

IN THE MATTER OF the *Expropriation Act*, being Chapter E-13 of the *Revised Statutes of Alberta*, 2000, and amendments thereto ("*Act*");

AND IN THE MATTER OF the intended expropriation by the City of Edmonton ("**Expropriating Authority**") of the lands legally described as:

PLAN 8521534
BLOCK 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 6.07 HECTARES (15 ACRES) MORE OR LESS (the "**J. Sabo Lands**");

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed on behalf of Jane Margaret Sabo (the "**Objector**"), by Jack N. Agrios, Q.C., counsel for the Objector;

AND IN THE MATTER OF the intended expropriation by the City of Edmonton ("**Expropriating Authority**") of the approximately 21.572 hectares (53.30 acres) more or less portion of the following lands municipally located at 10821 – 30 Avenue SW, Edmonton, Alberta, and legally described as:

ALL THAT PORTION OF SECTION SEVENTEEN (17)
TOWNSHIP FIFTY ONE (51)
RANGE TWENTY FOUR (24)
WEST OF THE FOURTH MERIDIAN, LYING WEST OF THE WESTERLY
LIMIT OF THE RIGHT OF WAY OF THE CALGARY AND EDMONTON
RAILWAY AS SHOWN ON RAILWAY PLAN C AND E NUMBER ONE (1)
AND SOUTH OF THE ROAD ALLOWANCE ADJOINING THE INDIAN
RESERVE AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP
SIGNED AT OTTAWA ON THE 17TH DAY OF MARCH, A.D. 1896,
CONTAINING 86.9 HECTARES (214.79 ACRES) MORE OR LESS
EXCEPTING THEREOUT:
(A) 16.2 HECTARES (40 ACRES) MORE OR LESS AS SHOWN ON
FILED PLAN 5581NY
(B) .259 HECTARES (0.64 OF AN ACRE) MORE OR LESS AS SHOWN
ON ROAD PLAN 3575ET
(C) 32.7 HECTARES (80.84 ACRES) MORE OR LESS AS SHOWN ON
ROAD PLAN 1400PX
(D) .154 HECTARES (0.38 OF AN ACRE) MORE OR LESS AS SHOWN
ON ROAD PLAN 3009PX
(E) 6.07 HECTARES (15.00 ACRES) MORE OR LESS AS SHOWN
SUBDIVISION PLAN 8521534
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME (the "**J. Sabo Lands**");

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed on behalf of Jane Margaret Sabo (the "Objector"), by Jack N. Agrios, Q.C., counsel for the Objector;

AND IN THE MATTER OF the intended expropriation by the City of Edmonton ("Expropriating Authority") of the approximately 1.78 hectares (4.39 acres) more or less portion of the following lands municipally located at 11250 – 41 Avenue SW, Edmonton, Alberta, and legally described as:

THE SOUTH EAST QUARTER OF SECTION EIGHTEEN (18)
TOWNSHIP FIFTY ONE (51)
RANGE TWENTY FOUR (24)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT:
(A) 0.707 HECTARES (1.77 ACRES) MORE OR LESS AS SHOWN ON
PARCEL (A) ON FILED PLAN 5353HW
(B) 32.52 HECTARES (80.32 ACRES) MORE OR LESS AS SHOWN ON CN
PLAN 7521577
(C) 16.2 HECTARES (40.03 ACRES) MORE OR LESS AS SHOWN ON
SUBDIVISION PLAN 8321482
EXCEPTING THEREOUT ALL MINES AND MINERALS (the "D.
Sabo/United Lands");

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed on behalf of Dean Sabo and Teresa Sabo (the "Objectors"), by Jack N. Agrios, Q.C., counsel for the Objectors;

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed on behalf of 2007 United Lands Corp. (the "Objector"), by Daron K. Naffin, counsel for the Objector;

AND IN THE MATTER OF an Inquiry in respect thereof pursuant to the provisions of the said Act by Graham McLennan as Inquiry Officer appointed by Clara Cerminara, Barrister and Solicitor, to conduct the said Inquiry;

**REPORT OF THE INQUIRY OFFICER
GRAHAM McLENNAN, Q.C.**

February 1, 2013

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INTRODUCTION

This Inquiry concerns the intended expropriation by the City of Edmonton (the "City") of interests in lands of Dean and Teresa Sabo, Jane Sabo and 2007 United Lands Corp ("United") (collectively the "Objectors") for the purposes of constructing an interchange at 41st Avenue SW and Hwy 2 ("Project").

An application was made during the hearing to add as parties to the hearing Mr. and Mrs. Kinzel, Tim Sabo, and Sabo Bros Enterprises Ltd. ("SBE") as parties impacted by the intended expropriations and the Project. This application was granted.

Jane Sabo, Dean and Teresa Sabo, Tim Sabo, and Tymen and Caroline Kinzel ("Sabo Family") and SBE were represented by Jack N. Agrios, Q.C.

The City was represented by Ms. D. Piecowye and Ms. M. A. Bohn.

United was represented by Blake Williams.

By agreement of the parties the hearing was held at a boardroom at McLennan Ross on January 22, 23, 24, and 29, 2013.

The parties advised that there were no preliminary objections. Evidence was given under oath and a court reporter was present to transcribe the evidence. However, the parties agreed that a formal transcript need not be prepared, at this time.

At the request of the Objectors and in the presence of representatives of all parties, the Inquiry Officer inspected the lands on January 22, 2013.

SUMMARY OF EVIDENCE

Exhibits

Exhibits numbering 1 through 26 were entered into evidence. In addition, exhibits for identification A - E were marked during the course of the hearing. Exhibits for identification F - I were considered full exhibits, although the parties agreed that a change the designation of these exhibits was not required. The exhibits are all listed in Appendix I to this report. Copies of Exhibits 3B and 3C are maps which contain highlighting added by witnesses.

EVIDENCE OF THE EXPROPRIATING AUTHORITY

Mr. McNutt

Mr. McNutt is an expert professional planner. His resume is found at Exhibit 1, Tab 26. No issue was raised by the Objectors' counsel regarding Mr. McNutt's expertise and ability to provide expert opinion evidence.

Mr. McNutt reviewed the planning process generally and referred to a planning process chart found at Exhibit 1, Tab 36.

He made reference to the Heritage Valley Servicing Concept Design Brief, found at Exhibit 1, Tab 34. He noted that it was contemplated that the Heritage Valley area would be developed over the next 30 – 35 years. The Heritage Valley area encompassed the Allard Neighborhood Area Structure Plan ("NASP"), which was found at Exhibit 1, Tab 33.

Mr. McNutt identified the Allard NASP as approved by City Council. He noted that the lands south of 41st Avenue SW is land which is in the jurisdiction of the County of Leduc and outside the boundaries of the City of Edmonton.

In reference to Exhibit 3A, Mr. McNutt identified on the Exhibit the planned arterial and collector roads noted in the Allard NASP. He also discussed the environmental reserve area around Blackmud Creek. He noted that the top of the bank determines the edge of the environmental reserve. He indicated that the work to ascertain the top of the bank has not been completed on the Allard lands side of Blackmud Creek, nor on the east side of the creek, which includes the J. Sabo Lands. He noted that an environmental reserve would be required on the D.Sabo/United Lands which are adjacent to Blackmud Creek.

Mr. McNutt then identified the Ellerslie Area Structure Plan found at Exhibit 1, Tab 35. He noted that 41st Avenue SW has been designated as a regional arterial road on both the west side and the east side of Hwy 2.

Mr. McNutt discussed general planning principles. He noted that: there are environmental, and wetlands factors that need to be considered; public consultation is required; major geographical or manmade structures such as railways and airports need to be considered.

He noted that there would be some realignment of Blackmud Creek but was not aware of the details of the same.

Mr. McNutt explained why public consultation is important to the City. He noted that the Capital Region Board approved statutory plans before final approval by the City of Edmonton. Mr. McNutt stated that there was a general public awareness that an interchange was coming to 41st Avenue SW and Hwy 2.

Cross-Examination of Mr. McNutt by Mr. Williams

Mr. Williams confirmed that Mr. McNutt has been with Focus Engineering for 14 years. He has planning and transportation expertise. Focus was heavily involved in the planning in connection with 41st Avenue SW and Hwy 2 as they acquired Transtech which did the initial design work. The subsequent design work was continued by Focus Engineering.

Cross-Examination of Mr. McNutt by Mr. Agrios

Mr. McNutt believes that Focus Engineering is being paid by the Province of Alberta, although he is not aware of the details. The initial involvement of Transtech did not involve Mr. McNutt personally.

Mr. McNutt identified four drawings that were prepared by Focus, although he had not personally seen these drawings before, to the best of his recollection. These were marked Identification Exhibits A – D.

He confirmed that he worked with Brian Locher in the 1980s and found Mr. Locher to be a competent engineer.

Mr. McNutt acknowledged that if the Dean Sabo residence was built in 1993, the Kinzel residence built in the late 1990s and the Tim Sabo residence built in the late 1990s, that would all have occurred prior to the Heritage Valley Servicing Concept Design Brief was initially completed. Further, the by-law approving the Allard Lands Neighborhood and the Ellerslie Neighborhood Plan was done after the residences were built.

Mr. McNutt noted that he drove by the Sabo residences last week and noticed the one house to the north of 41st Avenue SW but did not notice the residences south of 41st Avenue SW. He was not paying close attention to those details.

He confirmed that the City owned the two properties that are immediately west of the Blackmud Creek.

Mr. McNutt noted that the designated environmental area below the top of the bank (once determined) will be acquired by the City at no cost, although he was not sure this was the case. He was not sure of the details what had been done in this regard with respect to the Allard Land.

Mr. McNutt acknowledged that a lot of work goes into area structure plans. It could take two years or more to finalize a plan. In reference to the Heritage Valley Design Plan, at Exhibit 1, page 226, he made a reference to J. Sabo Lands being designated as business use. He agreed that Hwy 2 is not shown to be realigned to the west, that the Hwy 2 and 41st Avenue SW interchange is designated by a circle which does not appear to impinge on the D. Sabo/United Lands, there is not a design for off-ramps, nor a realignment of 41st Avenue SW. Further, in reference to the map at page 154, no off-ramps or interchanges are shown on the D. Sabo/United Lands, nor a widening of 41st Avenue.

He noted today that 41st Avenue SW is approximately 66 feet of right-of-way. If 41st Avenue SW was turned into an arterial road, although Mr. McNutt would look to transportation experts, he generally believes the standard right-of-way would be approximately 45 meters. If land was subdivided, the land for such an arterial roadway development could be acquired by way of dedicated land. However, if there was no subdivision then the City would have to acquire additional lands for the widening of 41st Avenue.

He was unclear whether the area designated on page 154 of Exhibit 1 for a public utility lot may include a widening of 41st Avenue SW.

Mr. McNutt was asked about noise attenuation. He was referred to page 169 of Exhibit 1. This clearly indicated that Alberta Transportation requires noise attenuation to be

considered where building or upgrading a road that is adjacent to residential properties. He noted that planners and transportation engineers work with noise attenuation specialist in developing whatever noise attenuation facilities may be required. He was unable to comment on whether noise attenuation facilities were planned adjacent any of the Sabo residences. He did agree that the Allard NASP shows some noise attenuation facilities. He acknowledged that the City certainly is required to consider the same. In reference to Exhibit 1, page 169, he outlined what he understood was the Edmonton Urban Traffic Noise Policy.

In reference to the Ellerslie Area Structure Plan, Mr. McNutt confirmed that no interchange was shown at 41st Avenue SW and Hwy 2 in that plan, including specifically at page 312 and page 365.

Mr. McNutt was asked about street lighting with respect to interchanges, ramps and arterial roads. He noted that he was not a lighting expert however, he agreed that the larger the roadway or the intersection/interchange the more lighting will likely be present.

On the subject of public consultation, it was noted that the Notice of Intention to Expropriate was dated October 2012. It was further suggested that the Objectors were interested in seeing exactly what plans were for construction of the interchange, 41st Avenue, southwest. Details such as elevations, plans for access, were not provided by the City prior to this Inquiry process.

Re-Examination of Mr. McNutt

Ms. Picowye referred Mr. McNutt to page 226 of Exhibit 1. Mr. McNutt confirmed that the symbols on this map are not to scale and simply note that there is some type of interchange, or planned interchange, at a given location. These are concept design plans and one would not require or expect scale interchange designations on them.

Mr. Latte

Mr. Latte testified that he was a Transportation Engineer and had considerable experience in transportation engineering as noted in his resume found in Exhibit 1, Tab 24. He explained that he is presently a Manager of Transportation Planning Branch with The City of

Edmonton. He addresses long-term planning issues and is not involved in detailed design matters. His expertise to provide opinion evidence on the subject of transportation engineering plans was not challenged.

Mr. Latte explained, in a general way, what the City's transportation planning branch does.

He advised that the Project has gone from a strategy, to concept, to design stages, and made reference to Tab 38 of Exhibit 1. He provided a broad overview of the transportation planning process. He noted that there is public consultation. The later in the process for developing any given project, the more difficult it is to accommodate the changes that may be requested by the public. He noted that formal public hearings are required before City Council approves Area Structure Plans.

Mr. Latte indicated that the Capital Regional Planning Board reviews all neighborhood structure plans and reviews transportation plans that involve transit (but not roadways) before final approval by City council.

He explained that the Project was a partnership between the City, the Province and the Federal Government. It was intended to benefit the adjoining neighborhoods as well as the CP Intermodal yard found to the east of Hwy 2. He explained that the City would be responsible for tendering and construction of the Project. The Province was responsible for the preliminary engineering and concept work. Once the Project was built, it becomes a Provincial asset and therefore must be built to specifications and standards of the Provincial Government.

The Hwy 2 long-term plan, including the realignment of Hwy 2, is a matter for the Provincial Government, although the City is impacted and is a stakeholder in any such development. He noted that the Hwy 2 Functional Planning Study was prepared by a subsidiary of Focus Engineering and is found at Exhibit 1, Tab 37. He noted that as part of this process there were a number of open houses as described on page 390 of Exhibit 1. There were also direct meetings with affected landowners which took place. However, there was uncertainty as to how much property would be required from landowners because there was not a detailed design that had been decided upon by 2010.

He noted that the Project was projected to cost \$150 million in 2007 with \$75 million coming from the Federal Government and an equal split between the Province and the City for the other \$75 million. Due to cost escalations, the Project will be higher than \$150 million. The design of the Project was managed by the Province, although the City had input. Generally, Provincial standards for design were used not the municipal standards of the City.

With respect to the interchange design for the Project, Mr. Latte noted that it would ultimately be six to eight lane wide on 41st Avenue and that the horizon for planning the transportation project like this was 30 – 40 years.

With respect to the Project, although Provincial standards are applicable, the Province did agree to certain City requests such as provision for sidewalks, bicycle lanes and wildlife corridors.

Mr. Latte noted that the Heritage Valley Neighborhood had some transportation challenges because it was bound by Hwy 2 to the east, the Henday to the north and creeks to the east and the west.

Mr. Latte talked in general terms with respect to the factors which determined the size of an interchange and access off 41st Avenue. He noted that only two access points to 41st Avenue were planned, as noted at page 154 of Exhibit 1.

Mr. Latte testified that the City does not wait until a detailed design is done before taking steps to acquire lands that are required for any given project. He indicated that budgets needed to be developed, which included land acquisition costs well in advance of final design.

He made reference to a 2008 letter to Dean Sabo found at Exhibit 2, Tab 1 and compared this to Exhibit 1 at page 395 noting that the dates coincide with an open house held in June of 2008. He noted that the general approach of the City is that if lands could not be purchased then a recommendation for expropriation is made.

Mr. Latte referenced the recommendation made to the Executive Committee of City Council for expropriation of the J. Sabo Lands and the D. Sabo/United Lands found at Exhibit 1, Tab 1. On page 9(a) of Exhibit 1, the land required to be expropriated to

accommodate the Project are depicted. He noted that properties identified as 1, 2 and 5 are the lands that are at issue in this inquiry. He then made reference to the approval by the City to commence expropriation found at Exhibit 1, Tab 3. He noted that there was a grey blue area on the map found at page 154 of Exhibit 1 which designates a public utility lot. He indicated that there is an Atco pipeline in that location at the present time.

Mr. Latte noted that there is a requirement to ensure that there is access, in some manner, provided to residents. He stressed that this was a legal requirement and would be provided.

Mr. Latte advised that when development occurs, all roadways within the development are constructed by the developers. Sometimes there is cost sharing arrangements with the City with respect to the building of roadways, such as 41st Avenue or James Mowett Trail. He noted that United was aware of the general arrangements and is a sophisticated land developer. He noted that private contributions by developers, including United, for the Project have been made and this fund is \$10 million.

Mr. Latte then testified on the subject of noise attenuation. He made reference to the City's Urban Traffic Noise Policy. Such policy needs to be taken into account in any subdivision plan. He indicated that this requires a 20 year projection for traffic noise. Further, that the City itself has the same obligation to address noise attenuation when it is engaged in building roads adjacent to residences. He noted that the Province has a similar policy. Noise attenuation can be addressed by distance, earth berms, and noise walls. He noted that many residences in the City back onto freeways or arterial roads and that noise attenuation features are often constructed. In reference to Exhibit 3A, Mr. Latte noted that where there is zoning for proposed business use west of Hwy 2, there would likely not be any noise attenuation facilities built. West of Blackmud Creek, residences probably would not need noise attenuation with respect to Hwy 2 noise. If United, or anyone else, has a subdivision plan for the land north of 41st Avenue, then there must be noise attenuation addressed before approval will be granted. Generally, developers would likely build the noise attenuation facilities and the City would maintain it in the future.

If there is need for noise attenuation in relation to Dean Sabo's house, then it will be placed on a City list of projects that require noise attenuation facilities to be constructed. The City then constructs the facilities, in priority, when able to do so.

He indicated that the Project is scheduled to be tendered by the end of March and construction could begin as early as Spring 2013. Mr. Latte emphasized that the interchange at Hwy 2 and 41st Avenue SW is required to facilitate development of Heritage Valley, Allard, Ellerslie, a CP Intermodal yard and general economic growth and development in the area.

Cross –Examination of Mr. Latte by Mr. Agrios

Mr. Latte acknowledged that he looks at transportation projects only from a planning perspective. Detailed engineering and construction of transportation projects is handled by another City "unit". He acknowledged that funding is dependent on elected officials. He confirmed that the Federal Government, Provincial Government, City, and a fund from developers of \$10 million, are funding the Project.

He acknowledged that the Province is responsible for the interchange and it will become a Provincial "asset".

He agreed that the Sabo and Kinzel's residences adjacent to 41st Avenue, are below the proposed level for 41st Avenue.

He confirmed that the acquisition of land, tendering for the Project, and construction of the Project was done by the City as one of the partners in the Project. Lands outside the City limits would not be required, although at one time during conceptual planning it was considered that lands south of 41st Avenue, SBE lands and T. Sabo lands, would be required. With more detailed design, it was concluded that these lands would not be required for the Project.

Mr. Latte confirmed that there were discussions about the possibility of requiring the T. Sabo lands and the SBE lands in some discussions with representatives of the City's Property Acquisition Department representatives including Mr. Wilson, Mr. Kopolich, and

Mr. Phillips. These land acquisition agents reported to the overall Project Team. At the time of the formal requisition to acquire properties, only land north of 41st Avenue was required.

In the Fall of 2011, there was a recommendation from City Executive that expropriation of the land be proceeded with and the land was identified in the recommendations to City Council as noted in Exhibit 1, Tab 1, at page 9(a).

Mr. Latte reviewed a number of CH2M Hill detailed drawings from 2011 and 2012 which noted slightly different areas of land that were apparently required for the Project. He was referred to Exhibits ID-G, ID-H, and ID-I. It was noted that the June 14, 2011 drawing by CH2M Hill (ID-H) showed .8 acres of land owned by SBE, near the Kinzel residence, would be required. There was also a slight variation in drawing marked ID-I dated June 14, 2012, from the lands identified in Exhibit 1, Tab 1, page 9(a) as part of the City resolution.

With respect to noise attenuation, Mr. Latte concurred that the Provincial policies or standards would need to be followed with respect to this Project. He was referred to Exhibit 4 which is the Provincial Noise Attenuation Standards or Guideline. Mr. Latte was unaware of whether there were any detailed drawings that shows noise attenuation features in relation to the Kinzel or Sabo residences. He was not aware of any. He was not sure if any noise attenuation studies had been done, although he expected there would be such studies.

Mr. Latte confirmed that a number of exhibits did not indicate the construction of an interchange such as Exhibit 1, Tab 1, page 154, page 167 and page 226 of Exhibit 1.

Mr. Latte was asked about the Ellerslie interchange, he was also asked about interchanges noted in the Heritage Valley Design Study at 25 Avenue and 41 Avenue.

Mr. Latte advised that Calgary Trail will ultimately be realigned. The southbound lanes will be moving in a westward direction. The design of the 41 Avenue interchange Project is taking into account this ultimate realignment of Hwy 2.

Mr. Latte acknowledged that there were different interchange designs as the process evolved. The drawing marked as ID-K, which is a CH2M Hill drawing dated June 2011, as a different interchange design than the one depicted on Exhibit 1, Tab 1, page 9(a). The

design of the interchange impacts the amount of land that we require from the J. Sabo Lands and impacting Tim Sabo residence.

In roadway design, Mr. Latte noted that it is desirable to use consistent and uniform standards, although they may have to be modified from time-to-time and that safety is a paramount factor in roadway design.

He acknowledged that 41 Avenue would eventually be eight lanes near the interchange. These eight lanes include some turning or merge lanes.

Currently, the width of 41 Avenue is approximately 66 feet. A four lane, undivided improvement to 41 Avenue would be approximately 37 to 44 meters wide. He was not sure whether 41 Avenue will ultimately be a divided highway in ten years' time. He thought perhaps the right of way for 41 Avenue would be at least 51 meters to accommodate all future development.

Mr. Latte acknowledged that 41 Avenue is designated as a truck route. The trucks make more noise than cars, especially when turning, braking or accelerating. He acknowledged that the off ramp from Hwy 2 to 41 Avenue in a westerly direction is near Dean Sabo's current driveway. There was discussion by Mr. Latte with respect to the access to Dean Sabo's residence. The existing access from the Dean Sabo house would not be permissible using the standards or guidelines. However, the final decision with respect to access would be with the Province given that the asset will ultimately be owned by them.

Mr. Latte indicated he would not expect much traffic on 41 Avenue as a result of the CP Intermodal operations. He thought most of the truck traffic would come and go from a different routes. Construction is projected to start in the Summer of 2013 for the Project and is expected to last approximately 3 years. Interim access to Dean Sabo's residence during the construction period is unknown. He will have some type of access.

Mr. Latte acknowledged that design concepts change and even the ultimate concept as presently contemplated may change in the future. It appeared that Exhibit 3A shows a different design than Exhibit 1, Tab 1, page 9(a), which again is different from Exhibit ID-K.

Mr. Latte acknowledged that he worked with the Province of Alberta and has a general awareness of the Functional Plan that was developed for this area and the elements of the Functional Plan. He did not agree that the higher the speed of vehicles the greater the noise. Many factors go into the noise including volume and types of vehicles. He explained the “leq 24” measurement that apparently refers to average noise over a 24 hour period.

With respect to street lighting, when a road is upgraded to an arterial road there would be more lighting and there would be more lighting associated with an interchange.

Mr. Latte concurred that noise attenuation facilities were constructed by the City in areas of the Whitemud Freeway, Yellowhead Trail, and 99th Street.

With respect to public meetings held in connection with the Project, Mr. Latte was not sure what drawings were displayed but they were likely conceptual, not detailed drawings such as Exhibit 3A.

Mr. Agrios asked Mr. Latte about the agreement between the City and the Province with respect to this Project. Mr. Latte indicated that the agreement is only in draft form and is still under negotiation. The City has not produced even a draft agreement.

Mr. Latte was referred to Exhibit 1, Tab 1, page 5 and the Real Property Report drawing Exhibit ID-H. He acknowledged that there were differences with respect to how much land remained with J. Sabo after the intended expropriation. One document indicated approximately 16 acres and another document indicated approximately 24 acres would remain. Mr. Latte did not have an explanation for this discrepancy.

Mr. Latte indicated that the Corporate Property Department with the City was responsible for acquiring lands. It had acquired lands designated as number 3 and number 4 on Exhibit 1, Tab 1, page 9(A). This had been done some time since the Fall of 2011.

Mr. Latte was not aware of any offers made to Dean Sabo or Jane Sabo, nor was he aware of any appraisals done before or after the Notice of Expropriation was filed against Titles.

Cross-Examination of Mr. Latte by Mr. Williams

Mr. Latte agreed that the D. Sabo/United Lands are noted as Parcel 5 in Exhibit 1, Tab 1, page 9(a). Mr. Latte acknowledged that the fact that United was a developer who provided some funds for the construction of the interchange does not mean that United is in favour of the expropriation proceedings by the City.

Mr. Latte acknowledged that Executive Committee recommended approval of the expropriations in November of 2011 (Exhibit 1, Tab 2), that in June of 2012 requisitions to acquire lands were issued and in October of 2012, Notices of Intention to Expropriate were registered against Title.

Mr. Latte was not aware of whether United was involved in any public consultation. He agreed that public consultation is not the same as negotiation to acquire land from a private land owner.

Mr. Latte agreed that Exhibit 2, Tabs 14 – 18 is a record of City's dealings with United in connection with the D.Sabo/United Lands.

Re-Examination of Mr. Latte

Ms. Piecowye referred Mr. Latte to Exhibit 1, Tab 1 attachments 1 and 2. Mr. Latte agreed that the City authorization to acquire lands did not include land required for the ultimate Hwy 2 design. In reference to Exhibit 2, Tab 8, the City was corresponding on its own behalf and Mr. Latte was not sure whether the City was also acting as agents for the Province. No lands south of 41 Avenue were required for the Project at the time the City Executive Committee recommended the expropriation process.

Ms. Piecowye referred Mr. Latte to Exhibits 5 and 6 which were the Internal Purchase Requests ("IPR") that are generally required to proceed to authorize acquisition of land. These were dated June 26, 2012. In some circumstances, the City may be able to purchase lands without an IPR, although the standard practice is to issue an IPR.

Mr. Latte confirmed that the CP Intermodal operation would result in little traffic on 41 Avenue, west of Hwy 2, because the trucks will typically will be travelling on Hwy 2 and the Henday.

Mr. Howes

Mr. Howes advised that he worked for CH2M Hill and he was an expert in transportation engineering and highway design.

He explained that CH2M Hill were the detailed design consultants for the Project. He was aware of the Functional Plan, Exhibit 8, and the detailed design was based on the Functional Plan.

He reviewed the design process. He indicated that the overall design was in accordance with the Province of Alberta Guidelines. However, the City had input and certain City requests such as sidewalks, wildlife corridors and curb and gutter design storm sewer services were incorporated in the design. He confirmed that the design process included field investigations, geotechnical information, topographical information, land ownership, right of ways, and a number of other factors.

Road design takes many factors into account, options are developed, assessed and a recommendation is made based on cost and level of service. Options considered here included a round-a-bout, a diamond interchange, and a double loop interchange. Ultimately, the double loop interchange was selected as being the best option.

Mr. Howes looked at the cross section and elevations in connection with the detailed design for 41 Avenue and the interchange. He noted that 41 Avenue was proposed to be aligned slightly to the north, ultimately having eight lanes together with a bike path, walking path and wildlife corridor. Of the ultimate eight lanes going over Hwy 2, it was anticipated that four of these would be core lanes and the others would be merging or exit lanes for the various ramps.

He explained the design speed limits and the posted speed limits for rural freeways generally, Hwy 2 and 41 Avenue. It is anticipated the posted speed limit on 41 Avenue would be 60 kilometers per hour.

Mr. Howes explained the structural detail of the Blackmud Creek bridge, the interchange bridge and the elevations in connection with the same. In looking at elevations, Mr. Howes made reference to Exhibit 3H. He thought that the ditch on the north side of 41 Avenue would have a slope of 3:1. Further, on the north side of 41 Avenue, it was anticipated that there would be a multi-use trail. It was anticipated that 41 Avenue would be approximately one meter higher than its existing height.

With respect to drainage, Mr. Howes indicated that all of the drainage would be collected and dealt with within the proposed 41st Avenue right of way and there would be no requirement for any additional lands either of D.Sabo/United Lands or of the lands owned by SBE. He indicated that the proposed ponds would collect excess drainage of surface water, remove sediment from the surface water, and ultimately would be discharge into Blackmud Creek.

Mr. Howes explained the Hwy 2 alignment. One desire of the City was to keep Gateway Park open if possible. He noted that in the future, Hwy 2 would have core lanes and collector lanes. Further, that at some time in the future, the ramp location of the interchange will need to be changed when Hwy 2 is realigned in a westward direction. This would appear to impact lands owned by T. Sabo.

Mr. Howes explained how the Project impacted Blackmud Creek. There would be a new bridge, a section of the creek would be straightened and that several conditions were imposed by Alberta Environment such as bank stabilization work.

In reference to Exhibit 3A, Mr. Howes explained the lands that are required for the Project including J. Sabo Lands, the D.Sabo/United Lands. He reiterated that the SBE lands south of 41 Avenue would not be required. These lands would be sufficient both for the Project and the future realignment of Hwy 2.

Mr. Howes made reference to Exhibit 3G and Exhibit 1, Tab 1, page 5, where there was a discrepancy with respect to the remaining J. Sabo Lands after the intended expropriation. Approximately 17 acres is indicated in one document and approximately 24 acres is indicated in another document. Mr. Howes did not have an explanation of this discrepancy, although he speculated that Mr. Kopolich may have noticed some error on the Certificate of Title.

Mr. Howes made reference to Exhibit 3B and described an access point for Dean Sabo's residence and the residences of the Kinzels and T. Sabo. He described the roadways to a collection "bulb" south of 41 Avenue. There will be a right-in, right-out access at this point. Further, he indicated that there would be a likely access for Dean Sabo somewhere near the end of the tapering of the roadway on the north side of 41 Avenue. He indicated this by placing a pink line on Exhibit 3B.

Mr. Howes confirmed that there was no current land requirement from SBE or T. Sabo. He did acknowledge that there were plans drawn up in 2011 which did contemplate land requirements from SBE and T.Sabo. However, those were part of option analysis work and the ultimate design did not require these lands. This is primarily because of the revised alignment of 41 Avenue to the north.

Mr. Howes reiterated the contemplated access from the Sabo residences to 41 Avenue. He noted that there will be a raised concrete median on 41 Avenue with a total of four lanes. He noted that at the interchange and bridge area, there would be two core lanes then left turning lanes to enter or exit ramps which funnel traffic to Hwy 2. In addition, there would be a sidewalk on the north side of 41 Avenue.

He confirmed that work related to Blackmud Creek did not require any lands from the Sabos, although lands were required from United for this purpose. With respect to noise attenuation, CH2M Hill performed no noise studies. He had information that Alberta Transportation had the noise study done as part of the Functional Plan Study done by Focus Engineering. He understands that the conclusion was that no noise attenuation facilities would be required.

Cross-Examination of Mr. Howes by Mr. Agrios

Mr. Agrios asked Mr. Howes about the Stony Trail interchange in Calgary. Mr. Howes was the project manager however, he does not recall much about that project. He agrees that Functional Planning Studies were done and that, typically, a Functional Planning Study is the starting point for more detailed design.

He acknowledged that part of a Functional Plan is a noise attenuation study, a traffic study and other fundamental elements.

With respect to Hwy 16 and the Henday, Mr. Howes acknowledged that he was the Roadcheck Engineer. In this role, he made sure that the design followed the appropriate standards. Impact on adjacent properties is one consideration. Alberta Transportation has standards regarding safety, level of service, environmental impact, etc.

Mr. Howes advised that he was familiar with the Dean Sabo residence and agreed that Dean Sabo would be considered a stakeholder. He agrees that Kinzel residence on the SBE Lands would be impacted and they are considered a stakeholder, as is T. Sabo. Therefore, he concurred that some consideration must be given those properties when considering design and construction of the Project.

Mr. Agrios referred Mr. Howes to Exhibit 3B. He acknowledged that the access to the Dean Sabo residence has not yet been resolved. However, he is the detailed design person and there is no one else to ask concerning the most current design details of access to the residence of D. Sabo, the Kinzels or T. Sabo. Mr. Howes indicated that the preferred design for access to Dean Sabo's house would be through development of the lands to the north. However, it is unclear when this will take place. Accordingly, the interim solution for access appears to be a right-in right-out access to 41st Avenue SW. Given that this a provincial project, governed by provincial standards/guidelines, it is ultimately the provinces decision as to where accesses are located.

Mr. Howes described the location of the core lanes, the merging lanes and the tapering of merging lanes when traffic is southbound on Hwy 2, taking the westbound ramp onto 41st Avenue. He concurred that 41st Avenue is a truck route.

Mr. Howes acknowledged that provincial standards or guidelines applied and he believed there were requirements for minimum distances for intersections on arterial roadways. He is not sure, but this might be 400 meters. Mr. Howes agreed that if you were planning this Project from scratch, and there was no Dean Sabo residence requiring access, there would likely not be an access located near the Dean Sabo residence. The access would be placed there to accommodate the existing residence and as a compromise to the otherwise applicable highway design standards.

With reference to Exhibit 3B, Mr. Howes described the proposed "bulb" opening that is proposed to provide access to 41st Avenue from the Kinzel residence and the T. Sabo residence. He acknowledged that there would be signage on 41st Avenue concerning exits, exit speeds and various directions one could take, in relation to the interchange and that the signage would be located somewhere around the area between Kinzel residence and the Tim Sabo residence. He acknowledge that there was maybe 50 to 60 meters from the access bulb to the start of the turning lane for traffic eastbound on 41st Avenue, turning southbound on Hwy 2.

It did appear as though detailed construction drawings appeared to show work was required on the SBE property south of 41st Avenue. However, Mr. Howes insisted that all work, including construction work, would be done on the existing 41st Avenue right-of-way to the south and would not require any SBE property.

In reference to Exhibit 3C, Mr. Howes estimated the Kinzel residence is approximately 2 meters lower than the proposed elevation of 41st Avenue. Further, he acknowledged that the standard height for fencing is 6 feet. Mr. Howes acknowledged that a construction easement may be required in connection with the access roads and the bulb.

With respect to the Dean Sabo residence, again the residence is approximately 2 meters below the proposed 41st Avenue elevation. As "designed", it appears as though the Dean Sabo residence driveway would be a grade of approximately 18%, given a 3 to 1 slope on the northern bank of 41st Avenue.

Mr. Howes acknowledged that he had been provided access to the Functional Plan. He believes that he reviewed the noise study and that attenuation features were not

required because the 65 decibel level was not predicted to be reached. This information is found at page 10 of the Noise Study which is Appendix E to the Functional Plan, marked as Exhibit 8. He acknowledged that the noise study assumed that the residence of Dean Sabo would be removed as part of the realigned of 41st Avenue and construction of the Project. However, Mr. Howes interpretation of the noise study was that the noise levels would be below the requisite standards whether the Dean Sabo residence was removed or not. He acknowledged that he had no expertise specifically in noise attenuation.

With respect to the interchange overpass, it is designed to accommodate the ultimate location and realignment of Hwy 2. The ultimate size is 8 lanes plus turning lanes. He advised that J. Sabo Lands were required even if Hwy 2 was not realigned as the land was required for construction of the loop and off-ramp.

Mr. Agrios returned to the Dean Sabo access question and referred again to Exhibit 3B. Mr. Howes described in detail how the access from Dean Sabo's residence to 41st Avenue would occur with an additional paved shoulder to accommodate a ramp from the Dean Sabo residence, with a turn radius that needed to be flared at the entrance, and with a grade rising approximately 2 meters over a distance of approximately 25 meters.

Mr. Howes said that the Alberta highway standard designs were adhered to with respect to this Project, except for the accommodations made for the pedestrian/bike path, the wildlife corridor, and the curb and gutter modification to the roadways. Mr. Howes was referred to Exhibit 7 which are provincial guidelines with respect to curb and gutter requirements. He noted 41st Avenue is an urban arterial road, not an urban highway road.

Mr. Howes was shown two different drawings done in 2011 regarding the J. Sabo Lands. There seemed to be a slight difference in the land required; 4.39 acres versus 4.99 acres. Mr. Howes indicated the difference is slight but had no explanation for the same. However, Mr. Howes did note that at some point there was a change in the J. Sabo Land requirements as the design of the storm drainage ponds changed somewhat. He was unsure when this occurred.

Regarding SBE lands, Mr. Howes acknowledged that drawings were done which were prepared for cost estimating purposes. These did indicate lands of SBE would be required.

However, once detailed design was performed, it was concluded that this would no longer be the case.

Mr. Agrios asked Mr. Howes about the Project Team meetings. This involved representatives from Focus, the City, the Province and other representatives. Mr. Kopylech would have been present at some meetings in 2012. He does not recall any reporting with respect to discussions between Mr. Kopylech and the Sabos.

Mr. Agrios referred Mr. Howes to the Focus Functional Study of May 2010. He advised that the service road that permits entry onto Tim Sabo's property was to be removed. Apparently, Alberta transportation did not want a service road access at that point. He advised that there was never any requirement, at any stage of development of the Project, for land from the Tim Sabo residence. Mr. Howes did acknowledge that Exhibit 12, a CH2M Hill drawing dated June 14, 2012 indicates that land from the Tim Sabo property is required for the highway right-of-way. He thought this was for the ultimate realignment of Hwy 2, a matter in which he was not involved with. He advised that there is no update on this plan or drawing because a stage 2 ultimate alignment of Hwy 2 is not proceeding at this time.

Mr. Agrios returned to the issue of noise attenuation and referred to Exhibit 8. The noise attenuation study appears to have been done in 2008. It seems to projected noise level to 2016. Construction of this Project will not be complete until 2015-2016. The noise receptor number 1 did not appear to be within 3 meters of the Dean Sabo residence property line.

Mr. Howes explained the manner in which Dean Sabo, Tim, Sabo and the Kinzels were required to travel to get to each other's house after the Project. This involved taking a right turn, travelling quite some distance to try and make a safe turn and then returning back over the interchange to Hwy 2 and making a right turn into the property or vice versa.

There was discussion with respect the government standard of not having access within 400 meters of a highway intersection. There can be exceptions to this rule according to Mr. Howes. He agreed that Jane Sabo's access will be less convenient. He agreed that separation of access to the family residences is an impact of this Project.

He agreed that in 2016, it was projected (apparently in 2008, using 2006 data) there would be 600 vehicles per hour at peak times on 41st Avenue and by 2032 there would be 2800 vehicles per hour at peak times on 41st Avenue.

Mr. Agrios referred to Exhibit 8, the Functional Study Plan. He noted that one option was a diamond intersection, similar to what is at the Ellerslie intersection. In such a design, the off-ramp is not as close to the Dean Sabo residence. However, Mr. Howes noted that the footprint of the proposed double loop ramp interchange was the same as the footprint for the design diamond ramp.

In reference to Exhibit 3B, Mr. Howes was asked about the drainage on both side of 41st Avenue. From the drawings, it did not appear as though there was any provision for a ditch on the south side of 41st Avenue as the end of the fill line appeared to be the property line of the SBE lands. Mr. Howes simply indicated that steps will be taken to ensure that drainage does not go on SBE property to the south of 41st Avenue.

Mr. Agrios referred Mr. Howes to Exhibit 3H. There was a discussion with respect to a "clear zone" adjacent to Dean Sabo's residence. There was further discussion about a driveway of Dean Sabo's residence be no steeper than a 12% grade. Further, that the quality of life will likely be dramatically change with a large realigned Highway 41 in close proximity to Dean Sabo's house.

Mr. Howes was asked whether a safety study had been done and he believed there was one done by the Canadian Highway Institute in 2012. A copy of this study had not been produced and the City would look into providing a copy during the course of this inquiry.

Mr. Howes was asked where land would come from if 41st Avenue was widened further. If that occurred, it would likely include the south side of 41st Avenue. Further, he indicated that some type of drainage on the south side of 41st Avenue would be installed, perhaps a culvert or other method to insure that drainage does not go onto the land occupied by the Kinzels, especially along an approximate 200 meter length of the proposed 41st Avenue which was described as a "pinch point" (where the bottom of the proposed slope appeared to be right on the property line of the land owned by SBE).

Re-Examination of Mr. Howes

Ms. Piecowye asked Mr. Howes whether minimum is equivalent to the lowest desirable. He agreed with this.

Cross-Examination of Mr. Howes by Mr. Williams

Mr. Williams asked whether at the Project Team meetings, Mr. Kopylech gave updates with respect to property acquisition activities. Mr. Howes indicated that information was provided, although he cannot recall the details. There was establishment of a Risk Register in June 2012 and one of the items on that document was land acquisition.

EVIDENCE OF THE OBJECTORS

Jane Sabo

Mrs. Sabo advised that she was the owner of lands identified as number 1 and number 2 on Exhibit 1, Tab 1, page 9(a). She explained that herself and her late husband wanted some farmland and purchased the subject property in 1972. They built a home on the property and raised 4 children. She explained how the family grew up around the lands enjoying the grain farming, raising of livestock and recreational activities that were enjoyed summer and winter.

Mrs. Sabo explained how her sons and her daughter established residences near her own residence during the 1990s. Since that time, her grandchildren have been growing up on the Sabo lands. The entire extended family lives in a close community and they see each other virtually every day as the homes are a few minutes away from each other by car. Indeed, the family can simply cross 41 Avenue on foot visiting between Dean's house, Tim's house, and the Kinzel's residence. A family compound has been established that creates a unique family community including a hockey rink with boards and their own Zamboni.

Mrs. Sabo explained that the present route she takes to her children's residences is along a service road which parallels Hwy 2, to 41 Avenue. This is a few minutes drive.

Mrs. Sabo recalled a meeting with Mr. Kopolich in April of 2012. She advised that the City was going to appraise the family's lands and get back to them with respect to the

City's land requirements. Ms. Sabo never heard anything further from the City, never received an appraisal, and never received any offer from the City to purchase any portion of her lands.

She is concerned that the service road will no longer exist after the Project is built and that she will have very poor access to her children's homes. Ms. Sabo indicated that there is no intention to try and stop the ultimate construction of the Project.

Cross-Examination of Ms. Sabo by Ms. Piecowye

Mrs. Sabo confirmed to Ms. Piecowye that when the farmland was purchased in 1972, it was not part of the City of Edmonton. Further, that the taxes increased when the lands became part of the City of Edmonton. Ms. Sabo agreed that in the last couple years, she has seen housing development occur to the west of her home. Further, that the Sabo Family had sold lands to developers, including Dean Sabo's sale to United in recent years. She agreed that her sons had authority to negotiate with the City with respect to land matters.

Ms. Sabo acknowledged that Exhibit 2, Tab 10 was a letter addressed to her. Further, depending on how the neighborhood roads developed, she may be able to access Dean Sabo's residence through neighborhood roads. Ms. Piecowye suggested that Dean Sabo gave up access to 41 Avenue, at some point in the future, when he decided to sell his lands to United. Ms. Sabo concurred that this was probably the case.

Re-Examination by Mr. Agrios

Mr. Agrios had Mrs. Sabo look at Exhibit 2, Tab 10, and confirm that there was a discussion with respect to acquiring lands by the City south of 41 Avenue. That is the lands of SBE and T. Sabo.

Dean Sabo

Mr. Agrios asked Dean Sabo to confirm that his residence is on the land registered in the name of United. Pursuant to the agreement with United, Mr. Sabo was entitled to 3 acres of land which included his residence. The exact location of that 3 acres is not yet determined. He indicated that land was purchased in 1993 and he built a home together with his

wife, Teresa. He farmed this land and other lands with a total acreage, at one time, of 3500 acres. He advised that he has 3 children and that his father passed away in 1996.

Dean indicated that his brother, Tim, purchased property in the 1990s. Tim Sabo built his house in approximately 1998, is married and has recently had one child.

Dean advised that they had no knowledge of the proposed interchange and upgrade to 41st Avenue when they purchased the land and built their home.

He indicated that in addition to grain farming, the family had some cattle and other livestock and operated a small feedlot at times over the years.

He noted that the Kinzels also have 3 children and built their residence on SBE lands in close proximity to Tim Sabo's residence and Dean's residence.

Dean emphasized that their family and family community was the biggest factor in their life. There is constant interaction between the families, including their mother, Jane Sabo, who lives nearby. They have recreational facilities built on Dean Sabo lands and recreational equipment is stored on the SBE land near Tim Sabo's house, which is used by all of the families.

Dean Sabo indicated that he has no present intention to develop or subdivide the 3 acres that he reserved under the agreement with United.

In addition to recreational vehicles and equipment, the Kinzel, Tim Sabo and Dean Sabo families share maintenance equipment between the families which is stored primarily in storage facilities on SBE lands south of 41st Avenue.

Dean indicated that he was first aware of the proposal for the interchange somewhere in or around 2005. He remembers attending a public meeting. His recollection is that there were simply concept designs. He then recalled having a meeting with a City representative who advised they may have to vacate their residence within 3 months. He believes this was a Mr. Wilson. Options for 41st Avenue were discussed, which included 41st Avenue travelling north of Dean Sabo's residence. The City representative generally represented

that they wanted to make a satisfactory arrangement with the Sabo and Kinzel families and were going to work with them to find a solution.

At some later date, Dean Sabo was told that the Project was on hold and nothing significant happened for years. It seemed to be a process of the City indicating that the development would proceed shortly, and then indicating that nothing will proceed in the immediate future.

The first significant meeting with the City occurred with a Mr. Phillips. Mr. Sabo acknowledges receiving the letter found at Exhibit 2, Tab 2 dated July 2011. This letter confirms that the meeting did occur and Mr. Sabo recalls Tim Sabo, Tymen Kinzel, a representative from C2HM Hill, and Mr. Phillips being present at the meeting. A number of steps were going to be pursued by the City after this meeting. However, the City never followed up with those steps. In particular, the Sabos never received an appraisal nor did they receive any offer or proposal with respect to land that was required or impacted by this Project.

Mr. Sabo recalls a meeting in April of 2012 with the rest of his family and Mr. Kopylech. He recalls Mr. Kopylech advising that they would need land from the Kinzels and Tim Sabo and that he was not authorized to speak on behalf of the County of Leduc/Province of Alberta. There was some general discussion regarding an option for a service road.

Mr. Sabo recalls another meeting in August 2012 that Mr. Kopylech attended. He had different maps or drawings. There was discussion concerning all of the Sabo Family lands including impacts on the Kinzels and Tim Sabo. As of this meeting, there was no specific design explained to them therefore they were unable to understand what the specific impact or options were with respect to their lands and residences. There was no specific proposal advanced by the City. They did find out that there was to be a tender for the Project and start of construction in 2013. This caused the families great concern as they were unable to make any specific plans for the future. It appeared to Dean Sabo that the City had years to come up with specific detail plans and to provide offers to the Sabo or provide them with options so that they could make plans for the future. Even at the present time, there has been no specific proposals to which the Sabos could respond. Mr. Sabo indicated that he has been extremely frustrated in efforts to find out basic information from the City such as exactly where 41st Avenue would travel, what the

elevations would be, how close the road would come to his residence, what access he would have, etc. None of this information was forthcoming from the City, although during the course of this inquiry process, some more specific information was provided by the City.

Mr. Sabo was referred to Exhibit 2, Tab 8 and it was noted that, oddly, the City is still making reference to possibly taking land from SBE and the Project impacting the Kinzel's residence and Tim Sabo's residence.

Dean Sabo noted that, in recent times there is very few vehicles using 41st Avenue. Indeed, the children of Dean and Teresa Sabo and the children of the Kinzels regularly travel back and forth across 41st Avenue.

Cross-Examination of Dean Sabo

Ms. Picowye had Mr. Sabo confirm that he bought approximately 40 acres in 1992. That he has been involved in grain farming and had horses on the property until approximately 2002. Further, that he still does some farming on his own lands or the D.Sabo/United Lands.

Ms. Picowye took Dean Sabo through Exhibit 1, having him identify various titles to land, including at Tab 9.

Ms. Picowye, in reference to Exhibit 2, Tab 1, asked Mr. Sabo whether he had authority for his mother and other family members which he confirmed that he did in connection with matters referenced in that document. Generally, Mr. Sabo acknowledged the summary of Mr. Falk in this letter was accurate.

Ms. Picowye referred Mr. Sabo to Exhibit 2, Tab 6 and confirmed the representation that the Project was not going to physically require moving of Dean Sabo's family from his residence. Further, since their residence is not directly and physically impacted by the Project, the City is unable to obtain support for the acquisition of the Dean Sabo residence. The letter appears to ask for a price from Dean Sabo to sell 3 acres reserved from the sale to United, excluding the residence. Further, the letter asks for a price if Mr. Sabo is prepared to sell the 3 acre interest, excluding the residence. The letter also states "we do recognize that the sale of the

said residence may well be a condition of the sale of the said 3 acre interest.” The residence was to be appraised by Gettle Appraisals. Mr. Dean Sabo confirmed receipt of this letter dated October 11, 2011 from Mr. Kopylech. Mr. Sabo confirmed that he did not provide a price to the City in response to this letter.

In reference to Exhibit 13, Dean Sabo agreed that J. Sabo’s Lands were designated as commercial business and industrial business. Further, some of the lands that were owned by Dean Sabo seemed to have been designated as commercial business. If this concept plan was ever developed, then Jane Sabo would have to move given that the lands would have been developed for commercial or industrial uses. Further, this plan seems to indicate an interchange at 41st Avenue. As the plan is dated in 2003, Dean Sabo acknowledged that he may have been aware of an interchange concept in 2003, not 2005 as he earlier approximated.

Mr. Sabo confirmed that he made an agreement to sell his lands to United in 2005. Mr. Sabo described who was involved in SBE. Further, he confirmed that he pays City taxes, which he finds to be high.

Re-Examination of Dean Sabo

Mr. Sabo confirmed that Exhibit 13 does not address the development of the lands that he owned at the time. Further, that he has no intention to subdivide the 3 acres reserved to him in the United sale.

Re-Cross-Examination of Dean Sabo

Ms. Piecowye referred Mr. Sabo to Exhibit 1, page 145. This does indicated that there would some future subdivision of the D.Sabo/United Lands generally into low density residential.

Ms. Munroe

Ms. Munroe testified that she has been a Real Estate Agent for approximately 32 years. In recent times, her specialization is in luxury executive homes. She has had an opportunity to look at the Dean Sabo residence. In her opinion, this a quality, high-end luxury

country estate home. With 3 acres of land this would be a very appealing high-end luxury residence. Features which make it appealing and marketable include the 3 acres, privacy, exclusivity, as well as the actual home structure.

Ms. Munroe testified that if the Project proceeded, this would have a very serious impact on the Dean Sabo residence. It would not be appealing to a buyer because the privacy, seclusion and exclusive features of the home would disappear and be replaced with features such as traffic, noise, no privacy and immediately adjacent to a major thoroughfare. Accordingly, the entire nature of the property and its marketability changes.

With respect to the Kinzel property, again it would be considered a luxury, high-end country residential estate. The same characterization for the same reason would apply to the Tim Sabo residence. Similar to the Dean Sabo residence, after the Project, they would change from appealing, desirable, exclusive country estates to non-appealing, difficult to market, homes exposed to a major roadway and interchange with Hwy 2.

Cross-Examination of Ms. Munroe

Mr. Piecowye asked whether Ms. Munroe had reviewed titled to the properties. She had not. She agreed with Ms. Piecowye that is it more difficult market lands that do not have their own separate title. Ms. Munroe was not aware of whether there was separate title for the Dean Sabo residence or the Kinzel residence. Ms. Munroe confirmed that she did have listings in the vicinity. She had a 4.5 acre parcel with a luxury home presently listed for \$2.2 million. Ms. Piecowye asked about an arterial road versus a collector road and how they affect marketability. Ms. Munroe concurred that the more noise and traffic and lack of privacy, generally speaking, the more difficult it may be to market a particular residence. Ms. Munroe commented that proximity to Hwy 2 may impact marketability. It really depends on whether Hwy 2 is in view of the property and whether there are noise impacts to the property.

Re-Examination by Mr. Agrios

Ms. Munroe confirmed that there was a creek between the Allard neighbourhood and the Dean Sabo, Tim Sabo and Kinzel residences and Hwy 2.

Mr. Tymen Kinzel

Mr. Kinzel indicated that he married Caroline Sabo in 1994. In 1998 they built their residence and occupied the home in 1999. Caroline Sabo/Kinzel is one of the shareholders of SBE. Further, that the Kinzels leased the property on which their residence is situated from SBE.

Mr. Kinzel confirmed that the Heritage Valley plan dated May 2010 does not show any impact on his residence or SBE lands. Further, the Allard NASP found at Exhibit 1, Tab 33, page 154, does not show any interchange at Hwy 2, nor any impact on SBE lands. Mr. Kinzel was not aware of any interchange plan or plan for this Project when he moved into his residence. During the time that they have lived at the SBE property, there has been very minimal traffic on 41st Avenue and it has been very rare to see truck traffic.

Mr. Kinzel took a number of photographs on 41st Avenue recently and these were marked at Exhibit 14 A – F. These pictures showed how narrow the existing bridge was which crossed Blackmud Creek on 41st Avenue. The pictures also showed tree growth from the ditch onto the roadway.

Mr. Kinzel noted that the family members are also friends and have daily interaction as between the residences adjacent to 41st Avenue. The Project will seriously impact the life of the family and their lifestyle.

Mr. Kinzel described the public meetings concerning the Project that he was aware of over the last year or two. The first time he can recall being aware of an interchange that may have a major impact on his family's lands was in 2009.

He confirmed that Exhibit 13 shows that there is no work that is contemplated on the SBE lands, nor the D. Sabo/United Lands.

Mr. Kinzel discussed the 2008 meeting with City of Edmonton representatives. He then described the next significant approach by the City of Edmonton in 2011 when the City suggested there may be land required from the SBE lands adjacent to where Mr. Kinzel had his residence. At the 2011 meeting, he believed that Mr. Philips, Mr. Falk, a CH2M Hill

representative and members of his family were present. They were shown plans that depicted an overpass. Mr. Kinzel recalls they explained the importance of their family and lifestyle at this meeting. The City assured them they would do all they can and that expropriation was not the preferred route for the City. In reference to Exhibit 2, Tab 2, Mr. Kinzel confirmed that the City advised that they would require lands from Jane Sabo, United, Tim Sabo, and SBE. Further he believes that drawings dated June 2011 were shown to them that also indicated lands would be required from SBE, Tim Sabo, as well as the D.Sabo/United Lands and lands from Jane Sabo. Nothing was finalized in this meeting, and no schedule for appraisal visits were ever established.

In reference to Exhibit 2, Tab 5, Mr. Kinzel noted that he had seen this letter and that it properly reflects discussions with the City.

The next approach by the City was in April of 2012 when there was another meeting with Mr. Kopylech. At this meeting, Mr. Kopylech confirmed that he apparently represented the City and the Province of Alberta and that he wanted to get to know the family. He said nothing about expropriation of lands by the City. The Sabo Family requested an offer or proposal from the City. Further, Mr. Kopylech indicated that there would be an appraisal coming on all 4 houses owned by the Sabo Family.

The next meeting with the City was near the end of August 2012. Mr. Kopylech confirmed he was representing the City and the Province of Alberta. Again, the Sabo Family requested an offer or a proposal but nothing was forthcoming from Mr. Kopylech. At this point, Mr. Kopylech advised that they would not need land from Tim Sabo but they would still require land adjacent to the Kinzel home owned by SBE. They were also told by Mr. Kopylech that some sort of service road would be built for them to allow access to 41st Avenue SW. Mr. Kinzel testified that he never received any offer or proposal nor any appraisal after this meeting.

Mr. Kinzel indicated that the City wanted to conduct some drilling on their lands and they agreed to whatever drilling or surveying the City wanted to do on their lands.

Mr. Kinzel first became aware that SBE lands were apparently not required when he received an October 2012 letter from the City marked as Exhibit 17.

Mr. Kinzel reviewed the October 2012 letters found in Exhibit 2, Tabs 12 and 13. He confirmed there was a meeting with City representatives. A number of requests related to details of elevations, requirements for land for the project, appraisals and staking of the properties so that they could have some idea as to where the realigned 41st Avenue SW would be in relation to the Sabo Family residences. Other than staking, no other information was provided by the City, other than some information provided in the course of this inquiry process.

Mr. Kinzel confirmed that there were no negotiations, no offers or proposals made by the City before receiving the Notice of Intention to Expropriate. Mr. Kinzel confirmed that he does not believe that this intended expropriation is fair or sound. He has concerns about breaking up the family unit, access being inconvenient and unsafe, noise being a concern, and construction activity being a concern. None of these concerns have been addressed by the City.

Cross Examination of Mr. Kinzel

Mr. Kinzel confirmed that he resides south of 41st Avenue. The land owned by SBE is approximately 155 acres. He has a lease between Caroline and Tymen Kinzel and SBE which initially was oral but was more recently reduced to writing. The terms of the lease are \$1.00 per year, 99 years term, with a provision to allow Caroline and Tymen Kinzel to transfer to their own name the residence in which they live together with a parcel of land that is approximately 10 feet beyond the line of trees that surrounds the residence and to the property line which borders 41st Avenue SW. The lease was reduced to writing in April of 2012. He confirmed that the lease is not registered against title. He pays taxes to the County of Leduc but has City water and electrical services.

Ms. Piecowye asked Mr. Kinzel about the dump trucks that were observed when the inquiry officer and the parties visited the site for viewing. Mr. Kinzel stated that SBE had some land that was not productive, it was rocky. Therefore, they entered into an agreement with a nearby developer that would take some topsoil and have it dumped in that area of SBE land, to improve the quality of the soil. This was why there were dump trucks travelling the roadway when the lands were viewed.

Mr. Kinzel confirmed that SBE owned a number of warehouse properties and that it managed those warehouse properties.

He confirmed that he does not oppose the development of an interchange at 41st Avenue and Hwy 2. Mr. Kinzel was directed to Exhibit 15 and confirmed that this 2007 drawing makes reference to an interchange and that it was reasonable to expect that Jane Sabo's lands may be impacted from that information. Further, Exhibit 15 and Exhibit 13 were compared and it was agreed that Exhibit 13 is in more detail. Ms. Piecowye referred Mr. Kinzel to ID-H, ID-K, Exhibit 1, Tab 37, page 460, and Exhibit 16 demonstrating that plans evolved over the years. Mr. Kinzel agreed that the letter, Exhibit 2, Tab 2, states in part:

1. Roadway requirements:

- 1.1.4 Portion of NW Quarter Section 7-51-24 W4th: registered owner Sabo Brothers Enterprises Ltd: while no interest has been registered against the Land Title Certificate it was confirmed that Tymen and Caroline Kinzel have an agreement to live in the residence and to use of this land.

Mr. Kinzel agreed with Ms. Piecowye that the above does not expressly state that the City would require his residence for this Project.

Mr. Dulaba

Mr. Dulaba advised that he was a planner and has had some past involvement with respect to what has been described as Neighbourhood 7 as a planner. He worked at Stantec and worked on planning in connection with Neighbourhood 7.

In reference to ID-J, a drawing of May 10th, 2002, Mr. Dulaba confirmed that there was no idea of what type of interchange may be planned for Hwy 2 and 41st Avenue SW. Further, that interchange designs evolve over time before they are built. The 25th Avenue interchange that was shown ultimately was built simply as a flyover Hwy 2. He noted that the J. Sabo Lands were designated for business use in this drawing/plan.

In 2001, when the City approved the Heritage Valley Plan, there was no suggestion that Dean Sabo, Tim Sabo, or SBE lands would be affected by the Heritage Valley Plan.

In reference to Exhibit 13, Mr. Dulaba confirmed that as of 2003, this document does not show any impact with respect to a proposed interchange at Hwy 2 and 41st Avenue SW. Further it notes that Jane Sabo's land is designed as industrial business or commercial business. It seems to indicate a diamond interchange at 41st Avenue, a diamond interchange at 25th Avenue, as well at Ellerslie Road and Hwy 2.

In reference to ID-J and Exhibit 19, there is no indication of impact to the lands of Tim Sabo, Dean Sabo or SBE by the proposed development.

Mr. Dulaba indicated that there was lack of clarity as to whether an interchange would proceed in the foreseeable future at 41st Avenue and Hwy 2 until approximately 2008/2009. In reference to Exhibit 15, as of 2007, there were no details known of any proposed interchange of Hwy 2 and 41st Avenue SW. Therefore, it would not be possible to know the extent of any impact on the Sabo Family lands.

In approximately mid-2009, there was a suggestion that there should be a redesign of the proposal for an interchange at 41st Avenue and Hwy 2. At this point, planning came to a stop again until things were clarified and it was therefore impossible to know what impact a future design may have on the Sabo Family lands or access of the Sabo Family to 41st Avenue SW.

Mr. Dulaba indicated that in approximately early 2010, better information came available surrounding the possible realignment of Hwy 2 and therefore the possible design of the interchange at 41st Avenue. The information with respect to Hwy 2 became more clear in 2011. Work on more detailed planning resumed in 2011 and it became clear that the City would need large portions of at least the J. Sabo Lands.

In conclusion, Mr. Dulaba indicated that there was stop and go and a considerable period of hiatus, roughly between 2009 and 2011 in knowing what the plans would be with respect to Hwy 2 and any future interchange at 41st Avenue SW.

Cross-Examination of Mr. Dulaba

Ms. Piecowye noted that it was 8 minutes after noon and that the witness was employed with Stantec for some time. She further confirmed that the witness knew Simon O'Byrne. Apparently a colleague at Stantec.

Ms. Piecowye made reference to Exhibit J and Mr. Dulaba confirmed that it showed that the SBE and Tim Sabo property were not impacted by the proposed interchange and that they are not within the City of Edmonton boundary.

He agreed that the Neighbourhood Area Structure Plan done by Stantec is circulated for city comments; that some city departments were not in favour of some of the land designation; that transportation in and out of the neighbourhood was considered by the City; and a traffic impact study was done. Further, he agreed that direct access to 41st Avenue by businesses would be an uncommon feature in planning for a neighbourhood of this nature.

Mr. Dulaba agreed that the planning process is impacted by a Municipal Development Plan. If a new Municipal Development Plan, or an amended Plan is in the works, this typically puts planning and development on hold.

Re-Examination of Mr. Dulaba

Mr. Dulaba agreed that collector roads or multiple collector roads which enter into an arterial road are common. He anticipates there would be multiple collector roads in Neighbourhood 7 serving both neighbourhoods designated as 7A and 7B.

He further noted in questioning by Mr. Agrios that the current 41st Avenue SW is approximately a 30m right-of-way. Typically when you are widening a road like 41st Avenue, land would be taken from both sides of the existing roadway.

Re-Cross-Examination of Mr. Dulaba

Mr. Dubala confirmed that he had considerable experience planning for development on city boundaries. He was asked whether arterial roadway assessment is typically taken on both sides of the road.

He is familiar with how lands are designated in land use planning. He confirmed that dedicated land can include roads.

Mr. Locher

Mr. Locher advised that he was a professional engineer and had also obtained his LLB degree. His work experience included; working for Alberta Transportation as a design engineer; working with consulting companies in connection with development of subdivisions; working with the BC Provincial Government or their agencies regarding road safety standards and road safety standard audits; providing engineering expertise with respect to Highway 407 in Ontario; and working on a project in China with respect to roadway traffic safety. He advised that he has been accepted as an expert transportation engineer in British Columbia and has experience in considering noise attenuation studies as they relate to transportation engineering.

Mr. Locher was accepted as an expert in the area of transportation engineering.

Mr. Locher was asked by Mr. Agrios to make reference to Exhibit 8, the Functional Planning Study. The Functional Planning Study was only received in the course of these proceedings. Mr. Locher indicated that before receiving Exhibit 8, there simply was no information to understand and comment upon issues of road safety and noise attenuation. Further, that he has had some time to review only some portions of the Functional Planning Study but has had insufficient time to make a proper, careful review of the same.

With respect to noise attenuation, it appears that there was a noise assessment study done in 2008 which is contained in the Functional Planning Study. Mr. Locher has read this information. He noted that, as he has depicted in Exhibit 22, the receptor locations do not appear to be placed in the correct location. He noted that the noise study presumed that Dean Sabo's house would be removed, as stated on page 10 of the Noise Study Plan contained in Exhibit 8. When the noise study was done, they were working with an alignment of 41st Avenue which was much further north than what is now being proposed by the City. It appeared that 41st Avenue SW was being aligned to the north of Dean Sabo's residence. Given that there is a different alignment of the roadway, the old Noise Assessment Study is not applicable. Further,

Mr. Locher noted that the receptor would be 2m from the property line. It appears they were not placed in the proper location.

Mr. Locher made reference to Exhibit 3C and made pink highlighting marks demarcating where the on and off ramps presently designed for the Project were located and the distances from those on and off ramps that were required by Alberta Transportation design standards for location of any access points.

Mr. Locher noted that the noise study appeared to project traffic volume from 2006 through to 2016. However, the Project is supposed to be operational in 2015. Therefore, the requisite Alberta Transportation Guidelines require a projection of noise levels for 10 years, namely to 2025. In addition, the Noise Traffic Study appears to assume that truck traffic is 7.5% of the traffic on the adjacent roadways. In Mr. Locher's opinion, typical volume of trucks on truck routes such as Hwy 2 and 41st Avenue SW would be approximately 20% of the traffic. This is especially the case when we have the CP Intermodal facility nearby just east of Hwy 2.

In Mr. Locher's opinion, the Noise Assessment Study that was done is not valid. There is a change of alignment of 41st Avenue, the receptors are in the wrong location, the traffic volume and projection into the future were not done properly. Accordingly, there should be a new noise study done so that one can draw the appropriate conclusions with respect to noise attenuation facilities being required, or not. He would be surprised if a properly done study would not indicate that a noise attenuation wall would be required. Such walls typically are heavy concrete walls with an earth foundation. The walls need to be continuous to be effective.

Mr. Locher made reference to Exhibit 4, the Alberta Transportation Noise Guideline Requirements. He indicated these are the requirements that must be met, at a minimum, for this project.

Other concerns that Mr. Locher has with the Project include safety. He thought that a 3:1 slope on the north side of 41st Avenue SW in proximity to Dean Sabo's residence renders that roadway design unsafe. There is not the requisite "clear zone" to allow for a margin of safety where a vehicle may leave 41st Avenue and roll from the ditch into Dean Sabo's residential property.

Mr. Locher indicated that he had recently been provided with the Safety Audit that had been done in connection with this Project, again received only in the course of these proceedings. The safety audit was marked as Exhibit 25. Further, once the Objectors had received the Safety Audit, they requested the drawings of the Project that were used by those conducting the Safety Audit. Again, these were provided by the City in the course of these proceedings and marked as Exhibit 26.

Mr. Locher reviewed this information and concluded that the drawings provided to those doing the Safety Audit, did not include any access points to the Sabo Family residences. Therefore, the Safety Audit could not have considered the safety of the proposed accesses to 41st Avenue from the Dean Sabo residence, the Kinzel residence and the Tim Sabo residence.

Mr. Locher has considered the accesses proposed by the City for these residences. In his view, the proposed accesses do not meet the minimum Alberta Safety Standards for highway design. The proposed access from the Dean Sabo residence, in Mr. Locher's opinion, is very dangerous. It creates an access which is too close to the area where there is a merger to the core lanes for those coming off Hwy 2 and proceeding from the off ramp in a westerly direction on 41st Avenue. The vehicles travelling along this direction would be likely accelerating to merge with the core lanes and be looking left and to the rear to safely merge with traffic travelling over Hwy 2 along 41st Avenue in a westerly direction. A vehicle turning out of Dean Sabo's driveway may not be noticed and would create a very dangerous situation. In addition, where vehicles are proceeding over Hwy 2 in a westerly direction, wanting to turn into Dean Sabo's residence, they would likely come into conflict with vehicles who are trying to accelerate and merge into the core lanes and proceed in a westerly direction on 41st Avenue.

Similar considerations apply to the proposed access from Tim Sabo's residence and the Kinzel residence. A likely complication at the Tim Sabo and Kinzel proposed access is the fact that there would be signage in that general area to alert traffic to the exit to Hwy 2 and the core lanes proceeding to fly over Hwy 2. Vehicles would be having regard to this signage and trying to make maneuvers, perhaps to exit on a southerly direction to join Hwy 2 while vehicles were making a right turn from the Tim Sabo/Kinzel proposed point of access. There would likely be a conflict between the Sabo/Kinzel vehicles who would be trying to move to the

left to proceed in an easterly direction over Hwy 2 and vehicles travelling on 41st Avenue in an easterly direction trying to move to the right to take the off ramp to join Hwy 2 travelling in a southerly direction.

Mr. Locher indicated that the present Dean Sabo access has another difficulty. Namely, that as presently designed, taking into account the slope, the ditch, the multi-use trail, and provisions for drainage, there would be relatively little area for Dean Sabo's driveway to rise upwards toward the elevation of 41st Avenue SW. This would likely result in a grade of Dean Sabo's driveway in the range of 14°. This is too steep and not recommended.

With respect to drainage, Mr. Locher looked at Exhibit 3B and Exhibit 26 which appear to show the edge of the 41st Avenue roadway right-of-way top of the slope being exactly on the SBE property line. There does not appear to be any space provided for drainage facilities. Therefore, either the roadway drainage will spill onto the SBE property in front of the Kinzel residence, or the City will require land from SBE to build proper drainage facilities.

In Mr. Locher's opinion, the proposed access points for the D. Sabo, T. Sabo or Kinzel residences do not comply with minimal requirements of Alberta Transportation safety design nor good engineering judgment. They are far too dangerous as presently proposed. At a minimum, a new safety audit is required that considers the proposed access design.

Cross-Examination of Mr. Locher

Ms. Piecowye asked Mr. Locher to confirm the purpose of the Functional Plan. In particular, he concurred that design of projects evolve over time from the Functional Plan as you work to more detailed planning design. Ms. Piecowye had Mr. Locher compare Exhibit 22 versus Exhibit 3A with regard to the alignment of 41st Avenue. She asked whether there was time to do a further noise attenuation study and Mr. Locher was unable to answer that question.

Ms. Piecowye suggested that Mr. Howes indicated that a further noise study would be done. Mr. Locher did not recall Mr. Howes making such a statement.

Ms. Piecowye suggested to Mr. Locher that the ramp coming on Hwy 2 would act as a noise barrier. Mr. Locher was not sure whether this would be the case as the ramp is

approximately 6.5m above Hwy 2 and noise from vehicles on an elevated roadway tends to travel farther. In reference to Exhibit 4, Ms. Piecowye asked Mr. Locher about the difference between guidelines versus standards. Generally speaking, guidelines are more flexible.

Ms. Piecowye asked whether Mr. Locher agreed that speed was a factor with respect to noise and safety. He agreed that speed was a factor. Ms. Piecowye suggested to Mr. Locher that Alberta Transportation had accepted the 3:1 slope on the north side of 41st Avenue and had accepted that there was a clear zone. Mr. Locher was unable to comment on what Alberta Transportation may have done.

Mr. Locher agreed there is a difference between permanent and temporary access. Ms. Piecowye had Mr. Locher acknowledge that 105 Street in the City is steeper than approximately 14%. Ms. Piecowye referred Mr. Locher to Exhibit 7, page U.A.4. and Exhibit 3B to acknowledge what those documents depict.

Re-Examination of Mr. Locher

Mr. Agrios, in reference to Exhibit 22, had Mr. Locher confirm that the roadway in one proposal would be on top of the Dean Sabo residence. He noted that 105th Street was a major roadway that one could take a run at, unlike the proposed access for Dean Sabo's driveway. Mr. Agrios had Mr. Locher confirm that trucks climbing ramps make noise.

Mr. MacKenzie

Mr. MacKenzie was accepted as an expert planner with many years' experience and having been qualified many times previously as an expert planner.

Mr. MacKenzie advised that he had some personal experience in the planning of the area which included the Heritage Valley Plan back in the late 1970s and early 1980s. His firm won an award for a major concept design contest for an area which encompassed the present Heritage Valley area.

Mr. MacKenzie recalls attending at least one public meeting that was held in connection with the Project at the Ellerslie Baptist Church. He may have attended other public

meetings. Mr. MacKenzie had a general interest as well as a particular interest as a result of industrial projects he was involved with south of the subject Project. He recalls at the public meeting that the designs were very conceptual.

Mr. MacKenzie, a person with extensive experience in dealing with developers, municipalities, counties, and Provincial representatives found the present process he was involved in on behalf of the Objectors to be very frustrating. From when he was retained in mid-December to the present, he has experienced a lack of information from the City to be able to properly advise the Objectors and prepare for these proceedings.

He confirmed, in reference to Exhibit 1, page 154, that there is no interchange depicted and no reference to the SBE or Tim Sabo properties.

Exhibit 13, Mr. MacKenzie advises, shows conceptual interchanges and shows a diamond shape interchange for 41st Avenue and Hwy 2. The interchange now proposed is substantially different. It has two large loops for ramps and has moved westerly closer to the Objectors' lands apparently to accommodate the realignment of Hwy 2 in a westward direction.

Mr. MacKenzie noted that Exhibit 1, page 154 also depicts 41st Avenue as running in a straight line. Normally, when a roadway is expanded to become an arterial road, half the required land comes from each side to widen the road and it remains a straight roadway. The widening typically goes from about 66 feet to approximately 130 feet.

Mr. MacKenzie testified that the Heritage Valley Plan, the Allard Plan and the Ellerslie Plan are approved statutory plans. None of these plans show an elaborate, significant interchange as now envisioned for this Project. In Mr. MacKenzie's opinion, there should have been proposed amendments to these plans to reflect this major interchange. That would have engaged a public process and ultimately an amendment to the statutory plans approved by the City. This would have permitted a much wider and focused analysis amongst stakeholders as to how this major interchange impacts the areas.

Mr. MacKenzie reviewed his understanding of the Sabo Family situation. He commented that it is a unique situation where a family community is established essentially on

either side of 41st Avenue. Obviously, the Project will have a major impact on this family community.

Mr. MacKenzie indicated that he had read the Noise Attenuation Study, recently received, as well as Exhibit 16. There were only proposals for 41st Avenue running through Dean Sabo's residence or running to the north of Dean Sabo's residence. The Functional Plan also shows options of 41st Avenue running north of Dean Sabo's lands.

In Mr. MacKenzie's opinion, the proposed interchange Project is much larger than indicated or which could be assumed to be built from looking at any of the approved statutory plans. The impact of this Project is a physical separation of the Sabo Family community, serious impediment to the use of their properties, a serious reduction in the enjoyment of the property and presents major access issues.

Mr. MacKenzie found it very surprising that the Noise Impact Study would assume that Dean Sabo's residence did not exist. Mr. MacKenzie clarified that he is not a noise expert but standard planning process is to require a proper noise study to be done. He noted that the City has constructed a noise attenuation facility to shield the existing residences on Mayfield Road and 111th Avenue, Yellowhead Road and 97th - 66th Street and Scona Road - 99th Street.

In reference to Exhibit 3B, Mr. MacKenzie placed a blue marking and yellow marking on the map to demarcate the existing driveway and the tree shelter that presently exists between 41st Avenue and the Dean Sabo residence. With the design of the Project, there would be a removal of all of the tree line shelter and a consequent loss of privacy.

Mr. MacKenzie noted the complicated vehicle movements that would likely be required for the Sabo/Kinzel family to visit each other after the Project is built. Likely, Mr. Kinzel would need to exit his property and travel east on 41st Avenue, take the off ramp and travel north on Hwy 2 until he reaches an interchange at Ellerslie Road at which point he can travel back southward on Hwy 2 to take the off ramp onto 41st Avenue and travel eastward to Dean Sabo's residence. A similar journey would be required by Dean Sabo to visit his family on the south side of 42nd Avenue.

Mr. MacKenzie made reference to Exhibit ID-J and indicated that there were diamond interchanges at 127th Street and Henday. The diamond interchange uses far less land than the proposed double loop ramp design. Mr. MacKenzie speculated that this was driven by anticipated additional volume at the intersection of Hwy 2 and 41st Avenue SW.

Mr. MacKenzie advised that he disagreed with one area of Mr. McNutt's testimony regarding the area structure plan. Namely, in designing a neighbourhood structure plan, you do typically specifically designate the required arterial roadways.

In conclusion, Mr. MacKenzie, reading between the lines with respect to the conduct of the City, speculated that the City may have been simply responding to the directions of Alberta Transportation in connection with this Project. In Mr. MacKenzie's experience sometimes Alberta Transportation has an attitude that they simply proceed with a desired project with cavalier disregard of the impact to the landowners. Mr. MacKenzie experienced this recently in connection with the Hopewell Development just south of the subject properties when after much inquiry and frustration it finally emerged that difficulties that Mr. MacKenzie's client was having with a development in Leduc County was caused by Alberta Transportation's position on a regional ring road which was undisclosed and therefore not discussed until very late in the process. Mr. MacKenzie speculated that the City's surprising lack of disclosure and communication with respect to exactly what is proposed and why may have been a consequence of the fact that this Project was ultimately controlled by Alberta, although the City was required to deal with land acquisition, tendering and construction.

Cross-Examination of Mr. MacKenzie

Mr. MacKenzie acknowledged that the D.Sabo/United Lands were annexed by the City of Edmonton in approximately 1982. Further, that the SBE lands remain in the County of Leduc.

In reference to Exhibit 1, at page 154, Mr. MacKenzie agreed that the interchange Project is not within the Allard Neighbourhood.

Mr. MacKenzie acknowledged that existing developments on structures are encountered sometimes in planning and development of neighbourhoods.

Ms. Piecowye referred Mr. MacKenzie to Exhibit 1, Tab 32, page 125 and the Allard Neighbourhood Area Structure Plan. He confirmed that low density residential was the primary consistent land use. There was also discussion regarding the Hopewell Development and the regional ring road being a major impact that emerged from Alberta Transportation and that Hwy 2 will intersect any such regional ring road.

In reference to Exhibit 16, Mr. MacKenzie was asked if the option of alignment of 41st Avenue north of the Dean Sabo residence was chosen, whether that would impact the requirement for land on the east side of Hwy 2. Mr. MacKenzie opined that it probably would not as the roadway could swing back in a southerly direction before crossing Hwy 2.

Mr. MacKenzie advised that he was not familiar with what the land use planning was south of 41st Avenue.

Ms. Piecowye referred Mr. MacKenzie to Exhibit 1, at page 154 and discussed the alignment of 41st Avenue. Mr. MacKenzie indicated that the proposed alignment for 41st Avenue was not in compliance with the Allard Neighbourhood Area Structure Plan. It only shows a widening of 41st Avenue towards the west, and on SBE land.

Ms. Piecowye asked Mr. MacKenzie to reconsider his evidence regarding the intersections at 111th Street and Rabbit Hill Road with the Anthony Henday. Mr. MacKenzie advised that he was not sure if the Rabbit Hill Road interchange had a loop and, on reflection, there was a loop exit ramp on the 111th Street and Anthony Henday intersection.

Mr. MacKenzie acknowledged that he was reading between the lines or speculating with respect to the impact of Alberta Transportation on the way the City has handled the Project and the City's interaction with the Sabo Family.

Ms. Piecowye referred Mr. MacKenzie to Exhibit 8 and suggested that there is no additional land required for the loop ramps versus a diamond interchange design. Mr. MacKenzie indicated that that was only because the proposed diamond interchange was not of a

standard design in Exhibit A. It had been "stretched" and incorporated an assumption that Hwy 2 would be shifted in a westerly direction.

Mr. MacKenzie acknowledged that the Ellerslie intersection and the CP Rail line constituted planning constraints in connection with the Project.

SUMMARY OF ARGUMENT

Expropriating Authority

City

Counsel noted that written argument had been provided and that argument would not be repeated in oral submissions.

It was noted that the well-understood test was fair, sound and reasonably necessary. Ms. Piecowye referenced the *Waters* Decision as the proper jurisprudence to interpret that phrase. It is to be taken in its entirety and each word alone should not be considered.

Ms. Piecowye indicated that the evidence is clear that the interchange is to the benefit of the Heritage Valley Development and general economic growth of the area in Edmonton.

Reference was made to the textbook *Todd on Expropriation*.

It was submitted that much of the Objectors' evidence related to compensation and that this was a matter for the Land Compensation Board not a matter for the Inquiry Officer.

The City's objective is to develop an interchange at 41st Avenue SW and Hwy 2.

It was submitted that negotiation with the landowners and the City were unsuccessful and therefore a Notice of Intention to Expropriate was issued.

Ms. Piecowye submitted that there were three different parcels here and that they should be considered separately as different factors apply to each parcel.

Parcel #1 is the J. Sabo Lands. It was submitted that the lands were acquired in 1972 and that there has been much development since that time. Jane Sabo will have access to her property. It was noted that it was contemplated by the Sabo Family that there would be potential development of these lands as early as 2003. Such development would likely result in Jane Sabo having to move. It would certainly result in change in access to the Jane Sabo residence. Further, it was submitted that the evidence clearly establishes that Jane Sabo's lands are required for the Project. The realignment of Hwy 2, the construction of the interchange loops and the drainage pond system clearly required expropriation of J. Sabo Lands. Ms. Piecowye rhetorically asked the question of whether the City could have done a better job in communicating with the Sabos. She did note, however, that the Sabos appear to want all of their lands acquired by the City.

Parcel #2 addressed by Ms. Piecowye is the D.Sabo/United Lands. She noted United was a sophisticated land developer. United had contributed funds to the \$10 million private contribution to the cost of the interchange Project. United led no evidence at this hearing. Further, Dean Sabo agreed to sell the lands to United reserving approximately a 3-acre parcel although it is not clear where this 3-acre parcel is to be located. It was submitted that United knew that dedication for lands for 41st Avenue may be required. It was noted that the amendment to the contract with Dean Sabo in 2008 permitted Dean Sabo to sell the 3 acres reserved from the 2005 sale to United.

The only objection of United is that expropriation was not required as it was a willing seller of land required to the City. It is submitted that the position of United is simply a challenge to the City's right to expropriate. Ms. Piecowye alleged that there were efforts to have a meeting of the minds regarding D. Sabo/United Lands.

Parcel #3 was the D. Sabo/United Lands. It was submitted that Dean and Teresa would know that development is inevitable. They were aware that there was some type of change coming with respect to an interchange. It was clear that in 2003 and 2007, the Sabos looked at some type of development of Jane Sabo's lands. Ms. Piecowye stated that there would be access to Dean and Teresa Sabo's lands in some fashion, depending on owner preference. The law requires access to be given. She submitted that it was unclear what type of development

might take place with respect to the 3 acres. She noted that some sort of dedication would be required on any subdivision. Ms. Piecowye made reference to Exhibit 2, Tabs 1-6 and Tab A with respect to the letters between the City and the Sabo Family and the meetings referred to therein.

Ms. Piecowye submitted that the City cannot expropriate all of the Sabo Family lands. There are no lands at all required from SBE.

With respect to noise attenuation, it was submitted that there were two policies. The policy of the City as described by Mr. Latte. Perhaps a new Noise Study was required. If the noise study showed that noise attenuation facilities were required or indicated then they would be dealt with appropriately. She submitted that the Provincial noise standards apply to this Project. The initial Noise Study indicated nothing was required and that there are plans for further Noise Studies.

Ms. Piecowye submitted that if a different route was selected for 41st Avenue, it would simply have the effect of impacting different people than the Sabos. She noted again that the Sabos' evidence in part dealt with compensation.

Ms. Piecowye indicated that only in certain circumstances can the City expropriate lands outside of the City boundaries. These exceptions are set forth in the *Municipal Government Act*.

It was submitted that the inquiry officer has no jurisdiction to opine on anything that relates to land outside the City limits.

It was submitted that the Sabo Family understood that changes were coming and that this happens with development, the quality of access should be anticipated to be impacted by such development.

Ms. Piecowye indicated that Dean Sabo's permanent access will occur through the subdivision and development of the D.Sabo/United Lands.

She noted that the Objectors do not oppose the interchange Project.

She submitted that the options are to take no lands in which case the Project could not go ahead, or take all of the Sabo Family lands, in which case it would cost the City something in the neighbourhood of \$20 million to take 200 acres of land, most of which are not required for the Project. The total projected cost of the Project is only \$200 million. In balancing the public rights versus the private interests, in the context of fair, sound and reasonably necessary, the City has demonstrated that this intended expropriation is fair, sound and reasonably necessary given the objectives of the City.

Objectors

United Argument

It was submitted by Mr. Williams that the City has the onus proving that the extended expropriation is fair, sound and reasonably necessary. He made reference to section 6(1) and 6(2) of the Act. For reasons unknown to United, despite United's communication that it was willing to discuss a sale of the land with the City, the City took no efforts to negotiate or make any offer to acquire the D. Sabo/United Lands. United submits that the City has a duty to make a reasonable attempt to acquire land from a landowner before resorting to the expropriation process. The City has not fulfilled this duty. Therefore, the entire expropriation process is not reasonably necessary nor reasonably defensible. United remains perplexed with the City's approach to not even have a meaningful discussion with respect to acquisition of property before resorting to the expropriation process.

Sabo Family Argument

Mr. Agrios submitted that he is providing the Inquiry Officer with written submissions with respect to the law and would not repeat those in his oral submissions.

He submitted that it is clear that this Project was a partnership. The City was responsible for dealing with land acquisition, tendering and construction. The Province drove the design process. As it is a provincial project, a provincial asset, the Alberta Government Guidelines or Standards apply to the Project.

Mr. Agrios submitted that negotiation requires a discussion between the City and the Sabos. The conduct of the City representatives, in his submission, were inappropriate and inexplicable. For example, there was a meeting with Mr. Kopylech in October of 2012 and deliverables were expected. A few days later, Notices of Intention to Expropriate were received by Sabos. He noted that Jane Sabo still does not know whether she will be left with 17 or 24 acres after the intended expropriation.

Mr. Agrios submitted that the Sabos were appalled with the treatment they have received by the City. No significant useful information was provided by the City to the Sabos so that they could make any reasonable assessment of the how the Project would specifically impact their land and their life, prior to this inquiry process. Details with respect to design, elevations, and property accesses were not provided until this inquiry process commenced. Request to meet with engineers or appraisers were ignored by the City. Mr. Agrios submits that there have been no negotiations and strongly disagrees with the City's submissions that any negotiations have even taken place with the landowners.

Mr. Agrios submitted that the Sabos never requested that all of their lands, including the SBE lands be purchased by the City. They simply suggested that the City look at acquiring the residences so that they could try to relocate and reestablish their community living arrangement, as they had enjoyed for the last many years.

Lack of provision of information, studies, and drawings, is consistent with the conduct of the City in refusing to provide the agreement which is apparently in place between the City and the Province with respect to this Project.

Mr. Agrios noted that his clients do not dispute the need for an interchange for 41st Avenue and Hwy 2. Further, there is no dispute that the City has the legal right or jurisdiction to expropriate lands. However, Mr. Agrios submitted that landowners are entitled to put their information before the inquiry officer who is obliged to report on the merits of the intended expropriation. He submitted that the *Expropriation Act* should be strictly construed against the expropriating authority.

Mr. Agrios submitted that there is jurisprudence that supports the proposition that the inquiry officer may recommend that more land or less land, or alternative routes, etc. This is a legitimate area for the inquiry officer to express his opinions upon. References made to the *Waters* case that incorporates the Morden lectures. Reference was made to the *City of Toronto* case and other authorities in Mr. Agrios' Binder of Authorities that establish that it is within the appropriate jurisdiction of the inquiry officer to make recommendations regarding whether more or less property of a landowner ought to be taken.

Mr. Agrios submitted that lack of communication and failure to provide information by the City is shocking. The City delivered information that should have been provided long ago. He finds it credible that even as at present time, Dean Sabo still has no clear understanding of what access will be constructed from his residence to 41st Avenue SW.

Mr. Agrios submitted that the Noise Study was seriously flawed. There should be a recommendation that a proper Noise Study be done and that the landowners be provided with the appropriate input. It is clear that the provincial noise standard applies, not the municipal noise standard.

Mr. Agrios submitted that the proposals, such as they are, with respect to access to 41st Avenue are obviously not in accordance with the appropriate Provincial Highway Guidelines. Further, that they are obviously dangerous as presently proposed, even to a layman.

Mr. Agrios submitted that it is properly within the jurisdiction of the inquiry officer to comment on requirements for proper noise studies and proper consideration of access and safety.

Mr. Agrios concluded by submitting that the conduct of the City in this case is most regrettable which has caused this entire, possibly unnecessary, expropriation proceeding.

Submissions were also made on the question of costs.

Ms. Piecowye submitted that section 15(10) of the Act permitted the Inquiry Officer to reduce or deny costs.

She submitted that in accordance with section 1(5) of the Act, the Kinzels and Dean Sabo are not owners of land. They may be affected parties or impacted parties that were properly added to the proceeding, but they are not entitled to recovery of their costs.

Further, the late addition of these impacted entities as parties would justify denial of costs.

With respect to United, Ms. Piecowye submitted that they provided no information to assist the Inquiry Officer so there are special circumstances to deny costs. Their position is essentially disputing the City's right to exercise the expropriation option.

Further, because SBE and Tim Sabo resided outside the City of Edmonton boundaries, I do not have jurisdiction to award them costs.

Finally, Ms. Piecowye submitted that the evidence of Ms. Munroe and Mr. Dubala was not useful.

Mr. Agrios made submissions on costs. He noted that an owner is simply defined as someone registered at the Land Titles Office, not someone registered at the Land Titles Office "within the City of Edmonton". Dean Sabo is a person who has a registered interest at the Land Titles Office.

Mr. Agrios submitted that it is ironic that the City engaged Tim Sabo and SBE/ Kinzels in connection with this Project and the intended expropriation. Further, initial plans confirmed that lands of SBE and Tim Sabo may be required. Furthermore, the City following the process under the *Municipal Government Act* can expropriate land outside the City limits. Therefore the distinction being drawn by Ms. Piecowye as to whether a party's interest in land is inside our outside the city limits is irrelevant.

With respect to Mr. Dubala, his evidence was important to reply to the City's evidence that somehow the Sabos should have known information concerning this interchange by virtue of what was available in the public domain. With respect to Ms. Munroe, Mr. Agrios submitted that her evidence was useful in establishing the impact of this project on the residences, not the market value.

Mr. Williams on behalf of United submitted that United was entitled to costs. He submitted that United was entitled to question the expropriation. They are a directly affected party and has been fully engaged, by the City, in the entire expropriation process.

In reply, Ms. Piecowye noted that Mr. Dubala was not necessary because Mr. MacKenzie could have given the same evidence.

Mr. Agrios in surreply noted that Mr. Dubala was the person personally involved in the Stantec work and was best able to speak to the evolution of the lack of information concerning the proposed interchange at 41st Avenue and Hwy 2.

FINDINGS OF FACT

I find as a fact that an interchange is required at Hwy 2 and 41st Avenue SW. Indeed, none of the parties or their witnesses took issue with this transportation requirement. It is required to handle the growth and anticipated traffic volumes arising from the development of the Heritage Valley Plan Area including the Allard neighbourhood and the surrounding anticipated commercial and industrial development.

There has been some consideration of this interchange, off and on, since at least the early 2000s. However, as outlined by Mr. Dubala, there was no clarity that this interchange Project would proceed, or what the configuration of the interchange might be until approximately 2011. This would be amongst the professional planning and design community. With respect to the Objectors, there was no understanding that this interchange Project would be proceeding in the immediate future until approximately mid-2011. There was no understanding by the Objectors regarding the configuration of 41st Avenue and the configuration of the interchange until later in 2012. Indeed, the Objectors were not informed of any information regarding how they would access 41st Avenue until the actual Inquiry Officer hearing process. The proposed access to Dean Sabo's residence, to this day, apparently can only be found on a witnesses handwritten markings on Exhibit 3B made during the Inquiry Officer's hearing.

This Project is scheduled to be tendered in March of 2013 with construction to begin in the summer of 2013.

The Objectors primary concerns relate to:

- a) Concerns over the failure of the City to have any meaningful discussion with respect to negotiating how their land may be affected and that steps can be taken to ameliorate that impact;
- b) Concerns with respect to traffic safety/access; and
- c) Concerns regarding noise.

The City appears to have not had any meaningful discussions or negotiations with United, Dean Sabo, Tim Sabo, SBE, Jane Sabo or the Kinzels. There were meetings in June 2011, August 2012 and October 2012 between City representatives and the Sabo Objectors. In 2011, the City represented they would need lands from Tim Sabo, SBE, Jane Sabo, United, and Dean Sabo. In October 2012, the City advised it would not require land from Tim Sabo or SBE. However, even drawings presented at the hearings of the Inquiry Officer appeared to leave an open question as to how drainage on the south side of 41st Avenue would be accomplished without using land owned by SBE. In any case, there was an unsatisfactory effort by City representatives to communicate with the Sabo Family (by which I include the Kinzels and SBE) as to what the plans for the interchange and related access will look like, how this will impact the Sabo Family, and what steps the City will take to try and eliminate or ameliorate the impact on the Sabo Family.

It was made very clear to the City by the Sabo Family that they have a unique family community that has been ongoing on these lands, or adjacent lands, since the 1970s. The children grew up in this area, acquired property on adjacent land and built their residences in this area. The entire third generation of the family lives in close proximity to 41st Avenue SW and 111A Street. Not only will this interchange Project have a major impact on their personal residences and lifestyle, but it will have a major impact on their property. Their residences will be transformed from a relatively private, exclusive country estate, luxury residence to residences that are very close to a four lane arterial road. Tim Sabo and Dean Sabo's residence will also be close to the large interchange and off-ramp loops proposed. It is reasonable to anticipate 41st

Avenue will be transformed from a relatively quiet rural country road to a major thoroughfare with a designation as a truck route.

For reasons that were not explained by the City, there does not appear to have been any meaningful discussion with the Objectors, Tim Sabo or the Kinzels with respect to the actual design of the Project, the impact of the Project on their property and lives, and what might be able to be accomplished to try and eliminate or ameliorate such impacts. In summary, the communications in the second half of 2012 constitutes notification only in October 2012 that the City will not require lands owned by SBE (on which the Kinzel's residence is located) or lands from Tim Sabo. Representations by the City that appraisals would be done, offers would be made, and general meaningful discussions about ameliorating the effects on the Sabo Family never occurred. Before any meaningful discussions, with no offers whatsoever from the City and no appraisals from the City, the Sabo Family were provided with Notice of Intention to Expropriate their lands. The City did not call anyone from the Property Acquisitions branch with respect to communications with the Sabo Family. I find that the City failed to make reasonable efforts to deal with United or the Sabo Family to discuss their concerns, inform them about the actual Project and the impact on their lands/life and made no effort to negotiate to acquire their properties but simply proceeded with the expropriation process. I find that the Sabo Family was completely cooperative with the City and their agents regarding access to the property, drilling on the properties and responding to any requests made by the City.

I find that United advised the City that they are prepared to work out an agreement for acquisition of land owned by United required by the City for this Project. This is noted amongst other places in Exhibit 2, Tab 14 through 17. Despite United's cooperation, there was no offer every made by the City to acquire D. Sabo/United Lands.

The City was aware that one of the concerns of the Sabo Family was access to their personal residences and safety. The City transportation group knows that Safety Audits are required for projects such as this. Yet, the Safety Audit was not provided or discussed with the Objectors until specifically requested in the course of the Inquiry Officer's hearings. This then lead to the Objectors' request for the drawings which were relied on by those performing the Safety Audit. The Safety Audit was marked as Exhibit 25 and the drawings used to conduct the

Safety Audit were marked as Exhibit 26. No explanation was offered by the City as to why clearly relevant documents or reports such as Exhibits 25 and 26 were not provided to the Objectors well in advance of the hearing. The witnesses called on behalf of the City did not bring forward the Safety Audit and discuss it as part of the Project design.

The Objectors experts had a relatively short time to review documents that were provided only in the course of the Inquiry Officer's hearing. This included the Functional Plan, Exhibit 22, as well as the Safety Audit and related drawings, Exhibits 25 and 26. Nonetheless, in the limited time of available, Mr. Locher raised what I found to be valid concerns with respect to the safety of the Project. Mr. Locher made referenced to what appeared to be the required guidelines for Alberta Highway Geometric Designs. These were marked Exhibit 23 and 24. Again, I pause to query why the City's transportation witnesses would not bring forth the applicable guidelines and demonstrate that they had complied with the same knowing that the Objectors were concerned about the design of the access/safety of the Project. In any event, Mr. Locher testified that the design of the Project and, in particular, the proposed accesses to Dean Sabo's residence and, to a lesser degree, the Kinzel/Tim Sabo residences were, in his opinion "very dangerous". I accept as a fact that the proposed design of the Project envisions access for Dean Sabo's residence marked on a copy of Exhibit 3A and Exhibit 3C, which are not in compliance with Alberta Highway Geometric Design Guidelines nor good professional transportation engineering design judgment. I find that the proposed access to Dean Sabo's residence is not in compliance with these guidelines and creates a dangerous situation for traffic where vehicles accessing the Dean Sabo residence are in very close proximity to vehicles merging from Hwy 2 in a southbound direction who have exited on the proposed ramp taking them in a westerly direction on 41st Avenue. I also find as a fact that the design for the exit from the Kinzel/Tim Sabo residences also does not comply with Alberta Highway Geometric Design Guidelines or good transportation engineering judgment. Again, the access to these residences appears to be too close to the commencement of the lane for vehicles taking the ramp to head in a southerly direction on Hwy 2. These vehicles, travelling in an easterly direction, would be moving to the right, while vehicles exiting the Kinzel/Tim Sabo residences would be generally moving to the left to carry on an easterly direction on 41st Avenue. Compounding the dangerous

situation is the signage which would presumably be attracting the attention of drivers in the near proximity to the proposed Kinzel/Tim Sabo access point.

The inappropriateness of these designed accesses seems all the more clear given the fact that there is great frequency to the travelling between the Sabo residences given the almost daily contact between family members.

It is clear that the drawings used for the purpose of the 2012 Safety Audit (Exhibit 26) failed to have any designation for access to the Dean Sabo property or the Kinzel/Tim Sabo residences. From the Sabo Family's perspective, and any objective consideration of the situation, this is a critical failure of a transportation Safety Audit. The City offered no explanation as to why a Safety Audit conducted in 2012 would be based on drawings that have no provision in them with respect to access points for the Sabo Family residences. A proper Safety Audit with the access points designated should be performed.

Again, I find as a fact that it was made clear to the City that one of the concerns of the Sabo Family was noise emanating from the Project. Notwithstanding this, the City did not provide to the Objectors available information with respect to the Noise Study that had been performed until requested by the Objectors in the course of the hearing. The provision of the Functional Plan, which included the Noise Study at the urging of the Inquiry Officer. Again, this deprived the Objectors of the appropriate time to review this study and obtain the requisite professional assistance to assess the same. Nonetheless, Mr. Locher did the best he could, given the compressed timeframe he had to consider the study and the Functional Plan in which it was contained (Exhibit 8). I find, as noted by Mr. Locher, that the Noise Study done on behalf of the City is not valid in relation to the current Project design.

The Traffic Noise Assessment/Noise Attenuation Assessment is found in Appendix E of the Functional Plan, Exhibit 8. The Noise Study used traffic volumes in 2006 and projected for modeling purposes to 2016. Those volumes are now 6-7 years old. Construction will not be completed until 2015. The appropriate procedure would be to measure relatively current levels of traffic and project them forward, using the requisite modeling, for a period of at least 10 years (apparently the City typically projects 20 years). Further, the noise must be measured 1.2 meters above ground level and 2 meters inside the property line. The relevant

noise attenuation guidelines provided by the Objectors were marked as Exhibit 4. The Noise Study is not only dated, it appears to contemplate that Dean Sabo's residence would not be in existence. The noise receptors do not appear to be placed in the location required by the Guidelines. The City's evidence through Mr. Latte appeared to be suggesting that the City Guidelines, rather than the Provincial Guidelines were to be applied. For example, the suggestion was the noise should be measured in the backyard of the property. In any event, I find that the noise study is dated, appears to have been improperly performed, and used a highway design that is not consistent with the current design of the Project.

**OPINION ON THE MERITS
OF THE INTENDED EXPROPRIATION
AND REASONS THEREFOR**

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

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

In my opinion, the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the Expropriating Authority. The parties did not disagree that the Project is general required. This inquiry was more about the City's processes than the requirement for land for the Project. However, in my opinion it would be reasonable for the City to:

- a) Conduct a proper and current noise study and take the appropriate noise attenuation action as may be indicated by such a study. Keep the Sabo Family and United reasonably apprised of this activity and providing them with a copy of the report on a timely basis.
- b) Prepare an updated, and properly performed Safety Audit. The current drawings, with access to the Sabo residence noted thereon, should be provided to a competent organization to do a proper safety study. Again, the City should keep the Sabo Family and United informed of this activity and provide them with a copy of the study on a timely basis.

- c) Make a reasonable efforts to determine whether there can be a reasonable acquisition of the Sabo Family residences so as to enable them the opportunity to try and relocate their family community. This would allow them to explore opportunities for a family community life to be reestablished as it had been for many years prior to this Project. It seems clear that Tim Sabo's residence will likely be impacted in the future with the realignment of Hwy 2, Dean Sabo's residence will be drastically impacted by the Project and the Kinzel residence will be very significantly impacted by the Project. As importantly, the entire community of the Sabo Family and their ability to continue to safely travel on a daily basis between the residences is made very difficult by this Project. This was suggested by the Sabo Family many months ago to the City. It does not appear the City provided any response to this general suggestion made by the Sabo Family

COSTS

Pursuant to section 15(10) of the *Act*, the reasonable costs of the Objectors, the Kinzels, Tim Sabo and SBE incurred in connection with this Inquiry shall be paid by the Expropriating Authority. It is clear that the Objectors, other than United, raised a number of issues that were important for consideration by the Inquiry Officer. Further, I consider it a legitimate position to bring to the attention of the Inquiry Officer, and those that read the Inquiry Officer's report, that an Expropriating Authority has apparently made no reasonable effort to negotiate and agree to acquire land, before resorting to the power to expropriate lands. It appears that the City acknowledges that things could have been handled better.

Section 15(9)(b) provides the Inquiry Officer with the ability to add as a party to the inquiry, any owner whose land would be affected by the expropriation of the land concerned in the inquiry and any person who appears to have a material interest in the outcome of the expropriation. Clearly, this would include the Kinzels, Tim Sabo and SBE. The City's witnesses concurred that these parties were impacted by the Project.

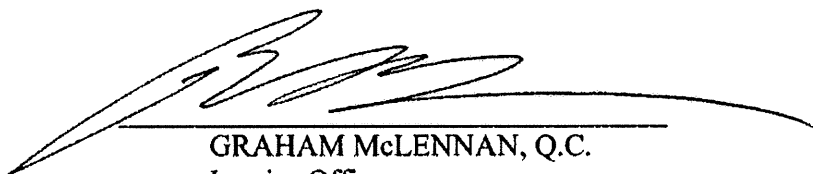
The City argued that costs should be denied to Tim Sabo, the Kinzells or SBE because:

- a) Their lands lay outside the City limit;
- b) Their lands are not being taken at the moment for the Project; and
- c) They are not an "owner" and therefore are not entitled to costs pursuant to section 15(10) of the *Act*.

In my opinion, there is no merit to these arguments. It would not be sensible to give the Inquiry Officer the right to add parties who are impacted by the intended expropriation, yet deprive them of their costs associated with bringing forth information relevant to the Inquiry Officer. Further, the City has the ability, under certain conditions, to acquire land outside the City limits and therefore that should not be a relevant consideration. Finally, "owner" is defined in section 1(k) of the *Act* to include "any other person who is in possession or occupation of the land". In addition, the word "land" is broadly defined in section 1(h) of the *Act*. Accordingly, I do not find any legal or jurisdictional prohibition in awarding costs to the Objectors as well as the parties added in the course of the hearing.

The City argued that costs should not be recoverable in relation to the testimony of Ms. Munroe or Mr. Dubala. Although I agree that the evidence of these witnesses were not too helpful, I do not conclude the calling of those witnesses, which was relatively short, would constitute special circumstances to justify reduction or denial of costs.

DATED at the City of Edmonton, in the Province of Alberta, this 1 day of February, 2013.



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