path was an integral part of the Tom Taylor Trail in this area and had to be accommodated.

Ms. Jones put it to Mr. Smith that a 6 m. extension of the right of way on the north side was possible, so as to lessen the effect on their property. This would be a middle ground between Alternatives 1 and 3. (Mr. Waqué later called this middle ground "option 4".) Mr. Smith had not considered this option as he was not involved in the policy decision, only its implementation. He commented that adjusting the alignment in this way now would affect many other properties. In

redirect he said that even a 6 m. shift to the north would impact GO train distances and thus the traffic on Davis. It would also have a cumulative effect on every property along the proposed right of way. (Mr. Mota later testified that "option 4" was considered and rejected during the EA process. It would have permitted only one lane of traffic on the north side of the bridge, or three in total, and it was considered essential to accommodate four lanes. Even if only three lanes were included it would have the same effect on the Di Cecco building, and would extend the bridge north by about 10 metres, definitely affecting the heritage structures. Cost and length of construction, and confusion for motorists, were additional reasons for rejecting this option. Even the option selected would result in the bridge being extended an additional 3.5 m to the north.)

However, Mr. Smith said that smaller modifications were still possible. The bridge design had not been finalized since a workable design was essential, and copying the existing bridge structure offers at least the assurance that it can be built. He was not confident that a different bridge could avoid the heritage walls. Increasing its thickness or raising the profile of Davis Drive would have a ripple effect on the structure above.

In his opinion a full buyout of the riverside parcel at 496 is reasonably necessary. He also relied on the reasons expressed by Mr. Roberts for the Illyes parcel (see Reference 110 below). Mr. Roberts later confirmed that the same rationale, both economic and environmental, apply for the proposed taking of all of this property as for the Illyes parcel. In addition, it is too small to allow for the construction of a new building on the remnant. Even if the owners proposed to use it as a parking lot it is unlikely that the Conservation Authority would approve this. He emphasized that he was not making this decision on behalf of the CA, as it were. The fact that the entire parcel could be valuable if used for conservation and recreational purposes was merely one of the factors in the decision. Mr. Roberts said that there may be an additional factor: to permit right turns from the parcel in the future may create an unsafe condition, although this was outside of his expertise. In his professional opinion this "package" is advisable. It is reasonable to take this entire parcel from a cost perspective, and to dedicate it to passive uses.

Mr. Roberts responded to Mr. Di Cecco's concern that an existing Town by-law would require his two parcels to be dealt with together by stating that the by-law did not necessarily require them to remain in the same ownership, but just to retain the uses in the by-law. In light of my opinion on the proposed expropriation of the parking lot, I will not deal further with this subject at present.

The landowners

There was no evidence tendered on behalf of the landowners who had requested the hearing. Mr. Di Cecco and Ms. Jones, as well as Ms. Turner for Mrs. Illyes, relied on cross examination to elicit the information desired to make their cases. Many requests had been withdrawn before the hearing.

Respecting other objectors who had requested a hearing of inquiry:

It was noted again that there are draft reference plans now prepared that illustrate the proposed takings as of this date (Ex. 28.) I will use these new Part Numbers when discussing the present proposals and my recommendations.

Mr. Hill attended for the owners of **Reference Nos. 1 and 2 above**. His clients have met with the Region. Mr. Hill then left the hearing. I have retained the references in the style of cause and if jurisdiction still exists at this point, I would recommend to the Region that the takings proceed as now proposed, or as amended by agreement.

Mr. Leck withdrew the hearing request on behalf of the owners of **Reference No. 16, 191 Davis Drive**, 1344459 Ontario Ltd..

Reference No. 38, the property owned by Dr. Hew at 291 Davis Drive, is on the north – east corner of Davis and Hill Street. Mr. Paul Butler submitted that following negotiations with the Region, Dr. Hew's main concern at present was to retain left turns from Hill St. next to their building, onto Davis Drive toward the hospital complex. Mr. Smith testified as to the reduced

taking now proposed (Ex. 29, Tab 6), which in his opinion is reasonably required for the project. It will not directly impact the structure, and the Region has agreed to mitigate possible adverse effects on its foundation by building a new sheet pile retaining wall. It was found that parking, also expressed as a concern, was actually occurring on municipally owned land. This would allow for only one legal space for the future. The Region will elevate the sidewalk to meet Dr. Hew's concerns about patient access, and a stairway will be constructed. While a left turn from Hill St. toward the hospital will no longer be possible, it was explained to Mr. Butler how first a right, then a left turn could be accomplished with little delay for regular drivers. (The proposed Emergency Services median crossing treatment is shown in Figure 10-6, p. 10-5 of Ex. 15.)

The owner of **Reference No. 97**, King Fei Investments Ltd. at 16 Main Street South did not appear, but it has not withdrawn its request. Its property is located on the south-west corner of Davis Drive and Main Street South, and a commercial building is located there. The Region proposes to take the fee in a strip along Davis, with a narrow permanent and a more extensive temporary easement south of it. This is illustrated at Tab 3 in Ex. 30. Mr. Waqué explained that there would be an underground retaining wall installed within Part 28 as shown on a new draft reference plan (L12-010693, dated March 13, 2009), the part proposed as a permanent easement. However, the owner could utilize this part (the wall location is illustrated at Tab 5, a cross section). Part 27 would be taken outright for the road widening. Part 29 would be a temporary 3-year easement to facilitate construction.

Mr. Waqué explained that the owners of **Reference Nos. 98 and 99**, Save It Holdings Ltd., 432 Davis Drive, and Chuang Holdings Ltd., 438-442 Davis Drive, were withdrawing their hearing requests, but wished for statements to be made. There are now certain agreements between the Region and these owners. The documentation is found in Exhibit 26. However, some contingencies remain that require explanation. The Region had proposed to take all of the Save It property in fee simple, but the owners requested that only the portion fronting on Davis Drive, Part 85 on the draft reference plan L12-010694, dated April 28, 2009 be taken so they could continue to operate the business. However, some question arose as to possible contamination on the site because of its use as a gas bar. Discussions are ongoing between the parties. While awaiting the results of an environmental assessment of the site, the Region wishes to maintain its application for approval of both Parts 84 on the draft reference plan, to the rear, and 85. Should the environmental report be favourable, it would not proceed with acquiring Part 84. The owner agrees with this approach.

There is a similar situation with respect to the property to the east of this one, **Ref. No. 99** owned by Chuang Holdings Ltd. The owners do not challenge the Region's need for Part 82 on the same draft reference plan. However, the entire parcel may be subject to contamination. There is also a cost issue respecting demolition of the front of the existing building. The parties await the results of the environmental assessment and an analysis of the demolition costs. If resolved to the parties' satisfaction, the Region will reassess the need for Part 83 to the rear of the parcel.

Mrs. Illyes is the owner of 560 Davis Drive, **Ref. No. 110**, the first lot on the south side, east of properties on Charles Street. She requested this hearing to challenge the proposed taking of the whole of her property, rather than just the portion of it required for the road widening. She lives in the home located close to the present roadway, and utilizes her entire lot. The east boundary of the CA flood plain designation lies just to the east of the property (a rough outline may be seen on Ex. 11.) Mr. Smith testified about the preferred alignment at this point as shown on Exhibit 31, Tab 2. Because the proposed sidewalk placement would require the demolition of the home, the Region, after consulting with its property acquisition team, decided to expropriate the entire parcel. The new descriptions for the proposed are shown as Parts 54, 55 and 56 on the draft reference plan L12-010695 dated April 28, 2009 (Ex. 28, Tab 5). Taking the whole would be to the owner's advantage, Mr. Smith said, as it would be difficult to obtain approval to build on land within the flood plain. However, from an engineering perspective Mr. Smith's opinion was that the taking of only Part 56 for the right of way, together with a limited easement for the required demolition (not shown), would meet the statutory test. Given his opinion, Ms. Turner suggested that the taking of the whole parcel was not fair, sound or reasonably necessary. Mr. Smith left the question of taking of the whole to the next witness.

Mr. Paul Roberts, Manager, Realty Law for the Region, has responsibility for the acquisition of all 1057747

property throughout the Region for the VIVA rapid transit projects. He engages outside appraisers to obtain objective valuations. He addressed the rationale for the proposed taking of the entire parcel. During the process of assessing the amount of compensation for the fee simple and easement portions, it was determined that it would be more appropriate from a cost perspective for the Region to take the whole. The Act's philosophy is to "make the owner whole" after an expropriation. However, the total amount for the portion required and for a claim for injurious affection caused by the demolition (as the Act permits), would be either a high percentage of the value of the whole, or could exceed it. The effect would be that Mrs. Illyes would have both the amount of compensation for injurious affection, as well as the rest of the land. To prevent possible overcompensation it is the Region's usual practice to take the whole where buildings must be demolished following acquisition. The fact that this parcel is located on a flood plain also entered into the Region's assessment of the desired result. It was unlikely that the CA would grant approval to build, even if the owner was left with a large remnant parcel.

Ms. Turner challenged this view as not meeting the Act's test of reasonably necessary. The test is not what is cheapest and easiest, she submitted to him, but what is reasonably required for the project. The whole was not so required. The Region had not proposed the acquisition of the rear of other properties in this fact situation. Mr. Roberts replied that the appraisal was not conducted on the basis of what the property was worth with and without the house. The conclusion was merely that it could constitute a benefit to the owner to leave her with the remnant parcel after injurious affection damages, and that the Act would not permit this benefit. He admitted said that the flood plain designation is not an absolute bar to a successful redevelopment application, but in his opinion it was highly unlikely that the CA would approve it. He believes that is reasonably defensible to buy Mrs. Illyes' entire property so that she could find similar land elsewhere.

Shell Canada: Mr. Waqué explained that Mr. Gerry Beelen, Senior Counsel for Shell Canada, the owner of **166 Davis Drive** at Parkside Drive, appeared by invitation, then submitted his concerns in writing (Exhibit 16). By way of background Mr. Waqué said that the issue of traffic on Parkside Drive in this area was considered to be of sufficient importance to the Davis Drive transitway study that it was effectively consolidated into the EA design process – Table 9-8, P. 9-18 of Ex. 15. After the newest reference plans were served, Shell wished to comment on the proposed construction of a new intersection, as in their view it could involve a complete taking of their land. Plate 10-80 of the ESR shows the design of a new intersection for Parkside Drive and Longford Drive at Davis (as proposed in section 9.2.2.) The Region believes that the two sets of traffic signals at the present T intersections of these streets with Davis are spaced too closely together for rapidway operation and safety. Therefore the ESR proposed a new alignment of Parkside and Longford to form a four-way signalized intersection at Davis Drive. This would require some adjustments to the Shell property at 166 Davis Drive, as stated in Ex. 15. Mr. Beelen objects to any full taking at this time so as to eliminate the profitable Shell business, as the timing of rapidway construction is in his opinion uncertain. He believes that any taking would be for a "speculative" future ROW, and that the business should not be disturbed merely because funding is now available for the project. He also argues that there is no need for a new intersection, as Parkside is a relatively minor road. Mr. Waqué noted that Mr. Beelen is incorrect in his claim that the project is merely speculative. Negotiations are ongoing.

Submissions by the Region:

Mr. Waqué addressed five general themes in his submissions, especially concerning the Di Cecco land:

1. Timing Timing is critical for the implementation of the project. Infrastructure funding is available and must be taken up soon in order to commence construction this year. There is also an urgent need for expansion of the road facilities to reach Southlake Regional Healthcare Centre, for the reasons expressed.

2. Design of the right of way The objective for the project is not to construct a "concrete tunnel", but a pleasant, effective and safe transportation corridor as set out in the EA. There was no objection expressed to the design of the right of way, incorporating most of the desired features. Rather than just the physical components of a rapidway, the design provides amenities that encourage its use. It is supported in all of the relevant planning documents, and in the VIVA

design guidelines. Mr. Waqué submitted that the proposed takings were reasonably defensible on this ground.

3. Decision-making Process There was a proper policy decision process in developing the recent preference for Alternative 3. However, this fact is irrelevant to the ultimate question here, and goes only to weight.

4. Purpose of the hearing of inquiry This hearing is not for the purpose of revising the policy decision in EA, but to apply the statutory test to the specific takings. The Di Cecco owners had been given an opportunity to understand the change, and this hearing is just for the purpose of challenging the specific takings in pursuit of the Region's goal.

5. Four factors supporting the proposed takings The proposed acquisitions from the Di Cecco property are supported by several factors: protection of the heritage features; avoiding interference with GO's operations; reducing impacts on other properties; and construction staging. For example:

- **Heritage issues:** The Town's Official Plan and Council resolution in support of cultural heritage preservation; the Minister of the Environment's refusal of the Part II request; Mr. Morgan's evidence on the significance of the remaining features as a heritage landscape; and the impossibility of building over them: all of these lead to the need to preserve the dam remnants both intact and undisturbed. Mr. Smith confirmed that they are located very close to the existing bridge, and that if the bridge were to be built on the north side it would cover them.
- **GO interference:** Even the present operations of the GO trains are constrained by the existing traffic lanes, as shown in Ex. 15, Table 9-9 (p. 9-24). Thus the issue is not new. Assuming the station platform cannot or will not be extended (as GO has stated), the previous Alternative 1 would have trains sitting right in the traffic lane while stopped for passengers, a completely unacceptable result from a civil engineering perspective. GO has also rejected a suggestion to relocate the station to the south of Davis, as there would be no signalized access and no facilities such as parking. Thus Alternative 3 is a reasonably defensible choice.
- **Impact on other properties:** From the evidence there would have been significantly more property needed on the north side of Davis had Alternative 1 proceeded. While there is a greater adverse impact on the Di Cecco lands, they are only one owner, versus many on the other side.
- **Construction staging:** The staging proposal was the only reasonable one to the team, as it accommodated the design choice of Alternative 3 given all of the parameters. Principal among these is the necessity of maintaining the present four lanes of traffic. Once this was accepted, the Di Cecco property cannot be protected.

Mr. Waqué mentioned as well the environmental factor given consideration in the recent decisions for a more southerly route and to take the entire riverside parcel. The Official Plan policy supported open spaces, connectivity with other river systems, and protection of the Tom Taylor Trail to the west of the bridge. This will promote a safe and supportive design for pedestrians as well as for automobile and transit traffic. While not wishing to have more of an adverse effect on the Di Cecco property, the Region had to consider this goal as well, and thus proposed to acquire the whole and devote it to passive uses.

In Mr. Waqué's submission it is fair, sound and reasonably necessary to take the entire parcel at 496 Davis Drive. The owners have had sufficient notice and opportunity to review the proposal. On Mr. Robert's testimony, it would be very difficult to rebuild at the back of the parcel, as no structures have been approved elsewhere in the floodplain. There is also the cost factor, as the Region is unwilling to unjustly enrich the owner, as explained in the evidence concerning Mrs. Illyes' land.

Submissions affecting other properties:

Dr. Lincoln Hew: (No. 38)

Mr. Sperduti submitted that the Mr. Smith's evidence showed that the Region had made
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reasonable efforts to avoid the building at 291 Davis in selecting Alternative 3, and in recent negotiations. The only concern fully expressed at the hearing was the elimination of left turns from the property. The Region is working with emergency services to provide expedited turns, and turns for other vehicles were explained to Mr. Butler. The required takings are now shown at Tab 5 of Ex. 28 as Parts 72 and 73. He requests that they be recommended for approval.

As **King Fei Investments Ltd.** (No. 97) did not challenge the proposed takings, Mr. Sperduti urged upon me Mr. Smith's opinion that it was reasonable defensible that they be taken as proposed.

Save It Holdings Ltd.: (No. 98) **and Chuang Holdings Ltd.:** (No. 99)

These requests for a hearing have been withdrawn, leaving the Region free to proceed, but discussions are ongoing on the issue mentioned: if test results are satisfactory, the Region would take less land. The Region relied by inference on the case of *Marisa Construction v. Toronto (City)* [1998] O.J. No. 4069 where in para. 12 Sharpe J. found it reasonable for the authority to take an interest in land for longer than it might be needed, when the facts showed that the time frame could not be accurately determined.

Mrs. Illyes (No. 110)

Respecting Mrs. Illyes' property, Mr. Sperduti submitted that the evidence proved that it was reasonable for the Region to take the whole of the parcel rather than the partial taking requested by the owner. He also relied on the *Marisa Construction* case in this instance. The proposed taking resulted from a balancing act, given the uncertainty of developing further, and the cost to the Region if injurious affection damages proved to be high. The bottom line is to propose that the whole be taken, as it made no economic sense not to do so.

Shell parcel, 166 Davis Drive

Mr. Waqué rejected the Shell view that it was premature or unnecessary to propose the creation of a Parkside/Longford 4-way intersection. Traffic volumes and their present signalization justified it, and the rest of the project was proceeding this year. The evidence demonstrates that any proposed taking of the Shell lands would meet the statutory test. (I note that the creation of a new intersection was contemplated even in September, 2008 – Ex. 10, Tab 8, p. 5. However, only a reconfiguration of this parcel was proposed in the December ESR – p. 9-18, and not a complete taking.)

Submissions by Owners

Mr. Di Cecco and Ms. Jones (Nos. 103, 104)

In his submissions Mr. Di Cecco stated that the proposed total expropriation of their parcel was unjust confiscation when there is a suitable and valuable alternative available. He sees an "impetuous rush" to complete this project, without adequate consultation. The proposal for moving to the north by 7 m (Alternative 1) would satisfy the Region's concerns for staging, the canal remnants and safety at the GO station. He sees only inexplicable distortion in the Davis Drive alignment now sought, which unfairly impacts his property while benefiting others. He preferred the former straight centre line alignment, and to have the bridge constructed 6 m north of the proposed. He recommends to me this "option 4" (as Mr. Waqué put it.) This would not affect the heritage remnants, which he suspects after detailed examination were not even built as planned, or do not remain where claimed. The Region had performed no verifying studies. Nor would it create a safety issue with the GO trains, as he believes that GO must redesign the platform in any event. In fact "option 4" would meet all of the Region's objectives, he said, as well as having the benefit of leaving his fellow owners with their building intact. He objects that the now preferred alignment was not made available for consideration at a public meeting. The Region is proceeding with undue haste, without engineering details. Such details can be developed and resolved, given good will; they are only minor technical ones. His preferred option is option 4, involving a lesser taking of his land as occurred with other properties, thus leaving the owners with the southern portion of both parcels to be developed as they wished.

Ms. Jones expressed concern that the prominent location of a long-established business would be lost. In her submission, experts should not be determining the ultimate issue that the inquiry officer must decide: the fairness of the taking. There is a reasonable alternative here: Alternative 3 in combination with relocation of the bridge 6 m to the north. This “option 4” would admittedly cause an additional stage in the construction. However, it would permit four lanes of traffic and also the retention of the Di Cecco building. The heritage features are not well identified, and have not been designated. On Mr. Mota’s evidence the new bridge would extend an extra 10 m to the north, and so would overhang the structures in any event. It may be possible to create a new bridge design that would protect the features (which have been emphasized unreasonably, even more than designated structures affected.) GO did not provide evidence, and a 6 m addition to the north side of the alignment may not affect it as claimed. The Di Cecco property was far more impacted than the other properties nearby, and they had not had sufficient notice of the proposed change to Alternative 3. She would argue for additional consideration of Alternative 1, or of “option 4”, a combination of Alternative 3 plus a 6 m extension of the bridge to the north.

Mrs Illyes: (No. 110)

Ms. Turner responded to Mr. Sperduti by submitting that taking the whole of the parcel (881.5 sq. m) when only a small portion (144 sq. m, or 16%) was required for the project, did not meet the statutory test. While the frontage might well be required as well as the temporary easement for construction, the entire parcel was not so required. Other inquiry officers had recommended a lesser taking in the past, such as an easement interest only, where justified. One such case, *St. Clair Regional Conservation Authority v. Aarssen* (1983), 26 L.C.R. 289 (Ont. H. C.) was discussed in Mr. Waqué’s text *New Law of Expropriation* at p. 10-36. (This excerpt was provided but was not entered as an exhibit.) She challenged Mr. Rogers’ evidence as irrelevant to the question of the fairness of the taking. The value of the land versus the home is not a proper consideration in applying the test in the Act for this hearing, as it is a question of compensation. Nor should the question of whether it could be developed be a factor. While this may be a consideration in determining the compensation to be provided, it does not go to the question of need. The CA may well allow some development, as this parcel is located at the very eastern edge of the regulated area, and already contains a home and a large workshop. She found no case where a complete taking was recommended when only a small segment was actually needed. She requests a finding that only Part 56 on the draft plan should be acquired, with a temporary construction easement behind it, and not the whole.

In responding to this, Mr. Waqué pointed out that there were cases on page 10-36 where the opposite request had been made: an owner asked that the authority take more of, or the whole of their property. In the *Gill* matter (unreported) one of the bases for the Inquiry Officer’s opinion that the whole should be taken was the fact that the owner faced additional regulatory approvals. The Region was not indulging in unreasonable behaviour in suggesting that the whole be taken. There can be factors in a proposed taking other than engineering necessity, and there were such factors here.

Mr. Waqué’s final submission was that all of the proposed takings were reasonably supported by the evidence and were fair, sound and reasonably necessary to complete the Region’s objective of incorporating the transitway within Davis Drive in the proposed location.

FINDINGS AND OPINION

I was convinced from the evidence of the Region’s witnesses that there is an urgent need for the widening of Davis Drive in this area to accommodate the proposed rapidway as designed. It will meet regional and interregional transportation needs as well as local ones. Long included in planning documents, its implementation is urgent at present for three main reasons: to provide better public transit to the existing Southlake Regional Health Centre; to handle increasing business and commuter traffic; and to take advantage of available funding for infrastructure projects. I am satisfied from the evidence of Mr. Mota that the Region and Town have adhered closely to the Urban Design Principles for the conceptual design (these are well explained as well on p. 10-3 of the EA, Ex. 15.) The design chosen, which from the evidence has been carefully

considered, illustrates that the proposed expropriations are reasonably necessary to meet the Region's objective of implementing it. I consider that I have no jurisdiction to inquire into either the process or the policy decision to favour Alternative 3 in the area of the Di Cecco lands. The purpose of this hearing was to apply the test in the Act to the proposed takings in furtherance of the new goal as described, giving close consideration to the owners' objections and suggested alternatives. I have evaluated their alternatives on the bases that the Act and the courts have prescribed. Comments specific to each of the challenged takings are:

Di Cecco property

The heritage issue: Mr. Di Cecco and Ms. Jones challenged Mr. Morgan on both the location and the value of the heritage remnants. They did not appear to accept Mr. Morgan's opinion that it is a site of historic significance, with the result that it is essential to do the least damage possible to it, since they pursued the question of a more northerly bridge throughout. I accept his testimony that the remnants of the turning basin and dam constitute a cultural heritage landscape, and should be preserved intact even if (or in my view especially if) they are not extensive. They are well preserved, as was confirmed in Ex. 21, Tab 10, a study for the Newmarket Historical Society, in which Mr. George Luesby said at p. 18 that when studied in 1978, "Examination of the canal structures shows that after 70 years, little deterioration has occurred other than surface spalling...". The CA still used the canal to control the flow of the Holland River. This means that the construction of a bridge 7 m to the north as proposed in Alternative 1 (Ex. 12), or even 6 m as was suggested recently ("option 4") is virtually impossible from a heritage perspective. The federal heritage guidelines make it very clear that no new built feature should cause damage to or [be] incompatible with the historic character of the landscape (Tab 14 of Ex. 21, p. 31.) Mr. Morgan said that even if there were no structural interference with the heritage features (some of which was likely in any event), constructing a bridge even partially on top of them would cause significant diminution of their heritage value. It would hide or obscure them, or more likely, necessitate their removal for the new support structures. Therefore, I conclude that to build over the heritage structures would contravene the guidelines as well as the provincial *Planning Act*. In my view nothing turns on the fact that the canal never operated as such. This fact contributed even more to the defeat of the Laurier government, and hence to its historical importance. Mr. Smith agreed that a new structure to the north would interfere with the heritage elements. He added that only a rigid frame structure would satisfy the location requirements for the replacement bridge, and that its support structures could not be so widely distributed as to sustain "option 4". From all of the evidence, the Region and Town's desire to protect these elements must be supported.

Insufficient notice of Alternative 3: Mr. Di Cecco and Ms. Jones claimed that there was insufficient notice of the change to the proposed design. There is little evidence that confirms this. They had received notice of the changes at each stage of the approval of the ESR. No in-depth information about the bridge design could be supplied to the requesters in the Nov. 20 notice (Ex. 14, Tab 8), because detailed design work had not and has not been done. Proof of this is found in Ex. 10, Tab 9, para. 4 - in its October 15, 2008, Resolution, Council stated "that the Region of York/VIVA Next be requested to work with Newmarket staff during the detailed design of the project to address the following issues:" [one of these was the Davis Drive bridge structure]. As well, even in the Minister's April 2, 2009 approval of the EA, he states: "I understand that during the detailed design phase of the Project, further public consultation will occur with affected property owners to help mitigate their concerns." (Ex. 14, Tab 2, p. 1.) The parties' dissatisfaction with the lack of detail is understandable, but insoluble in the circumstances. I find no unfairness in the Region's following standard practice in this regard for detailed engineering design to be completed following an approval of a Class EA or Municipal Class EA project. The fact that the political decision to alter the route was made in November following the adverse comments by GO and the heritage staff, and was fully illustrated in the December ESR, allowed the owners several months at least to absorb it and to prepare for a hearing if requested. Mr. Di Cecco responded to Mr. Mota's letter of Nov. 20, 2008, and thus he had actual notice. I find no unfairness in the process.

His cross-examination contained suggestions of prejudice in favour of properties on the north side of Davis Drive in deciding on the realignment. The previous alignment would have required the removal of existing plantings on the north side, and had made no accommodation for a

landscaped median and boulevard plantings. I think that the response to this is found in a single sentence in the staff report of Sept. 16, 2008. It is: "From a streetscaping perspective this scheme represents an unacceptable design compromise." (Ex. 10, Tab 8, p. 8.) Mr. Mota confirmed that all of the owners' concerns were given consideration in preparing the final assessment document. It was clearly a balancing exercise, as the Minister said in his approval of the EA. As stated, the fairness of the political process was not before this hearing; the issue is the whether these parcels are reasonably required to implement the Region's selected option for the alignment.

Conclusion on the proposed expropriation: The rationale for the proposed shift of the bridge to the south, Exhibit 13 rather than Exhibit 12, is very well summarized in the Town staff's report to Town Council, Exhibit 10, Tab 8, starting at p. 6, and especially the section entitled "Davis Drive Alignment for Holland River to Prospect Street" on page 7. I find it reasonable and convincing, as I do the evidence of the Region's witnesses. From the evidence, there remain far greater impediments to Mr. Di Cecco's proposal of "option 4" than minor technical choices as he claimed. GO trains would have to stop within the traffic lanes on Davis if a north alignment were chosen. Just to state this is to see how unrealistic it is. GO is unwilling to move its station or its platform as desired by the Di Cecco owners. In Mr. Mota's opinion the construction staging would be impossible if option 4 were accepted.

The Minister's response to the Di Cecco request for a Part II order provides a response to virtually all of the concerns and objections raised by Mr. Di Cecco and Ms. Jones (Ex. 14, Tab 2.) He pointed out that the selected route had the lowest number of impacts overall, indicating a careful balancing of public and private interests. It is most unfortunate that the engineering changes to meet the concerns raised by Alternative 1 resulted in a greater taking than proposed from the Di Cecco property, as compared to others. There was no challenge to the need to demolish the building if it will be cut in half by the new sidewalk. Thus from Mr. Smith and Mr. Morgan's evidence it is reasonably necessary to acquire all of the riverside parcel, as well as the partial takings from the parking lot for the proposed alignment. I am satisfied from all of the evidence that it is reasonably necessary to take all of 496. Respecting the lot at 498 now used for parking: Given that its use may be somehow tied to the use of the other parcel, and also that it is equally within the flood plain, I recommend that the entire lot at 498 be acquired in fee simple as well.

Ms. Jones submitted that experts should not determine the ultimate issue that the inquiry officer must decide: the fairness of the taking. However, the hearing process permits countervailing evidence to be presented. After hearing the Region's evidence in favour of Alternative 3 and against option 4, I was unable to determine whether option 4 was viable without expert assistance to contradict the Region's evidence and to allow for this conclusion to be reached. I was nonetheless convinced that there was sufficient information made available both before and at the hearing that the decision to proceed without adjourning had been the correct one. Since option 4 was on the horizon, even in the minds of the owners, experts could have been requested to put forward such a case, and this did not occur.

The Illyes property:

I accept Mr. Waqué's submission that cost can be a factor in the decision to expropriate the whole of a parcel rather than just the portion physically required for the construction. I rely on the comments of Mr. Justice Cory in *Re Parkins and the Queen* (1977), 13 L.C.R. 306, [not overruled on this point on appeal – 19 O.R. (2nd) 473] in which he states at page 315:

"Each matter coming before an inquiry officer will vary with regard to the elements that he will wish to consider. He may want to consider aspects of comparable costs, aesthetics, environmental impact or safety to mention a few. What constitutes fairness, justness and reasonable necessity will vary with the circumstances of each proposed expropriation. For example the routing of a road around a historic landmark, or stand of giant redwood trees may justify a route that is more expensive than the one which requires the destruction of the landmark or redwood trees. In some instances a consideration of environmental impact may outweigh a consideration of cost. It is impossible to say in every situation which factor may predominate in the application of the test."

I find that the Region's argument for taking the whole of this parcel is a rational one. I was initially attracted to Ms. Turner's argument that the rest was not needed for this project, and thus did not meet the statutory test. However, I accept the Region's argument that cost is a legitimate factor in this decision. The proposal for the whole is not necessarily intended just to save the Region money, but could also be of assistance to the owner rather than prejudicing her. She will face additional regulatory approvals (as in the *Gill* fact situation) if she wishes to construct a house further to the rear of her parcel, or to convert the workshop to habitable space. These may not be forthcoming. The Region's decision to take the whole is not unreasonable when all of these factors are considered. It is also proposing to take the whole of the Di Cecco riverside parcel in quite similar circumstances.

RECOMMENDATIONS

I recommend to the Region that all of the expropriations proceed as proposed or amended. To clarify:

Reference Nos. 1 and 2 above. Should these proposed expropriations still be in question, I would recommend to the Region that they or any agreed-upon amendments to them proceed.

Reference No. 38 Dr. Lincoln Hew: I endorse and recommend the expropriations now proposed from Dr. Hew's parcel, designated as Part 72, a three-year temporary easement, and 73, a fee simple interest, on the draft reference plan L12-010693, dated March 13, 2009.

Reference No. 97 King Fei Investments Ltd.: The new draft reference plan extract at Ex. 30, Tab 4 (L12-010693, dated March 13, 2009) shows these segments as Parts 27 (fee simple), Part 28 (permanent easement) and Part 29 (temporary 3-year easement.) In my opinion, these Parts are reasonably required for the widening, and I recommend that the Region acquire them as proposed.

Reference No. 98 Save It Holdings and
Reference No. 99 Chuang Holdings

Given the withdrawals I have no power to deal with these parcels at this time. However in my view it is reasonable for the Region to pursue the taking of the rear of these properties in the short term, and to abandon these portions depending on the test results. Therefore either of the takings now proposed from Save It (all of the parcel, i.e. Parts 84 and 85, or only Part 85 on draft Reference Plan L12-010694, dated April 28, 2009) would be reasonably defensible in the fact situation to meet the Region's objective. Similarly, either both (Parts 82 and 83), or Part 82 alone are reasonably defensible proposals for the Chuang lands.

Reference Nos. 103, 104 Alessandro Di Cecco et al.

I support the Region's proposal that number 496 be acquired in fee simple. I also recommend that 498 Davis Drive be acquired in full, as the remnant would not be useful to the owners. There may not be a comparable site with a similar degree of visibility as the present building, but compensation will provide the means to conduct a search. In my view the public interest in proceeding expeditiously with this large public infrastructure project outweighs the private interests involved. I am satisfied from the evidence that the design chosen is the best alternative. Thus I recommend that the Region acquire Parts 56, 57, 58, 59 and 60 on draft reference plan L12-010694 dated April 28, 2009, and the rest of the parcel at 498, in fee simple.

Reference No. 110 Erzsebet Illyes

I accept Mr. Roberts' view that if Ms. Illyes retained the rest of the parcel it could constitute a benefit to her, and the Act does not permit the owner to benefit from the expropriation process. It is unlikely that permission to build would be granted. I therefore recommend to the Region that it acquire Parts 54, 55 and 56 on the April 2009 draft reference plan L12-010695 as proposed.

Costs

Mr. Di Cecco made a request for costs as permitted in the Act. If a larger amount were authorized I would not so recommend, but I do so in this case. Ms. Turner did not make such a request, but I make the same recommendation for Mrs. Illyes.

CONCLUSION

After considering the evidence and argument, I conclude that all of the proposed takings meet the test in the *Expropriations Act* and the summation of it as set out by the courts. The test in subsection 7(5) of the Act is whether the proposed takings are "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority". Decisions such as the Court of Appeal in *Re Parkins and the Queen* (1977), 13 L.C.R. 327 (O.C.A.) conclude that the test that the inquiry officer must apply can be expressed as whether the proposed takings are "reasonably defensible in the achievement of the authority's objectives."

For the reasons given above, I find that the proposed taking by the Regional Municipality of York of the whole or parts of the properties described above is reasonably defensible in the achievement of the Region's objective of implementing road and intersection improvements along Davis Drive in the Town of Newmarket, and to provide designated lanes for the VIVA transit system and works ancillary thereto.

-Original signed by-

Gillian. M. Burton
Inquiry Officer

Date: June 1, 2009

APPENDIX A
LIST OF EXHIBITS

1. Affidavit of Andy Brown
2. Timeline for motion – Di Cecco
3. List of Witnesses requested – Di Cecco
4. Brief of Cases – Region
5. Response to adjournment request – Region
6. Letter – Di Cecco to Mota – Feb. 16, 2009
7. Letter – Di Cecco to Waqué – April 20, 2009
8. Brief – Michael Larkin
9. Conservation Brief
10. Brief – Jason Unger
11. Natural Heritage System - Newmarket Official Plan
12. Alignment – June 2008 – Di Cecco
13. Alignment – Dec. 2008 – Di Cecco
14. Brief – Steve Mota
15. Environmental Study Report – Dec. 2008
16. Letter – Beelen, Shell Canada
17. Emails – Mota to Lynton Erskine – April 3, 2008
18. Aerial view from Town of Newmarket website
19. Email - Robert Prentice to Mayor – June 11, 2008
20. a and b – Photos of east wall of turning basin – Di Cecco
21. Heritage Brief – Wayne Morgan
22. Photo – Mr. O'Rourke – north west side of bridge – Di Cecco
23. Photo – demolition of bridge – July 1965 – Di Cecco
24. Enlargement of plan of dam – Tab 3 C, Exhibit 21 – Di Cecco
25. Photo – further demolition of bridge – Aug. 4, 1965 – Di Cecco
26. Brief – Save It Holdings Ltd. – Region
27. Brief – Mitchell Smith – Region
28. Draft reference plans - Region
29. Brief – Dr. Hew – Region
30. Brief – King Fei Investments Ltd. – Region
31. Brief – Alessandro Di Cecco et al. – Region
32. Brief - Erzsebet Illyes – Region
33. Photos – GO station and trains – Di Cecco
34. Photo – south of bridge looking north – Di Cecco
35. Sketch – possible design of supporting wall – Di Cecco
36. Disk – photos and video of GO station – Di Cecco
37. Letter – LaHay to Di Cecco re By-law – June 29, 1999 – Di Cecco
38. Letter – Collett to Di Cecco re By-law – June 2, 1992

Schedule “A”

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
1	17555 Yonge Street	<p>Part of PIN: 03578-0903 (LT)</p> <p>A fee simple interest in Part Lot 96, Conc. 1, East of Yonge St., Township of East Gwillimbury designated as Parts 72, 77, 78, 81, 82, 88, 89, 90, 91, 95 and 99 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Lot 96, Conc. 1, East of Yonge St., Township of East Gwillimbury designated as Parts 74, 75, 80, 85, 97, 98, 101, 102, 104 and 105 on Plan L12-010691</p> <p>A permanent easement in Part Lot 96, Conc. 1, East of Yonge St., Township of East Gwillimbury designated as Parts 73, 76, 79, 83, 84, 86, 87, 92, 93, 94, 96, 100 and 103 on Plan L12-010691</p>
2	39 Davis Drive	<p>Part of PIN: 03578-0129 (LT)</p> <p>A fee simple interest in Part of Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury, designated as Part 71 on Plan L12-010691</p> <p>A 3 year temporary easement in Part of Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury, designated as Part 69 on Plan L12-010691</p> <p>A permanent easement in Part of Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury, designated as Part 70 on Plan L12-010691</p>
3	69 Davis Drive	<p>Part of PIN: 03578-0132 (LT)</p> <p>A fee simple interest in Part Lot 96, Conc. 1, East of Yonge Street, former Township of East Gwillimbury designated as Part 66 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Lot 96, Conc. 1, East of Yonge Street, former Township of East Gwillimbury designated as Part 68 on Plan L12-010691</p> <p>A permanent easement in Part Lot 96, Conc. 1, East of Yonge Street, former Township of East Gwillimbury designated as Part 67 on Plan L12-010691</p>
4	77 – 83 Davis Drive	<p>Part of PIN: 03578-0348 (LT)</p> <p>A fee simple interest in Part of Block A on Plan 492 East Gwillimbury, designated as Parts 60 and 65 on Plan L12-010691</p> <p>A 3 year temporary easement in Part of Block A on Plan 492 East Gwillimbury, designated as Parts 62 and 63 on Plan L12-010691</p> <p>A permanent easement in Part of Block A on Plan 492 East Gwillimbury, designated as Parts 61 and 64 on Plan L12-010691</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
5	85 Davis Drive	<p>Part of PIN: 03578-0349 (LT)</p> <p>A fee simple interest in Part Block A on Plan 492, East Gwillimbury designated as Part 57 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Block A on Plan 492, East Gwillimbury designated as Part 59 on Plan L12-010691</p> <p>A permanent easement in Part Block A on Plan 492, East Gwillimbury designated as Part 58 on Plan L12-010691</p>
6	89 – 91 Davis Drive	<p>Part of PIN: 03578-0350 (LT)</p> <p>A fee simple interest in Part Block A on Plan 492, East Gwillimbury designated as Parts 51 and 54 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Block A on Plan 492, East Gwillimbury designated as Parts 53 and 56 on Plan L12-010691</p> <p>A permanent easement in Part Block A on Plan 492, East Gwillimbury designated as Parts 52 and 55 on Plan L12-010691</p>
7	83 – 97 Davis Drive	<p>Part of PIN: 03578-0351 (LT)</p> <p>A fee simple interest in Part of Block A on Plan 492, East Gwillimbury designated as Part 50 on Plan L12-010691</p> <p>A 3 year temporary easement in Part of Block A on Plan 492, East Gwillimbury designated as Part 48 on Plan L12-010691</p> <p>A permanent easement in Part of Block A on Plan 492, East Gwillimbury designated as Part 49 on Plan L12-010691</p>
8	99 – 101 Davis Drive	<p>Part of PIN: 03578-0352 (LT)</p> <p>A fee simple interest in Part of Block A on Plan 492 East Gwillimbury designated Part 45 on Plan L12-010691</p> <p>A 3 year temporary easement in Part of Block A on Plan 492 East Gwillimbury designated Part 47 on Plan L12-010691</p> <p>A permanent easement in Part of Block A on Plan 492 East Gwillimbury designated Part 46 on Plan L12-010691</p>
9	103 Davis Drive	<p>Part of PIN: 03578-0353 (LT)</p> <p>A fee simple interest in Part Block A on Plan 492 East Gwillimbury designated as Part 44 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Block A on Plan 492 East Gwillimbury designated as Part 43 on Plan L12-010691</p> <p>A permanent easement in Part Block A on Plan 492 East Gwillimbury designated as Part 109 on Plan L12-010691</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
10	105 Davis Drive	<p>Part of PIN: 03578-0354 (LT)</p> <p>A fee simple interest in Part Block A on Plan 492 East Gwillimbury designated as Parts 40 and 41 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Block A on Plan 492 East Gwillimbury designated as Parts 39 and 42 on Plan L12-010691</p> <p>A permanent easement in Part Block A on Plan 492 East Gwillimbury designated as Parts 107 and 108 on Plan L12-010691</p>
11	111 Davis Drive	<p>Part of PIN: 03578-0355 (LT)</p> <p>A fee simple interest in part Block A on Plan 492 East Gwillimbury designated as Part 36 on Plan L12-010691</p> <p>A 3 year temporary easement in part Block A on Plan 492 East Gwillimbury designated as Part 38 on Plan L12-010691</p> <p>A permanent easement in part Block A on Plan 492 East Gwillimbury designated as Part 37 on Plan L12-010691</p>
12	135 Davis Drive	<p>Part of PIN: 03578-0356 (LT)</p> <p>A fee simple interest in Part Lot 96, Conc. 1 East of Yonge St., former Township of East Gwillimbury designated as Part 34 on Plan L12-010691</p> <p>A 3 year temporary easement in Part Lot 96, Conc. 1 East of Yonge St., former Township of East Gwillimbury designated as Part 32 on Plan L12-010691</p> <p>A permanent easement in Part Lot 96, Conc. 1 East of Yonge St., former Township of East Gwillimbury designated as Part 33 on Plan L12-010691</p>
13	151 Davis Drive	<p>PIN 03578-0357 (LT)</p> <p>A fee simple interest in Part of Lot 96, Concession 1 East of Yonge Street designated as Parts 30 and 31 on Plan L12-010691, Town of Newmarket, former Township of East Gwillimbury</p>
14	157 – 159 Davis Drive	<p>PIN 03578-0358 (LT)</p> <p>A fee simple interest in Part of Lot 96 Concession 1 East of Yonge Street designated as Parts 2 and 3 on Plan L12-010692, Town of Newmarket, former Township of East Gwillimbury</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
15	161 Davis Drive	<p>Part of PIN: 03578-0497 (LT)</p> <p>A fee simple interest in Part Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury designated as Parts 6 and 7 on Plan L12-010692, reserving unto the owners a permanent easement for the purposes of maintaining the underground garage lying within the limits of said Parts 6 and 7 for the benefit of the remaining lands (“Dominant Tenement”) described as Part of Lot 96, Concession 1, East of Yonge Street designated as Parts 1 and 4 on Plan 65R-14304, save and except said Parts 6 and 7 on Plan L12-010692.</p> <p>A 3 year temporary easement in Part Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury designated as Part 4 on Plan L12-010692, reserving unto the owners a permanent easement for the purposes of maintaining the underground garage lying within the limits of said Parts 6 and 7 for the benefit of the remaining lands (“Dominant Tenement”) described as Part of Lot 96, Concession 1, East of Yonge Street designated as Parts 1 and 4 on Plan 65R-14304, save and except said Parts 6 and 7 on Plan L12-010692.</p> <p>A permanent easement in Part Lot 96, Conc. 1, East of Yonge St., former Township of East Gwillimbury designated as Part 5 on Plan L12-010692, reserving unto the owners a permanent easement for the purposes of maintaining the underground garage lying within the limits of said Parts 6 and 7 for the benefit of the remaining lands (“Dominant Tenement”) described as Part of Lot 96, Concession 1, East of Yonge Street designated as Parts 1 and 4 on Plan 65R-14304, save and except said Parts 6 and 7 on Plan L12-010692.</p>
16	191 Davis Drive	<p>Part of PIN: 03574-0175 (LT)</p> <p>A fee simple interest in Part of Lots 259 and 261 on Plan 492, East Gwillimbury designated as Part 9 on Plan L12-010692</p> <p>A 3 year temporary easement in Part of Lots 259 and 261 on Plan 492, East Gwillimbury designated as Part 11 on Plan L12-010692</p> <p>A permanent easement in Part of Lots 259 and 261 on Plan 492, East Gwillimbury designated as Part 10 on Plan L12-010692</p>
17, 18, 19, 20	Vacant Land, south side Penn Avenue	<p>Part of PIN: 03574-0174 (LT)</p> <p>A fee simple interest in Part of Lots 257 and 258 on Plan 492, East Gwillimbury, designated as Parts 13 and 14 on Plan L12-010692</p> <p>A 3 year temporary easement in Part of Lots 257 and 258 on Plan 492, East Gwillimbury, designated as Parts 12 and 15 on Plan L12-010692</p>
21, 22, 23, 24	Vacant Land, south side Penn Avenue	<p>Part of PIN: 03574-0173 (LT)</p> <p>A fee simple interest in Part of Lots 255 and 256 on Plan 492 East Gwillimbury designated as Part 17 on Plan L12-010692</p> <p>A 3 year temporary easement in Part of Lots 255 and 256 on Plan 492 East Gwillimbury designated as Part 16 on Plan L12-010692</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
25, 26, 27, 28	Vacant Land, south side Penn Avenue	Part of PIN: 03574-0172 (LT) A fee simple interest in Part of Lots 253 and 254 on Plan 492, East Gwillimbury designated as Part 19 on Plan L12-010692 A 3 year temporary easement in Part of Lots 253 and 254 on Plan 492, East Gwillimbury designated as Part 18 on Plan L12-010692
29	188 Penn Avenue	Part of PIN: 03574-0171 (LT) A fee simple interest in Part Lot 252 on Plan 492, East Gwillimbury designated as Part 22 on Plan L12-010692 A 3 year temporary easement in Part Lot 252 on Plan 492, East Gwillimbury designated as Part 20 on Plan L12-010692 A permanent easement in Part Lot 252 on Plan 492, East Gwillimbury designated as Part 21 on Plan L12-010692
30	190 Penn Avenue	Part of PIN: 03574-0170 (LT) A fee simple interest in Part Lot 252 on Plan 492 East Gwillimbury designated as Part 23 on Plan L12-010692 A 3 year temporary easement in Part Lot 252 on Plan 492, East Gwillimbury designated as Part 25 on Plan L12-010692 A permanent easement in Part Lot 252 on Plan 492, East Gwillimbury designated as Part 24 on Plan L12-010692
31	192 Penn Avenue	Part of PIN: 03574-0169 (LT) A fee simple interest in Part Lot 251 on Plan 492 East Gwillimbury designated as Part 28 on Plan L12-010692 A 3 year temporary easement in Part Lot 251 on Plan 492 East Gwillimbury designated as Part 26 on Plan L12-010692 A permanent easement in Part Lot 251 on Plan 492 East Gwillimbury designated as Part 27 on Plan L12-010692
32	194 Penn Avenue	Part of PIN: 03574-0168 (LT) A fee simple interest in Part Lot 251 on Plan 492 East Gwillimbury designated as Part 29 on Plan L12-010692 A 3 year temporary easement in Part Lot 251 on Plan 492 East Gwillimbury designated as Part 31 on Plan L12-010692 A permanent easement in Part Lot 251 on Plan 492 East Gwillimbury designated as Part 30 on Plan L12-010692

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
33	196 Penn Avenue	<p>Part of PIN: 03574-0167 (R)</p> <p>A fee simple interest in Part Lot 250 on Plan 492 East Gwillimbury designated as Part 34 on Plan L12-010692</p> <p>A 3 year temporary easement in Part Lot 250 on Plan 492 East Gwillimbury designated as Part 32 on Plan L12-010692</p> <p>A permanent easement in Part Lot 250 on Plan 492 East Gwillimbury designated as Part 33 on Plan L12-010692</p>
34	198 Penn Avenue	<p>Part of PIN: 03574-0166 (LT)</p> <p>A fee simple interest in Part Lot 250 on Plan 492 East Gwillimbury designated as Part 35 on Plan L12-010692</p> <p>A 3 year temporary easement in Part Lot 250 on Plan 492 East Gwillimbury designated as Part 37 on Plan L12-010692</p> <p>A permanent easement in Part Lot 250 on Plan 492 East Gwillimbury designated as Part 36 on Plan L12-010692</p>
35	200 Penn Avenue	<p>Part of PIN: 03574-0165 (LT)</p> <p>A fee simple interest in Part Lot 249 on Plan 492 East Gwillimbury designated as Part 40 on Plan L12-010692</p> <p>A 3 year temporary easement in Part Lot 249 on Plan 492 East Gwillimbury designated as Part 38 on Plan L12-010692</p> <p>A permanent easement in Part Lot 249 on Plan 492 East Gwillimbury designated as Part 39 on Plan L12-010692</p>
36	202 Penn Avenue	<p>Part of PIN: 03574-0164 (LT)</p> <p>A fee simple interest in Part Lot 249 on Plan 492 East Gwillimbury designated as Part 41 on Plan L12-010692</p> <p>A 3 year temporary easement in Part Lot 249 on Plan 492 East Gwillimbury designated as Part 43 on Plan L12-010692</p> <p>A permanent easement in Part Lot 249 on Plan 492 East Gwillimbury designated as Part 42 on Plan L12-010692</p>
37	251-259 Davis Drive	<p>Part of PIN: 03574-0277 (LT)</p> <p>A fee simple interest in Part Lot 96, Conc. 1 East of Yonge St., former Township of East Gwillimbury designated as Part 44 on Plan L12-010692</p> <p>A 3 year temporary easement in Part Lot 96, Conc. 1 East of Yonge St., former Township of East Gwillimbury designated as Part 46 on Plan L12-010692</p> <p>A permanent easement in Part Lot 96, Conc. 1 East of Yonge St., former Township of East Gwillimbury designated as Part 45 on Plan L12-010692</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
37A	8 Hill Street	Part of PIN: 03574-0279 (LT) A 3 year temporary easement in Part Lots 10, 11 and 12, Plan 112, Town of Newmarket, designated as Part 47 on Plan L12-010692
38	291 Davis Drive	Part of PIN: 03574-0925 (LT) A fee simple interest in Part Lots 7, 8 and 9 on Plan 112, Newmarket designated as Part 73 on Plan L12-010693 A 3 year temporary easement in Part Lots 7, 8 and 9 on Plan 112, Newmarket designated as Part 72 on Plan L12-010693
39	299 Davis Drive	Part of PIN: 03574-0284 (LT) A fee simple interest in Lots 5 and 6 on Plan 112, Newmarket, designated as Part 70 on Plan L12-010693 A 3 year temporary easement in Lots 5 and 6 on Plan 112, Newmarket, designated as Part 71 on Plan L12-010693
40	309 Davis Drive	Part of PIN 03574-0290 (R) A fee simple interest in part of Maple Street on Plan 112 (closed by Bylaw 2006-74 Inst. No. R751052) designated as Parts 65, 66 and 67 on Plan L12-010693 PIN 03574-0285 (LT) A fee simple interest in Lot 4 on Plan 112 Newmarket, designated as Parts 68 and 69 on Plan L12-010693
41	315 Davis Drive	Part of PIN: 03574-0290 (R) A fee simple interest in part of Maple St. on Plan 112 (closed by Bylaw 2006-74 Inst. No. R751052) Newmarket designated as Parts 60 and 61 on Plan L12-010693 A 3 year temporary easement in part of Maple St. on Plan 112 (closed by Bylaw 2006-74 Inst. No. R751052) Newmarket designated as Part 63 on Plan L12-010693 A permanent easement in part of Maple St. on Plan 112 (closed by Bylaw 2006-74 Inst. No. R751052) Newmarket designated as Part 62 on Plan L12-010693 Part of PIN: 03574-0287 (LT) A fee simple interest in Lot 3 on Plan 112, Newmarket designated as Part 57 on Plan L12-010693 A 3 year temporary easement in Lot 3 on Plan 112, Newmarket designated as Part 59 on Plan L12-010693 A permanent easement in Lot 3 on Plan 112, Newmarket designated as Part 58 on Plan L12-010693

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
42	319 Davis Drive	<p>Part of PIN: 03574-0286 (LT)</p> <p>A fee simple interest in Part Lot 2 on Plan 112, Newmarket designated as Part 54 on Plan L12-010693</p> <p>A 3 year temporary easement in Part Lot 2 on Plan 112, Newmarket designated as Part 56 on Plan L12-010693</p> <p>A permanent easement in Part Lot 2 on Plan 112, Newmarket designated as Part 55 on Plan L12-010693</p>
43	333 Davis Drive	<p>Part of PIN: 03574-0307 (LT)</p> <p>A fee simple interest in Part Lots 1 and 2, Plan 112 Newmarket and Part Lots 32 and 33, North of Huron St., Plan 78 Newmarket, designated as Part 51 on Plan L12-010693</p> <p>A 3 year temporary easement in Part Lots 1 and 2 Plan 112 Newmarket and Part Lots 32 and 33, North of Huron St., Plan 78 Newmarket, designated as Part 53 on Plan L12-010693</p> <p>A permanent easement in Part of Lots 1 and 2 Plan 112 Newmarket and Part Lots 32 and 33, North of Huron St., Plan 78 Newmarket, designated as Part 52 on Plan L12-010693</p>
44	341 Davis Drive	<p>PIN 03574-0932 (LT)</p> <p>A fee simple interest in Part of Lots 31 and 32 north side of Huron Street, Plan 78 Newmarket designated as Part 50 on Plan L12-010693</p>
45	345 Davis Drive	<p>Part of PIN: 03574-0309 (LT)</p> <p>A fee simple interest in Part of Lots 29, 30, 31 north side Huron St., Plan 78 Newmarket designated as Part 47 on Plan L12-010693</p> <p>A 3 year temporary easement in Part of Lots 29, 30, 31 north side Huron St., Plan 78 Newmarket designated as Part 49 on Plan L12-010693</p> <p>A permanent easement in Part of Lots 29, 30, 31 north side Huron St., Plan 78 Newmarket designated as Part 48 on Plan L12-010693</p>
46	351 Davis Drive	<p>Part of PIN: 03574-0946 (LT)</p> <p>A fee simple interest in Part Lot 29, North of Huron St., Plan 78 Newmarket designated as Part 45 on Plan L12-010693</p> <p>A 3 year temporary easement in Part Lot 29, North of Huron St., Plan 78 Newmarket designated as Part 46 on Plan L12-010693</p>
47	355 Davis Drive	<p>Part of PIN: 03574-0311 (LT)</p> <p>A fee simple interest in Part of Lot 28, north of Huron St., Plan 78 Newmarket designated as Part 42 on Plan L12-010693</p> <p>A 3 year temporary easement in Part of Lot 28, north of Huron St., Plan 78 Newmarket designated as Part 43 on Plan L12-010693</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
48	359 Davis Drive	Part of PIN: 03574-0312 (LT) A fee simple interest in Part Lot 27 n.s. Huron St., Plan 78, Newmarket designated as Part 40 on Plan L12-010693 A 3 year temporary easement in Part Lot 27 n.s. Huron St., Plan 78, Newmarket designated as Part 41 on Plan L12-010693
49	371 Davis Drive	Part of PIN: 03574-0317 (LT) A fee simple interest in Part Lots 25 and 26, North of Huron St., Plan 78 Newmarket designated as Part 38 on Plan L12-010693 A 3 year temporary easement in Part Lots 25 and 26, North of Huron St., Plan 78 Newmarket designated as Part 39 on Plan L12-010693
50, 51, 52	383 – 415 Davis Drive	Part of PIN: 03574-0318 (LT) A fee simple interest in Part Lots 17, 18, 19, 20, 21, 22, 23, and 24, North of Huron St., Plan 78 Newmarket designated as Parts 30, 35 and 36 on Plan L12-010693 A 3 year temporary easement in Part Lots 17, 18, 19, 20, 21, 22, 23, and 24, North of Huron St., Plan 78 Newmarket designated as Parts 31, 34 and 37 on Plan L12-010693 A permanent easement in Part Lots 22 and 23, North of Huron St., Plan 78 Newmarket designated as Parts 32 and 33 on Plan L12-010693
53	425 – 431 Davis Drive	PIN 03556-0552 (LT) A fee simple interest in Lot 16 on the north side of Huron Street, part of Lot 15 on the north side of Huron Street, and part of the strip of land in rear of Lot E and 12 to 16 both inclusive, north side of Huron Street, all on Plan 78 Newmarket designated as Parts 1, 2, 3, 4 and 5 on Plan L12-010694, Town of Newmarket
54	435 Davis Drive	Part of PIN: 03556-0397 (LT) A fee simple interest in Part Lots 14 and 15 on n.s. Huron St. Plan 78, Newmarket designated as Part 6 on Plan L12-010694 A 3 year temporary easement in Part Lots 14 and 15 on n.s. Huron St. Plan 78, Newmarket designated as Part 7 on Plan L12-010694
56	447 Davis Drive	Part of PIN: 03556-0419 (LT) A fee simple interest in Part of Lots 12, 13, 14 and E, north side of Huron St., all on Plan 78 Newmarket; designated as Part 11 on Plan L12-010694 A 3 year temporary easement in Part of Lots 12, 13, 14 and E, north side of Huron St., all on Plan 78 Newmarket; designated as Part 13 on Plan L12-010694 Permanent easement in Part of Lots 12, 13, 14 and E, north side of Huron St., all on Plan 78 Newmarket; designated as Part 12 on Plan L12-010694

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
57	465 Davis Drive	<p>Part of PIN: 03556-0417 (LT)</p> <p>A fee simple interest in part Block D on Plan 78 Newmarket designated as Part 18 on Plan L12-010694</p> <p>A 3 year temporary easement in part Block D on Plan 78 Newmarket designated as Part 16 on Plan L12-010694</p> <p>A permanent easement in part Block D on Plan 78 Newmarket designated as Part 17 on Plan L12-010694</p> <p>Part of PIN: 03556-0422 (LT)</p> <p>A fee simple interest in Part of Block D, on Plan 78 Newmarket designated as Parts 19 and 24 on Plan L12-010694</p> <p>A 3 year temporary easement in Part of Block D, on Plan 78 Newmarket designated as Parts 21 and 22 on Plan L12-010694</p> <p>A permanent easement in Part of Block D, on Plan 78 Newmarket designated as Parts 20 and 23 on Plan L12-010694</p>
59	North Side of Davis Drive, east of Holland River	<p>Part of PIN: 03556-0427 (LT)</p> <p>A fee simple interest in Part Lots 8, 9, 10, N.S. Huron Street, Plan 78 Newmarket designated as Part 27 on Plan L12-010694</p> <p>A 3 year temporary easement in Part Lots 8, 9, 10, N.S. Huron Street, Plan 78 Newmarket designated as Part 26 on Plan L12-010694</p> <p>Part of PIN: 03556-0394 (LT)</p> <p>A fee simple interest in Part Lot 8 N.S. Huron Street, Plan 78 Newmarket, designated as Part 28 on Plan L12-010694</p> <p>A 3 year temporary easement in Part Lot 8 N.S. Huron Street, Plan 78 Newmarket, designated as Part 29 on Plan L12-010694</p>
60	531 Davis Drive	<p>Part of PIN: 03556-0393 (LT)</p> <p>A fee simple interest in Part of Lots 1, 2, 3, 4, 5, 6, 7 and 8, n.s. of Huron St. Plan 78, Newmarket, designated as Parts 31 and 32 on Plan L12-010694</p> <p>A 3 year temporary easement in Part of Lots 1, 2, 3, 4, 5, 6, 7 and 8, n.s. of Huron St. Plan 78, Newmarket, designated as Part 34 on Plan L12-010694</p> <p>A permanent easement in Part of Lots 1, 2, 3, 4, 5, 6, 7 and 8, n.s. of Huron St. Plan 78, Newmarket, designated as Part 33 on Plan L12-010694</p>
61	567 Davis Drive	<p>Part of PIN: 03568-0350 (LT)</p> <p>A fee simple interest in Part Lot 1, Conc. 2, Township of East Gwillimbury, designated Part 1 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lot 1, Conc. 2, Township of East Gwillimbury, designated Part 2 on Plan L12-010695</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
62, 63	581 – 589 Davis Drive and 597 Davis Drive	<p>Part of PIN: 03568-0609 (LT)</p> <p>A fee simple interest in Part of Lots 1 and 2, north of Huron St. on Plan 56 East Gwillimbury, designated as Part 3 on Plan L12-010695</p> <p>A 3 year temporary easement in Part of Lots 1, 2 and 3, north of Huron St. on Plan 56 East Gwillimbury, designated as Parts 4, 5 and 6 on Plan L12-010695</p> <p>Part of PIN: 03568-0611 (LT)</p> <p>A fee simple interest in Part Lot 4, north of Huron St. in Plan 56 East Gwillimbury designated as Part 8 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lots 3 and 4, north of Huron St. in Plan 56 East Gwillimbury designated as Part 7 on Plan L12-010695</p>
64	603 Davis Drive	<p>Part of PIN: 03568-0331 (LT)</p> <p>A fee simple interest in Part of Lots 4 and 5 on Plan 56, North of Huron St., East Gwillimbury designated as Parts 9, 10 and 11 on Plan L12-010695</p> <p>A 3 year temporary easement in Part of Lots 4 and 5, North of Huron St., Plan 56 East Gwillimbury designated as Part 12 on Plan L12-010695</p>
65	615 Davis Drive	<p>Part of PIN: 03568-0343 (LT)</p> <p>A fee simple interest in Part of Lots 7 and 8, n.s. Huron St., Plan 56 East Gwillimbury, designated as Part 13 on Plan L12-010695</p> <p>A 3 year temporary easement in Part of Lots 7 and 8, n.s. Huron St., Plan 56 East Gwillimbury, designated as Part 14 on Plan L12-010695</p>
66	625 Davis Drive	<p>Part of PIN: 03568-0344 (LT)</p> <p>A fee simple interest in Part of Lot 9 on n.s. of Huron St., Plan 56 East Gwillimbury designated as Part 15 on Plan L12-010695</p> <p>A 3 year temporary easement in Part of Lot 9 on n.s. of Huron St., Plan 56 East Gwillimbury designated as Part 16 on Plan L12-010695</p>
67	631 Davis Drive	<p>Part of PIN: 03568-0345 (LT)</p> <p>A fee simple interest in Part of Lot 10 on n.s. of Huron St., Plan 56 East Gwillimbury designated as Part 17 on Plan L12-010695</p> <p>A 3 year temporary easement in Part of Lot 10 on n.s. of Huron St., Plan 56 East Gwillimbury designated as Part 18 on Plan L12-010695</p>
68	637 Davis Drive	<p>Part of PIN: 03568-0346 (LT)</p> <p>A fee simple interest in Part of Lot 11 on n.s. of Huron St. Plan 56 East Gwillimbury designated as Part 19 on Plan L12-010695</p> <p>A 3 year temporary easement in Part of Lot 11 on n.s. of Huron St. Plan 56 East Gwillimbury designated as Part 20 on Plan L12-010695</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
69	641 Davis Drive	<p>Part of PIN: 03568-0347 (LT)</p> <p>A fee simple interest in Part Lot 1 Conc. 2, Township of East Gwillimbury designated as Part 21 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lot 1 Conc. 2, Township of East Gwillimbury designated as Part 22 on Plan L12-010695</p>
70	647 Davis Drive	<p>Part of PIN: 03568-0348 (LT)</p> <p>A fee simple interest in Part Lot 1 Conc. 2, Township of East Gwillimbury designated as Part 23 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lot 1 Conc. 2, Township of East Gwillimbury designated as Part 24 on Plan L12-010695</p>
71	655 Davis Drive	<p>Part of PIN: 03568-0349 (LT)</p> <p>A fee simple interest in Part Lot 1 Conc. 2 Township of East Gwillimbury designated as Part 25 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lot 1 Conc. 2 Township of East Gwillimbury designated as Part 26 on Plan L12-010695</p>
72	665 Davis Drive	<p>Part of PIN: 03568-0351 (LT)</p> <p>A fee simple interest in Part Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 27, 30, 33 and 34 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 29, 32 and 36 on Plan L12-010695</p> <p>A permanent easement in Part Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 28, 31 and 35 on Plan L12-010695</p>
72A	679 Davis Drive	<p>Part of PIN: 03568-0607 (LT)</p> <p>A fee simple interest in Part Lot 1 Conc. 1 Township of East Gwillimbury designated as Parts 37 and 38 on Plan L12-010695</p> <p>A 3 year temporary easement in Part Lot 1 Conc. 1 Township of East Gwillimbury designated as Part 39 on Plan L12-010695</p>
73	693 Davis Drive	<p>Part of PIN: 03567-0081 (LT)</p> <p>A fee simple interest in Part of Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 41 and 43 on Plan L12-010696</p> <p>A 3 year temporary easement in Part of Lot 1 Conc. 2 Township of East Gwillimbury designated as Part 45 on Plan L12-010696</p> <p>A permanent easement in Part of Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 42 and 44 on Plan L12-010696</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
74	713 Davis Drive	Part of PIN: 03567-0082 (LT) A fee simple interest in Part of Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 33, 34, 35 and 36 on Plan L12-010696 A 3 year temporary easement in Part of Lot 1 Conc. 2 Township of East Gwillimbury designated as Parts 30 and 31 on Plan L12-010696 A permanent easement in Part of Lot 1 Conc. 2 Township of East Gwillimbury designated as Part 32 on Plan L12-010696
74A	721 Davis Drive	Part of PIN: 03567-0083 (LT) A 3 year temporary easement in Part Lot 1, Concession 2, former Township of East Gwillimbury designated as Part 29 on Plan L12-010696
75	40 Huron Heights Drive	Part of PIN: 03567-0086 (LT) A fee simple interest in Part Lot 1, Concession 2, former Township of East Gwillimbury designated as Part 27 on Plan L12-010696 A 3 year temporary easement in Part Lot 1, Concession 2, former Township of East Gwillimbury designated as Part 26 on Plan L12-010696
76	749 Davis Drive	Part of PIN: 03567-0085 (LT) A fee simple interest in Part Lot 1 Conc. 2, former Township of East Gwillimbury designated as Part 25 on Plan L12-010696 A 3 year temporary easement in Part Lot 1, Conc. 2, former Township of East Gwillimbury designated as Part 24 on Plan L12-010696
77	795 Davis Drive	Part of PIN: 03561-0276 (LT) A fee simple interest in Part Lot 1, Concession 2, former Township of East Gwillimbury designated as Part 23 on Plan L12-010696 A 3 year temporary easement in Part Lot 1, Concession 2, former Township of East Gwillimbury designated as Part 22 on Plan L12-010696
78	20 Davis Drive	Part of PIN: 03602-0326 (LT) A 3 year temporary easement in Part Lot 95 Conc. 1 Township of Whitchurch designated as Part 3 on Plan L12-010691 A permanent easement in Part Lot 95 Conc. 1 Township of Whitchurch designated as Part 2 on Plan L12-010691
79	54 Davis Drive	Part of PIN: 03602-0328 (LT) A fee simple interest in Part Lot 95 Conc. 1 Township of Whitchurch designated as Parts 4, 7, 11 and 12 on Plan L12-010691 A 3 year temporary easement in Part Lot 95 Conc. 1 Township of Whitchurch designated as Parts 6, 9, 10 and 14 on Plan L12-010691 A permanent easement in Part Lot 95 Conc. 1 Township of Whitchurch designated as Parts 5, 8 and 13 on Plan L12-010691

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
80	130 Davis Drive	Part of PIN: 03602-0159 (LT) A fee simple interest in Part Lot 95 Conc. 1 Township of Whitchurch designated as Parts 17 and 18 on Plan L12-010691 A 3 year temporary easement in Part Lot 95 Conc. 1 Township of Whitchurch designated as Part 15 on Plan L12-010691 A permanent easement in Part Lot 95 Conc. 1 Township of Whitchurch designated as Part 16 on Plan L12-010691
81	130 Davis Drive	Part of PIN: 03602-0156 (LT) A fee simple interest in Part Lots 7, 8 and 9 on Plan 32 Whitchurch designated as Parts 22, 23, 26 and 27 on Plan L12-010691 A 3 year temporary easement in Part Lots 7, 8 and 9 on Plan 32 Whitchurch designated as Parts 25, 29 and 106 on Plan L12-010691 A permanent easement in Part Lots 7, 8 and 9 on Plan 32 Whitchurch and Part Lot 95 Conc. 1 Township of Whitchurch designated as Parts 24 and 28 on Plan L12-010691
82	166 Davis Drive	PIN 03602-0330 (LT) A fee simple interest in Part of Lot 6 on Plan 32 Whitchurch designated as Parts 84, 85 and 86 on Plan L12-010692
83	180 Davis Drive	PIN 03602-0142 (LT) A fee simple interest in part of Lot 6 on Plan 32 Whitchurch designated as Parts 82 and 83 on Plan L12-010692
84	200 Davis Drive	Part of PIN: 29230-0001 (LT) to 29230-0026 (LT) A fee simple interest in Part of Common Elements of YRCP No. 698, Newmarket designated as Part 79 on Plan L12-010692 A 3 year temporary easement in Part of Common Elements of YRCP No. 698, Newmarket designated as Part 81 on Plan L12-010692 A permanent easement in Part of Common Elements of YRCP No. 698, Newmarket designated as Part 80 on Plan L12-010692
85	Vacant Land, south side Davis Drive	Part of PIN: 03602-0177 (LT) A fee simple interest in Part Lot 4, Plan 32, Town of Newmarket designated as Part 78 on Plan L12-010692 A permanent easement in Part Lot 4, Plan 32, Town of Newmarket designated as Part 77 on Plan L12-010692
85A	230 Davis Drive	Part of PIN: 03602-0175 (LT) A permanent easement in Part of Lot 4, Plan 32, Town of Newmarket designated as Part 76 on Plan L12-010692

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
85B	250 Davis Drive	Part of PIN: 29142-0001 (LT) to 29142-0300 (LT) A permanent easement in Part of Common Elements of YRCP No. 609, Town of Newmarket designated as Part 75 on Plan L12-010692
85C	260 Davis Drive	Part of PIN: 29400-0001 (LT) to 29400-0189 (LT) A permanent easement in Part of Common Elements of YRCP No. 869, Town of Newmarket designated as Part 72 on Plan L12-010692
86	270 Davis Drive	Part of PIN: 29366-0001 (LT) to 29366-0131 (LT) A fee simple interest in Part of Common Elements of YRCP No. 836, Town of Newmarket designated as Parts 68 and 69 on Plan L12-010692 A 3 year temporary easement in Part of Common Elements of YRCP No. 836, Town of Newmarket designated as Part 71 on Plan L12-010692 A permanent easement in Part of Common Elements of YRCP No. 836, Town of Newmarket designated as Part 70 on Plan L12-010692
87	280 Davis Drive	Part of PIN: 03602-0136 (LT) A fee simple interest in Part Lot 2 Plan 32, Town of Newmarket, designated as Parts 55, 56, 57, 58, 63 and 64 on Plan L12-010692 A 3 year temporary easement in Part Lot 2 on Plan 32 Town of Newmarket designated as Part 53, 60 and 61 on Plan L12-010692 A permanent easement in Part Lot 2 on Plan 32 Town of Newmarket designated as Part 54, 59 and 62 on Plan L12-010692
88	26 Lorne Avenue	Part of PIN: 03602-0132 (LT) A fee simple interest in Part Lot 1 on Plan 32 Town of Newmarket designated as Parts 49 and 50 on Plan L12-010692 A 3 year temporary easement in Part Lot 1 on Plan 32 Town of Newmarket designated as Part 52 on Plan L12-010692 A permanent easement in Part Lot 1 on Plan 32 Town of Newmarket designated as Part 51 on Plan L12-010692
89	25 Lorne Avenue	Part of PIN: 03603-0132 (LT) A fee simple interest in Part Lot 1 on Plan 32, and part of Lot 95 Conc. 1 former Township of Whitchurch designated as Parts 2 and 3 on Plan L12-010693 A 3 year temporary easement in Part Lot 1 on Plan 32, and part of Lot 95 Conc. 1 former Township of Whitchurch designated as Part 4 on Plan L12-010693

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
90	330 Davis Drive	PIN 03603-0131 (LT) A fee simple interest in Part of Lots 26 and 27, south side of Huron Street, Plan 78 Newmarket and part of Lot 95 Concession 1, Township of Whitchurch designated as Parts 5 and 6 on Plan L12-010693, Town of Newmarket
91	338 Davis Drive	PIN 03603-0130 (R) A fee simple interest in Part of Lots 25, 26 and 27, south side of Davis Drive and Lot 25 and part of Lots 24 and 26, north side of Simcoe Street, Plan 78 designated as Parts 2 and 4 on Plan 65R-1457, Town of Newmarket
92	350 Davis Drive	Part of PIN: 03603-0129 (R) A fee simple interest in Part Lots 21, 22, 23, 24, and 25 on the ss of Huron St. (Davis Drive), Plan 78, Town of Newmarket designated as Parts 10, 14 and 15 on Plan L12-010693 A 3 year temporary easement in Part Lots 21, 22, 23, 24, and 25 on the ss of Huron St. (Davis Drive), Plan 78, Town of Newmarket designated as Parts 12 and 13 on Plan L12-010693 A permanent easement in Part Lots 21, 22, 23, 24, and 25 on the ss of Huron St. (Davis Drive), Plan 78, Town of Newmarket designated as Part 11 on Plan L12-010693
94	378 Davis Drive	Part of PIN: 03603-0124 (LT) A fee simple interest in Part Lot 19 ss of Huron St. Plan 78 Newmarket designated as Part 20 on Plan L12-010693 A permanent easement in Part Lot 19 ss of Huron St. Plan 78 Newmarket designated as Part 21 on Plan L12-010693
95	390 Davis Drive	Part of PIN: 03603-0125 (LT) A fee simple interest in Part Lots 16, 17, and 18, ss Huron St., Plan 78, Town of Newmarket designated as Part 22 on Plan L12-010693 A 3 year temporary easement in Part Lots 16, 17, and 18, ss Huron St., Plan 78, Town of Newmarket designated as Part 24 on Plan L12-010693 A permanent easement in Part Lots 16, 17, and 18, ss Huron St., Plan 78, Town of Newmarket designated as Part 23 on Plan L12-010693
96	400 – 406 Davis Drive	Part of PIN: 03603-0126 (LT) A fee simple interest in Lots 14 and 15 ss of Huron St. Plan 78, Town of Newmarket designated as Part 25 on Plan L12-010693 A 3 year temporary easement in Lots 14 and 15 ss of Huron St. Plan 78, Town of Newmarket designated as Part 26 on Plan L12-010693

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
97	16 Main Street South	<p>Part of PIN: 03603-0064 (LT)</p> <p>A fee simple interest in Part Lot 1 on west side of Main Street, Plan 78, Town of Newmarket designated as Part 27 on Plan L12-010693</p> <p>A 3 year temporary easement in Part Lots 1 and 2 west side of Main St. Plan 78, Town of Newmarket designated as Part 29 on Plan L12-010693</p> <p>A permanent easement in Part Lot 1 on west side Main Street, Plan 78, Town of Newmarket designated as Part 28 on Plan L12-010693</p>
98	432 Davis Drive	<p>PIN 03609-0003 (LT)</p> <p>A fee simple interest in Part of Lots 12 and 13 south side of Huron Street Plan 78 designated as Parts 84 and 85 on Plan L12-010694</p>
99	438 – 442 Davis Drive	<p>PIN 03609-0005 (LT)</p> <p>A fee simple interest in Lot 11 south side of Huron Street Plan 78 Newmarket, designated as Parts 82 and 83 on Plan L12-010694</p>
100	446 Davis Drive	<p>Part of PIN: 03609-0006 (R)</p> <p>A fee simple interest in Part of Lots 9 and 10 on the ss of Davis Drive, formerly Huron St., on Plan 78, Town of Newmarket designated as Part 79 on Plan L12-010694</p> <p>A 3 year temporary easement in Part of Lots 9 and 10 on the ss of Davis Drive, formerly Huron St. on Plan 78, Town of Newmarket designated as Part 81 on Plan L12-010694</p> <p>A permanent easement in Part of Lots 9 and 10 on the ss of Davis Drive, formerly Huron St. on Plan 78, Town of Newmarket designated as Part 80 on Plan L12-010694</p>
101	31 Superior Street	<p>Part of PIN: 03609-0169 (LT)</p> <p>A fee simple interest in part of Block “B” Plan 78, Town of Newmarket designated as Part 77 on Plan L12-010694</p> <p>A 3 year temporary easement in part of Block “B” Plan 78, Town of Newmarket designated as Part 78 on Plan L12-010694</p>
102A	Holland River	<p>Part of PIN: 03609-0062 (LT)</p> <p>A fee simple interest in Part Block F, Plan 262, Town of Newmarket designated as Part 65 on Plan L12-010694</p> <p>A 3 year temporary easement in Part Block F, Plan 262, Town of Newmarket designated as Part 66 on Plan L12-010694</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
102B, 105	514 Davis Drive	<p>Part of PIN: 03609-0059 (LT)</p> <p>A fee simple interest in Part of Lots 2, 3, 4 and 5 ss of Huron St. Plan 78 Newmarket and part of Block F Plan 262 Newmarket designated as Parts 44, 47, 50, 53, 62 and 63 on Plan L12-010694</p> <p>A 3 year temporary easement in Part of Lots 2, 3, 4 and 5 ss of Huron St. Plan 78 Newmarket and part of Block F Plan 262 Newmarket designated as Parts 46, 49, 52, 55 and 64 on Plan L12-010694</p> <p>A permanent easement in Part of Lots 2, 3, 4 and 5 ss of Huron St. Plan 78 Newmarket designated as Parts 45, 48, 51 and 54 on Plan L12-010694</p>
103	496 Davis Drive	<p>PIN 03609-0060 (LT)</p> <p>A fee simple interest in Part of Block F Plan 262 designated as Parts 59 and 60 on Plan L12-010694</p>
104	Vacant Land, south side Davis Drive	<p>All of PIN: 03609-0061 (LT)</p> <p>A fee simple interest in Part Block F on Plan 262 and Part Lot 5 ss of Huron St. Plan 78 as in Deed No. R389945, Town of Newmarket</p>
106	524 Davis Drive	<p>Part of PIN: 03609-0063 (LT)</p> <p>A fee simple interest in Part of Lots 1 and 2, ss Huron St., Plan 78, Newmarket; part of road allowance btwn Conc. 1 and 2, Town of Whitchurch (closed by By-Law No. IF294), Town of Newmarket designated as Part 41 on Plan L12-010694</p> <p>A 3 year temporary easement in Part of Lot 1, ss Huron St., Plan 78, Newmarket; part of road allowance btwn Conc. 1 and 2, Town of Whitchurch (closed by By-Law No. IF294), Town of Newmarket designated as Part 43 on Plan L12-010694</p> <p>A permanent easement in Part of Lots 1 and 2, ss Huron St., Plan 78, Newmarket; part of road allowance btwn Conc. 1 and 2, Town of Whitchurch (closed by By-Law No. IF294), Town of Newmarket designated as Part 42 on Plan L12-010694</p>
107	540 Davis Drive	<p>Part of PIN: 03609-0174 (R)</p> <p>A fee simple interest in Part Lot 1 on Plan 125, Town of Newmarket designated as Part 38 on Plan L12-010694</p> <p>A 3 year temporary easement in Part Lot 1 on Plan 125, Town of Newmarket designated as Part 40 on Plan L12-010694</p> <p>A permanent easement in Part Lot 1 on Plan 125, Town of Newmarket designated as Part 39 on Plan L12-010694</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
108	534 Davis Drive	<p>Part of PIN: 03609-0064 (R)</p> <p>A fee simple interest in Part Lots 1 and 2 on Plan 125, Town of Newmarket designated as Part 35 on Plan L12-010694</p> <p>A 3 year temporary easement in Part Lots 1 and 2 on Plan 125, Town of Newmarket designated as Part 37 on Plan L12-010694</p> <p>A permanent easement in Part Lots 1 and 2 on Plan 125, Town of Newmarket designated as Part 36 on Plan L12-010694</p>
109	3 Charles Street and 554 – 558 Davis Drive	<p>PIN 03610-0003 (LT)</p> <p>A fee simple interest in Part of Lots 38 and 39 Plan 125 Newmarket designated as Parts 57 and 58 on Plan L12-010695</p>
110	560 Davis Drive	<p>PIN 03610-0007 (LT)</p> <p>A fee simple interest in Part of Lots 39 and 40 on Plan 125 Newmarket designated as Parts 54, 55 and 56 on Plan L12-010695</p>
111	564 Davis Drive	<p>PIN 03610-0277 (LT)</p> <p>A fee simple interest in Part of Lot 40 Plan 125 designated as Parts 52 and 53 on Plan L12-010695</p>
112	568 Davis Drive	<p>PIN 03610-0010 (LT)</p> <p>A fee simple interest in Part of Lot 41 Plan 125 Newmarket designated as Parts 48, 49, 50 and 51 on Plan L12-010695</p>
113	572 Davis Drive	<p>PIN 03610-0283 (LT)</p> <p>A fee simple interest in Lot 42 on Plan 125 designated as Parts 46 and 47 on Plan L12-010695</p>
114	596 Davis Drive	<p>Part of PIN: 03610-0041 (R)</p> <p>A fee simple interest in Part Lots 1 and 4, Plan 89, Part Lots 1, 2, 3, 4 and 5, Plan 68 and Part Lots 65, 66, 67, 68 and 69, Plan 344, Town of Newmarket designated as Parts 40, 41, 42, 43, 44 and 45 on Plan L12-010695, save and except the pedestrian bridge structure and footings.</p>
115	700 Davis Drive	<p>Part of PIN: 03610-0276 (LT)</p> <p>A fee simple interest in Part of Lot 70 on Plan 344, Town of Newmarket designated as Parts 1 and 2 on Plan L12-010696</p>

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
116	712 Davis Drive	Part of PIN: 29227-0001 (LT) to 29227-0068 (LT) A fee simple interest in Part of Common Elements, YRCP No. 695 designated as Parts 6, 7 and 8 on Plan L12-010696 A 3 year temporary easement in Part of Common Elements, YRCP No. 695 designated as Part 9 on Plan L12-010696
117	724 Davis Drive	Part of PIN: 03610-0081 (LT) A fee simple interest in Part Lot 13 Plan 81, Town of Newmarket designated as Part 10 on Plan L12-010696 A 3 year temporary easement Part Lot 13 Plan 81, Town of Newmarket designated as Part 11 on Plan L12-010696
118	730 Davis Drive	Part of PIN: 03610-0082 (LT) A fee simple interest in Part Lot 13 Plan 81, Town of Newmarket designated as Part 12 on Plan L12-010696 A 3 year temporary easement in Part Lot 13 Plan 81, Town of Newmarket designated as Part 13 on Plan L12-010696
119	736 Davis Drive	Part of PIN: 03610-0083 (LT) A fee simple interest in Part Lot 13 on Plan 81, Town of Newmarket designated as Part 14 on Plan L12-010696 A 3 year temporary easement in Part Lot 13 on Plan 81, Town of Newmarket designated as Part 15 on Plan L12-010696
120	776 Davis Drive	Part of PIN: 03610-0281 (LT) A fee simple interest in Part Lot 13 on Plan 81, Town of Newmarket designated as Part 17 on Plan L12-010696 A 3 year temporary easement in Part Lot 13 on Plan 81, Town of Newmarket designated as Part 16 on Plan L12-010696
121	5 Alexander Road	Part of PIN: 03615-0003 (LT) A fee simple interest in Part Lot 13, Plan 81, Town of Newmarket designated as Part 18 on Plan L12-010696 A 3 year temporary easement in Part Lot 13, Plan 81, Town of Newmarket designated as Part 19 on Plan L12-010696
122	800 Davis Drive	Part of PIN: 03615-0007 (LT) A fee simple interest in Part Lot 35, Concession 2, former Township of Whitchurch, designated as Part 20 on Plan L12-010696 A 3 year temporary easement in Part Lot 35, Concession 2, former Township of Whitchurch, designated as Part 21 on Plan L12-010696

Lands in the Town of Newmarket, in the Regional Municipality of York, described as follows:		
Ref# No.	Municipal Address	Legal Description
123	19 Parkside Drive	PIN 03602-0145 (LT) A fee simple interest in part of Lot 6, Plan 32 Whitchurch designated as Parts 87 and 88 on Plan L12-010692
124	23 Parkside Drive	PIN 03602-0146 (LT) A fee simple interest in part of Lot 6 on Plan 32 Whitchurch designated as Parts 89 and 90 on Plan L12-010692
125	27 Parkside Drive	Part of PIN: 03602-0147 (LT) A fee simple interest in Part Lot 6, Plan 32, Whitchurch, designated as Part 92 on Plan L12-010692 A 3 year temporary easement in Part Lot 6, Plan 32, Whitchurch, designated as Part 91 on Plan L12-010692

Schedule “B”

IN THE MATTER OF AN APPLICATION FOR APPROVAL TO EXPROPRIATE LAND BEING THE LANDS DESCRIBED IN SCHEDULE “A” TO THIS REPORT

Reasons for the Decision to Approve the Expropriation

After considering the decision of Inquiry Officer Gillian Burton dated June 1, 2009 from the inquiry relating to the proposed taking, the Council of The Regional Municipality of York agrees that the expropriation of the lands set out in Schedule “A” is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority for the following reasons:

- (a) implements the approved Environmental Study Report prepared in December 2008 in respect of the project (the “ESR”);
- (b) improves accessibility to current and planned development by providing a high public transit alternative to reduce automobile dependence;
- (c) provides for a sustainable natural environment, economic vitality and healthy communities;
- (d) makes the Newmarket Regional urban centre more liveable, pedestrian oriented and economically viable;
- (e) provides for appropriately located, sized and sheltered transit station sites;
- (f) implements transit improvements, which include, but are not limited to dedicated transit ways, bus only queue jump lanes, and stations;
- (g) provides a safe public road;
- (h) achieves a significant increase in transit’s share of peak period travel;
- (i) improves the level of transit service including speed and reliability;
- (j) ensures a safe, consistent and proper alignment of all north south roads through intersections along Davis Drive through the Town of Newmarket;
- (k) provides safe passage for pedestrians and cyclists;
- (l) provides safe ingress and egress to and from Davis Drive;
- (m) reduces the potential for unsafe traffic conditions;
- (n) responds to increased traffic demands;
- (o) improves traffic capacity at intersections along Davis Drive;

- (p) increases the number of traffic lanes to minimize hazard and inconvenience, while improving operational efficiency;
- (q) protects local cultural heritage and preserve the historical significance of the existing site of the Newmarket Canal turning basin and dam;
- (r) provides for improved and more attractive streetscape with medians and landscaped boulevards that are sized to allow for soft landscaping that is sustainable;
- (s) implements the Region's Official Plan, the Official Plan for the Town of Newmarket and to comply with the 2005 Provincial Policy Statement, The Places to Grow Growth Plan, the Greenbelt Plan, and the Oak Ridges Moraine Conservation Plan;
- (t) addresses infrastructure requirements of the Region in a planned and organized manner;
- (u) implements the Region's Transportation Master Plan to develop transit infrastructure and associated road improvements;
- (v) supports the development of the Regional Health Care Centre at the Southlake Hospital site by developing transit service for employees and patients linked to the GO station and Yonge Street transit;
- (w) complies with other governmental controls regarding intersections with major arterial roads and provincial highways;
- (x) implements a permanent rapid transit facility along Davis Drive to improve public transit infrastructure and service in the northern sector of the Regional network's primary north-south corridor capable of producing significant increases in transit ridership both within the corridor and across the network and regional boundary; and
- (y) implements a permanent rapid transit facility to interconnect with other corridors and GTA transit systems such as GO Transit at the Newmarket Station and the Toronto Transit Commission through the Yonge Street corridor.