

Report of the inquiry officer Janet Alexander-Smith dated January 22, 2020

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

**AND IN THE MATTER OF** the intended expropriation by the City of Edmonton in and to a portion of the lands [containing 414.73 sq. m. (0.041473 hectares) (more or less)] of those lands legally described as:

CONDOMINIUM PLAN 9420510  
COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

-and-

CONDOMINIUM PLAN 9423752  
UNIT 10  
AND 5 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
Title No.: 972 214 313

-and-

CONDOMINIUM PLAN 9520727  
UNIT 16  
AND 4 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
Title No.: 972 214 312

-and-

CONDOMINIUM PLAN 9421041  
UNIT 4  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
Title No.: 972 214 314

(collectively referred to as the "Lands");

**AND IN THE MATTER OF** the Notice of Objection to the said intended expropriation filed by the Owners: Condominium Plan 9420510 (the "Condominium Corporation") by their solicitor, Roberto Noce, Q.C. of Miller Thomson LLP;

**AND IN THE MATTER OF** an Inquiry in respect thereof pursuant to the provisions of the *Expropriation Act* by Janet Alexander-Smith as Inquiry Officer appointed to conduct the said Inquiry by the Minister of Justice and Solicitor General for the Province of Alberta, as represented by Lorne Merryweather, Q.C.

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REPORT OF THE INQUIRY OFFICER  
JANET ALEXANDER-SMITH  
January 22, 2020

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**Appearances:**

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**I. INTRODUCTION**

- [1] An Inquiry Hearing under the *Expropriation Act* was held at offices of Emery Jamieson LLP in Edmonton, Alberta on December 17 and 19, 2019, pursuant to my appointment as Inquiry Officer in this matter on November 26, 2019 by the Minister of Justice and Solicitor General for the Province of Alberta, as represented by Lorne Merryweather, Q.C.
- [2] The Inquiry involves the proposed taking of those portions of the Lands described above; consisting of four titled parcels; three being bareland condominium units owned by the Objector (being units 4, 10 and 16) together with a portion of the common property which the Objector holds along with the other individual unit holders in the condominium complex known as Dufferin Village, municipally located at 9439–156 Street NW, 9449–156 Street NW and 15523–95 Avenue, Edmonton, AB.
- [3] The purpose of the proposed taking by the City of Edmonton (the “City”) is for the construction, operation and maintenance of the Valley Line West Light Rail Transit (LRT) project (the “WLRT” or “WLRT project”), including necessary road and sidewalk widening and/or improvements, utility locations and/or relocations, facilities, landscaping and other street improvements incidental to the WLRT project.
- [4] The City seeks to expropriate three contiguous strips of land along 156 Street as more particularly described in the Notice of Intention to Expropriate (“NOITE”) filed by the City of Edmonton on September 27, 2019 and as graphically depicted in Attachment 1 of the NOITE.
- [5] The Objector served the City with a Notice of Objection to the proposed taking pursuant to Section 10 of the *Expropriation Act* on November 6, 2019, which set out the bases of its objection at paragraph 2 therein, as follows:
  - (a) *Based on the information provided by the City with respect to this intended expropriation, the Corporation states that the intended expropriation is too broad and goes beyond what is or should be necessary to achieve the City’s stated objective with respect to the work and purpose for which the interest in a portion of the Lands and Common Property is allegedly required; and*
  - (b) *Further, or in the alternative, the Corporation disputes that the intended expropriation is fair, sound and reasonably necessary for the achievement of the objectives of the City.*
- [6] At the commencement of the hearing, the parties stipulated that the hearing was properly constituted in accordance with the provisions of the *Expropriation Act*.
- [7] The Inquiry Hearing was commenced at 9:00 a.m. on Tuesday, December 17, 2019 and concluded on Thursday, December 19, 2019.

[8] No preliminary matters were raised at the commencement of the Inquiry Hearing.

**II. SUMMARY OF THE EVIDENCE**

[9] Written briefs and documents were provided to the Inquiry Officer and exchanged by the parties both before and during the course of the Inquiry Hearing. In addition, the City called two professional engineers as witnesses, one of whom I qualified as an expert in transportation engineering, without objection. The Objector called one lay witness. The parties' respective documents and witnesses' evidence is summarized below.

**A. EVIDENCE OF THE EXPROPRIATING AUTHORITY**

**1. Documents of the Expropriating Authority**

[10] The documents produced by the City during the course of the Inquiry Hearing were entered as Exhibit 1 and 2 by consent, as described at Appendix A to the Report.

**2. Testimony of Ms. Eva Cheung, M.Eng., P.Eng.**

[11] Ms. Cheung was affirmed to give evidence at the Inquiry Hearing.

**a. Direct Examination**

[12] Ms. Cheung advised that she has been employed by the City for the past 15 years as a professional engineer. She obtained her BSc. in Civil Engineering in 2004 and a MA degree in Construction Engineering in 2009. She is currently assigned to the WLRT project as its Project Manager and in that role, she manages both internal City staff as well as the Owner's Engineering Consultant, ConnectED Transit Partnership ("CTP"), representing the City's consultant team on the WLRT project. Ms. Cheung advised that she has been involved with the WLRT project since 2008 and is currently engaged in its procurement phase.

[13] Ms. Cheung provided the Inquiry Officer with an overview of the City's strategic plans and policies, including its 2009 strategic plan for the development of its transportation network for the next decade (the "Transportation Master Plan" or "TMP ") and the City's Municipal Development Plan ("MDP"). Ms. Cheung explained that both the TMP and the MDP reflect a sustainable urban integration design philosophy which recognize that land use and transportation go hand-in-hand. Ms. Cheung described these strategic plans as an expression of sustainable, integrated development envisioned to 2040; one which maximizes access to public transit while minimizing reliance on single occupancy vehicles.



- [14] Ms. Cheung also discussed at some length the application of the City's transit-oriented development ("TOD") policies. She testified that these policies outline why transit-oriented considerations have been adopted to support transit and land-use integration. Such considerations include steps to optimize the use of public transportation, increase mobility choices for Edmontonians and create diverse neighbourhoods; all of which is anticipated to result in a greater return on the City's infrastructure investments.
- [15] She explained that the City's sustainable urban integration design philosophy was applied to the entire Valley Line LRT design (composed of the Valley Line Southeast and the WLRT); responding to LRT infrastructure requirements while remaining sensitive to adjacent community needs. Ms. Cheung referred to the focus of WLRT design as a "pedestrian-first philosophy", supporting access to the LRT corridor in a safe and secure manner.
- [16] Ms. Cheung advised that the concept plan for the WLRT project, which included the alignment and the location of the Glenwood/Sherwood LRT stop at the intersection of 156 Street and 95 Avenue (the "Intersection"), was approved by City Council in 2011. Thereafter, preliminary design work was commenced and continued through to 2013. During this period, construction of the Valley Line Southeast was commenced. Late in 2016, an infusion of funding allowed the City to pursue an update of the preliminary design of the WLRT, which was completed in early 2019. These additional design steps included both public consultations and numerous public engagement events, in recognition that a project of this magnitude touches many people.
- [17] Ms. Cheung described a number of general design considerations that were applied to the entirety of the WLRT project, which included the adoption of best practices and design standards and guidelines within the industry, as well as those formally adopted by the City; such as in its Complete Streets Design and Construction Standards ("Complete Streets"), the particulars of which were then incorporated into the design and construction of infrastructure within the City.
- [18] Ms. Cheung more particularly described the WLRT undertaking as a 14 kilometre urban style, low-floor LRT project; meaning that the LRT trackway is designed to run mostly at grade surface, adjacent to the roadway, thereby integrating it into the surrounding area.
- [19] Ms. Cheung identified a number of considerations taken into account when determining land requirements for a project the scope of the WLRT once the LRT corridor had been selected and approved by City Council, which include:
- Engineering design to ensure a safe, well-designed facility is built to meet the function(s) intended for the infrastructure.
  - Identification of potential impacts upon the communities through which the LRT corridor will transverse; on a case-by-case basis.
  - Efforts to eliminate or minimize land requirements where possible.

- Site reconfigurations, particularly where the design impacts the front area of a single-family home and its use of the site.
- [20] She explained that these considerations and input from stakeholders generally result in a refinement of the preliminary design process, leading to the specific identification of land requirements and contact with impacted property owners. This approach was employed once portions of the Objector's lands were identified for expropriation.
- [21] In terms of the WLRT's current status, Ms. Cheung confirmed that the procurement phase of the WLRT is intended to be launched in January 2020 with a request for qualifications (RFQ) and, in time, the selection of a contractor to complete the final design and construction of the WLRT project. Accordingly, the City is looking to complete acquiring all the lands necessary to allow the contractor to begin the construction work once the contract is signed. Currently, Ms. Cheung estimated that the City had obtained more than 60% of the lands required for the WLRT project. She advised that it now requires the Lands set out in the NOITE, in furtherance of the project.
- [22] Ms. Cheung testified at length about the proposed WLRT construction in the vicinity of the Lands, which included the design of the Glenwood/Sherwood LRT stop at the Intersection. She explained that a side-loading split platform style LRT stop was designed at this constrained location in an effort to minimize its impact and its footprint upon the adjacent communities. In doing so, the northbound platform is to be located north of 95 Avenue and the southbound platform is to be located south of 95 Avenue, somewhat south of the Lands; accounting for future growth and future redevelopment potential in the area. Pedestrian crossings points are to be established to facilitate access and mobility for LRT users and other pedestrians in the vicinity.
- [23] Ms. Cheung advised that because the northbound and southbound track alignment is along the center of 156 Street, it is necessary to reduce the existing four lanes of traffic to two lanes of traffic; allowing one lane in each direction on either side of the trackway. She explained that the reduction of traffic lanes reflected a conscious decision to allocate space away from single occupancy vehicles in favour of multi-use LRT ridership within a walkable, cycle friendly, age friendly and safe city community. She testified that the reduction of traffic lanes was also a reflection of efforts to reduce the WLRT's impact on adjacent properties on both sides of 156 Street.
- [24] Ms. Cheung advised that the majority of the Lands of the proposed taking are located in the SE quadrant of 95 Avenue and 156 Street, running north-south from 95 Avenue to the third row of housing in the condominium complex. The Lands are currently used as a side-yard green space of grass and trees.

[25] Ms. Cheung informed the Inquiry Officer that arising from input from impacted property owners of private lands in the area, a design change was implemented to reduce the traffic lane widths along 156 Street and to provide increased consideration for pedestrians, walkability, as well as to enhance the safety, security and “feel” of this specific corridor. She further advised that private property requirements in relation to this proposed taking was thereby reduced by approximately 1.35 m, while still meeting the Complete Streets design and construction standards.

**b. Cross Examination**

[26] Ms. Cheung testified that once the Glenwood/Sherwood stop location was approved by City Council as part of the concept plan in 2011, it was not thereafter revisited.

[27] She confirmed that an all-directional intersection was being maintained at 156 Street and 95 Avenue and explained that the 95 Avenue land requirement was in response to the need for the two LRT platforms while maintaining the left turn at the Intersection. She confirmed that left turns whether travelling north or south bound would be eliminated along 156 Street at 96 and at 97 Avenues; and agreed it thereby reduced the land requirements on the east side of those intersections. However, Ms. Cheung also testified that even if the left turn at 95 Avenue had also been eliminated, additional land would still be required for the construction of the two platforms; one northbound and one southbound on 156 Street and 95 Avenue.

[28] Ms. Cheung confirmed that design activities included looking at surrounding land in an effort to, insofar as possible, balance land requirements and design impacts upon other properties and its residents.

[29] When asked whether acquiring or taking additional lands in the SW quadrant of 156 Street was considered in order to minimize the impact upon the residents of the condominium complex, Ms. Cheung advised that land requirements for the WLRT project included considerations of both track and lane alignments as well as roadway configurations needed at the Intersection. She stated that from a track design perspective, as straight a track as possible is necessary because trains are not able to twist and turn as quickly. From a roadway design perspective, traffic lanes should line up through an intersection for safety reasons. Thus, Ms. Cheung explained that they were limited by these factors in determining how much they could “shift west”.

[30] In selecting the Objector’s Lands for expropriation, Ms. Cheung described the design constraints upon them arising from the land use at the other quadrants of the Intersection as well as design rules relating to the enhancement of safe intersections. In terms of design constraints, she noted, for example, that there was not much room available at the Petro-Canada station (NW quadrant). She also described the different design and allotment considerations applied for single-family homes fronting onto 156 Street south of the Lands,



in contrast to the "flanking" orientation of the side windows at the Dufferin Village complex; meaning its doors faced north and south, rather than facing directly onto 156 Street.

- [31] To accommodate the different orientations of the properties adjacent to the WLRT track, a differential of .6 of a metre was initially applied to narrow the sidewalk design for single-family homes fronting on 156 Street, to allow for a 4.4 m wide sidewalk; in this case composed of a 2.6 m boulevard and a 1.8 m walkway.
- [32] Ms. Cheung agreed that applying the .6 m differential to the proposed sidewalk adjacent to the condominium complex would result in a lesser taking of the Lands and a greater greenspace for its residents. She further agreed that a narrower sidewalk at this location would not impact upon the roadway design or eliminate the proposed left turning lane on 156 Street at 95 Avenue; nor would it impact upon the LRT platform on 156 Street south of 95 Avenue or alter the approach to the Intersection. Ms. Cheung confirmed that reducing the proposed taking would also satisfy the requirements set out in Section 5.7.1 of the MDP, which provides: *Ensure that streets, sidewalks and boulevards are designed to perform their diverse roles and to enable safe access for all users.*
- [33] However, Ms. Cheung testified that such a design change would not meet the 3 m design standard for a pedestrian through zone in a high-activity area as mandated in the City's Complete Streets standards. Ms. Cheung testified that the anticipated growth in pedestrian traffic by 2047 generated by the introduction of an LRT stop would further support the construction of the recommended minimum sidewalk width of 3 m.
- [34] Ms. Cheung confirmed that the proposed taking from the three buildings of the condominium complex was not uniform. The intended expropriation of the land from the most southerly of the three buildings is only 1.53 m, thus reducing the distance between the newly constructed fence and the building by some 0.3 m. This compares to the proposed takings of approximately 5.3 m on the west side of the two most northerly buildings, thus reducing the existing green space of 6.6 m to 1.3 m. She agreed that the new fence to be built in response to the proposed taking would be relocated onto the Objector's property.

c. Re-Direct Examination

- [35] In re-direct, Ms. Cheung stated that since the Notice of Expropriation was filed, the .6 metre differential between the proposed taking of the Lands and the lands to the south along 156 Street was eliminated once the City was able to acquire sufficient land to also provide for a 5 m sidewalk and furniture allowance south of the Lands. That design was also extended to the pedestrian crossing location south of the Lands.
- [36] She also confirmed that, as of the date of the Inquiry Hearing, no alternate engineering design for this location was presented to the City by the Objector.

3. **Testimony of Ms. Jacqueline Miller, P.Eng., C.Eng., M.I.C.E.**

[37] Ms. Miller was sworn to give evidence at the Inquiry Hearing.

a. **Objector's Interim Application for an Adjournment of the Inquiry Hearing**

[38] Just prior to the conclusion of Ms. Cheung's evidence, an objection to the introduction of the City's Exhibit 2, Tab 35 was raised by counsel for the Objector on the basis that its belated introduction unfairly prejudiced his and his client's preparation for the Inquiry Hearing. On that basis, the Objector sought an adjournment of the Inquiry Hearing.

[39] In connection with the adjournment application, the Inquiry Officer allowed the City to introduce evidence of the circumstances and timing in which Exhibit 2, Tab 35 (part of the City's rebuttal materials) was created.

(i) **Direct Evidence on the Adjournment Application**

[40] Ms. Miller testified in respect of the design changes related to the lands south of the Lands in issue in this Inquiry, as reflected in the City's Exhibit 1, Tab 18(n) and that which is depicted in the City's Exhibit 2, Tab 35; the latter drawing of which was created on Monday morning, December 16, 2019 in response to the Objector's disclosure documents. She explained that the "date issued" in the signature block of Exhibit 2, Tab 35 as "December 3, 2019" was an oversight in the pressures to release the revised design changes prior to the commencement of the Inquiry Hearing on December 17, 2019.

[41] Ms. Miller explained that one of the points raised by the Objector in its disclosure documents was the .6 m differential between the 5 m sidewalk proposed outside of Dufferin Village as compared to the narrower sidewalk (1.8 m) and boulevard (2.6 m) for a total of 4.4 m contemplated for the lands immediately south of Dufferin Village.

[42] Ms. Miller said they approached their land person to find out if they had acquired enough land to widen the sidewalk south of the Lands up to the crosswalks at either end of the platform. She determined that there was sufficient land to the south to achieve uniformity in the size of the sidewalk at 5 m, both at the Lands and south of the Lands. She said the ability to expand the width of the sidewalk south of the Lands reflected the ongoing nature of land acquisition throughout this process. At Ms. Miller's direction, the depicted plan as set out in Exhibit 1 Tab 18(n) was updated on December 16, 2019 to demonstrate that design change as illustrated in Exhibit 2, Tab 35.

(ii) **Cross Examination on the Adjournment Application**

[43] Ms. Miller again confirmed that updated drawing of the width of the sidewalk and boulevard south of the Lands was prepared by an ISL drafter at her direction in response to the disclosure documents and submissions received from counsel for the Objector. The updated drawing was delivered to her about 11:00 am on Monday, December 16, 2019. She explained that in the rush to produce the rebuttal submissions on time, the drawing was not re-printed on connectED letterhead; an oversight.

[44] Ms. Miller confirmed that when the drawings and measurements depicted in Exhibit 1, Tab 18 (n) were produced, the information set out therein was accurate.

[45] She stated that the 5 m sidewalk now stretches from the corner of 95 Avenue and 156 Street, on the east side of 156 Street, and continues south up to the crosswalk at the south end of the platform. However, the sidewalk again narrows south of the crosswalk.

(iii) **Submissions on the Adjournment Application**

[46] Mr. Buck pointed out the increase in the width of the sidewalk immediately south of the Lands as illustrated in Exhibit 2, Tab 35 has no impact upon the proposed taking as described in the NOITE; and is therefore not particularly relevant in any event.

[47] Mr. Noce submitted the adjournment should be granted. He pointed out that the Notice of Objection set out that the Objector's issue has always been that the amount of land contemplated in the proposed taking is beyond anything necessary to achieve the City's stated objectives. He submitted that he wished an opportunity to rethink some of his arguments because "... they've taken a tool out of my toolbox."

(iv) **Ruling on the Adjournment Application**

[48] Having regard to all of the circumstances, including the time-sensitivities of the statutory Inquiry process under the *Expropriation Act*, the land acquisition process attendant on a project of this magnitude and the absence of any substantive impact arising from the change in the size of the sidewalk on the lands south of the condominium complex upon the issues before this Inquiry Officer, that being whether the proposed taking of the Lands is fair, sound and reasonably necessary; the Inquiry Officer denied the Objector's application for an adjournment and the hearing proceeded accordingly.

b. **Qualification of Ms. Miller**

[49] Ms. Miller informed the Inquiry Officer that she is the Major Transportation Lead at ISL Engineering; in the capacity as a subconsultant, acting together with other consultants as the

"Owner's Engineer" for the WLRT; and collectively known as "ConnectED Transit Partnership" or "CTP".

- [50] Ms. Miller's Curriculum Vitae is set out at Exhibit 1, Tab 26. She is both a P.Eng. and C.Eng. (UK) with more than 25 years of industry experience in urban roadways, LRT design and in other facets of transportation engineering. On the basis of her education, and extensive training and experience, particularly in urban roadways engineering, the Inquiry Officer qualified Ms. Miller as an expert in transportation engineering, without objection.

c. Direct Examination

- [51] In connection with the WLRT project, Ms. Miller has acted as the Roadways Design Lead for CTP and commencing in the summer 2019, she has acted as the Civil Design Lead with responsibilities expanded to include the track, drainage and utilities in addition to the roadways. She confirmed that she has the final say on the preliminary design of the WLRT project.
- [52] Ms. Miller testified that alternatives to the proposed taking of the Lands were investigated and considered as a standard component of the preliminary design process. She stated that a preliminary design is somewhat equivalent to a "30 % design" which represents what the Owner's Engineer believes "works" for all of the things they will be asking of the design-build contractor, once selected, to develop and construct the final WLRT design.
- [53] Ms. Miller advised the Inquiry Officer, both in her expert report and in her testimony during the Inquiry Hearing, of the reasons it is necessary to expropriate the Lands described in the NOITE.
- [54] In its simplest terms, Ms. Miller advised that the combined width of tracks, traffic lanes, sidewalks and platforms at the Glenwood/Sherwood LRT Stop are wider than the existing road right of way; additional land is therefore required to build the station. Because the track runs along the center of the roadway, additional land is needed from both sides of 156 Street.
- [55] She testified about design issues arising from the use of split-platforms north and south of the intersection of 156 Street and 95 Avenue (accommodating the north and southbound tracks) and the need to achieve traffic lane continuity through that intersection without deflection for safety reasons; meaning that the northbound lane south of the intersection should line up with the northbound lane north of the intersection.
- [56] Ms. Miller advised that because the northbound lane has been pushed eastward, the southbound lane has to be pushed eastward as well to better respond to vulnerable road users, including pedestrians. Ms. Miller testified that this design decision accords with roadway intersection design endorsed by the Transport Association of Canada ("TAC") Design Guide.



- [57] Ms. Miller explained that pedestrian activity is anticipated to be higher at LRT Stop locations than on typical neighbourhood sidewalks, as people walk to and disembark from an LRT train. She considered that ridership forecasts are anticipated to rise to 900 a day over by 2047 at the Glenwood/Sherwood Stop. In responding to pedestrian safety issues, Ms. Miller referenced the Zones of the Roadside depicted in the TAC Design Guide for Pedestrian Integrated Design, which are described as, "... the area between the curb or pavement edge, and the adjacent property line. The roadside generally includes three functional zones: frontage zone, pedestrian through zone, and furnishing zone." Ms. Miller pointed out that while a 5 m wide sidewalk is not insignificant, it is important to keep in mind that it is made up of these different zones; each serving different functions.
- [58] In making the design choice of a 5 m wide sidewalk along the southeast quadrant of 156 Street, Ms. Miller testified that she also considered the requirement for an unobstructed minimum of a 3.0 m wide pedestrian through zone (clear of obstacles), mandated in the Complete Streets standards adopted by City Council in 2013. This width of the pedestrian through zone is to accommodate increased pedestrian traffic volumes at the LRT station. Ms. Miller explained that as it is anticipated that people will exit the LRT station in bunches, a wider sidewalk is required to support increased demand for access in a busier area. Ms. Miller opined that in her experience, a high pedestrian-activity area is one in which there is a reason to anticipate a lot of pedestrians to be there; such as at an LRT stop.
- [59] Ms. Miller stated that the 5 m wide sidewalk included a furnishing zone which, in addition to enhancing the safety of pedestrians through the provision of a buffer zone, also provides space for infrastructure (lighting, poles, trees, furniture, snow storage, bicycle racks for LRT patrons). She explained that although the lower limit of an allowance for a furnishing zone is 1.7 m for an arterial roadway, by designing the trees to be placed in grates, requiring less room, they were able to reduce the furnishing zone to 1.4 m in an effort to keep the property line as far west of the Lands as possible.
- [60] Ms. Miller advised the Inquiry Officer that a standard component of the preliminary design process in selecting land to meet the WRLT design requirements, was to consider available alternatives in an effort to reduce the land take required.
- [61] Amongst the alternatives considered included an assessment of whether some deflection through the Intersection was feasible, thus allowing the roadway to be relocated slightly west. However, Ms. Miller concluded that because of the low-floor design as part of the roadway without barriers (such as those incorporated into a high-floor system), it was necessary to ensure drivers could readily discern the roadway from the trackway. Accordingly, for safety reasons, this option was rejected.
- [62] A narrowing of the roadway was also considered. Ms. Miller stated that what began as a 4.5 m wide through lane was reduced to a 3.3 m roadway, the minimum recommended for a transit route (plus gutter), for a total width of 3.55 m. This option also accorded with the

Complete Streets philosophy of making sidewalks wider and taking space away from roadways; an expression of a “pedestrian first” strategy. Accordingly, Ms. Miller advised that as the City had already incorporated a minimum roadway width for a transit route, further compromise in this area was not, in her opinion, appropriate.

- [63] Ms. Miller testified that a third option, narrowing the sidewalk right next to the curb, was considered as a means to reduce the taking of the Lands. She testified that the City was unwilling to compromise on the 3 m pedestrian through zone because of the anticipated high pedestrian activity around the platform. She explained that the size of the pedestrian through zone was developed from the amount of space a group of people or someone on a bike is anticipated to need to pass by others without infringing upon someone’s personal space. That said, Ms. Miller acknowledged that different sites require different considerations in terms of sidewalk widths.

- [64] She also advised the Inquiry Officer of the application of the “pedestrian first” design strategy as promoted in TAC Geometric Design Guide for Canadian Roads, which articulates the design shift as follows at section 6.1:

*Pedestrians are the most vulnerable roadway users and require distinct design considerations relative to vehicles. Walking and wheeling is the most universal form of travel; when motorists, cyclists and users of public transit leave the vehicle, they are pedestrians. Well designed and maintained pedestrian facilities make access to transportation more equitable, by allowing pedestrians to travel safely and comfortably.*

- [65] In discussing design trade-offs, Ms. Miller advised that if area width is insufficient to accommodate all the functional zones which would otherwise apply to a particular roadway, it is the pedestrian through zone width which should be preserved; and the width in the frontage zone and in the furnishing zone should be reduced in that order. In summary, Ms. Miller explained that the pedestrian focus in LRT design and ancillary roadway design is now paramount.

- [66] Ms. Miller opined that while 156 Street does not currently constitute a “main street” in the traditional sense of being a destination in and of itself, in her view 156 Street does fit within the context of the City’s “main street overlay” zoning bylaw, with a stated purpose of encouraging and strengthening a pedestrian-oriented character of Edmonton’s main street commercial areas that are located in proximity to residential and transit-oriented areas, particularly those located within 200 m of an LTR station.

**d. Cross Examination**

- [67] In response to questions from counsel for the Objector, Ms. Miller responded to possible, but not recommended, design alternatives posed by counsel; such as eliminating the northbound turn lane at 95 Avenue and 156 Street. Ms. Miller opined that even doing so would not provide additional land to move the sidewalk along the southeast quadrant further west. She

explained that the design principles to address deflection issues would remain in issue. This is so because there is a platform north of the stop resulting in the through lane being pushed to the east. There is a need to accommodate the through lane south, to ensure that it lines up with the northbound lane. Accordingly, Ms. Miller concluded that eliminating the northbound left turn lane would result in a very wide median, without reduction in the taking of the Lands. She conceded that the concept was possible, but not recommended.

- [68] Ms. Miller advised that she and the designers did consider the impact of the taking of the Lands upon the owners, being the side yard area; but opined that the design process is not merely one of selecting optimums, but rather it is a series of evaluative trade-offs considering the location and availability of land needed in conjunction with the long-term objectives of the City. Those objectives include the “pedestrians first” design philosophy, the incorporation of plazas, and, meeting the sidewalk requirements in and around LRT stops.
- [69] She agreed, however, that if it was necessary to preserve the frontage zone as well as the furnishing zone, the only remaining zone in which to compromise would necessarily be the sidewalk (pedestrian through zone). Ms. Miller also agreed that in assessing a possible compromise of a design characteristic at an LRT stop, the fact that the LRT stop in issue was expected to be the least used stop on the Valley Line would be considered.
- [70] Ms. Miller conceded that while the TAC Design Guidelines reflect industry standards; those standards, having not been adopted by City Council, were not required to be followed; unlike the Complete Streets Design and Construction Standards approved by City Council. She added, however, that TAC Guidelines as well as other guidelines would be considered in matters in which Complete Streets is silent.
- [71] Having regard to the competing interests and efforts to balance those interests, Ms. Miller’s team concluded that effectively aligning the new fence line along the two most northerly properties of the condominium complex at or near the existing fence line of the most southerly property was a reasonable alternative in the circumstances.
- [72] Ms. Miller opined that even if the Glenwood/Sherwood Stop was anticipated to be the least-used stop in the entire Valley Line LRT project, that fact alone was insufficient to designate the area as one of “low activity”. While she conceded it was not likely to be “as high” an activity area as the West Edmonton Mall stop, for example; that fact alone did not alter her opinion.
- [73] In reply to the Objector’s technical objections to a 5 m wide sidewalk (inclusive of all zones) along the southeast quadrant of 156 Street, Ms. Miller noted that the City had introduced evidence of existing transit ridership and forecasted LRT ridership at a 15% increase by 2027 and a 67% increase by 2047. In Ms. Miller’s opinion, 600 people using this transit stop is not insignificant and reflects a “high activity area”, excluding casual users of the sidewalk, walking north and/or southbound.



- [74] While she conceded that the 156 Street and 95 Avenue area had not been identified as a “main street” by the City, in her opinion it had incorporated the area as a “main street overlay” under Zoning Bylaw 12800 in light of its proximity to location to the Glenwood/Sherwood LRT station.
- [75] In further reply to the Objector’s position on the merits of the proposed 5 m sidewalk, Ms. Miller acknowledged that the sidewalks within the quadrants of the Intersection were not consistent. In her opinion, the varying size of sidewalks is not remarkable, having regard to the various land usages and orientations of the various properties throughout the quadrants.
- [76] By way of example, Ms. Miller noted that there was a gas station at the northwest quadrant. She stated that business considerations impact upon land usage and while a 5 m plaza with landscaping might be aesthetically pleasing, any detraction from the gas station’s business would likely result in the City having to acquire the entire property. Similarly, she noted that land on the southwest quadrant has mixed ownership; some of which is held by the City. The City allowed for a 5 m plaza in that area; using its own land for that purpose. However, for the single-family dwellings in that quadrant fronting on 156 Street, the City reduced the sidewalk width to 4.4 m as a compromise to avoid a sidewalk extending to a front porch.
- [77] Ms. Miller rejected any suggestion that the impact of the proposed taking of portions of the Objector’s side yards was not unlike the impact of a 5 m sidewalk adjacent to the single family homes in the southwest quadrant fronting on 156 Street; distinguishing between a side yard and a front porch.
- [78] Ms. Miller opined that any inconsistencies in the width of sidewalks reflected a response to particular site requirements, which were evaluated on a case-by-case basis.
- [79] Ms. Miller conceded that taking less of the Lands would not slow down the RFQ process or impact upon the desired 2021 start date of construction. She further conceded that if the area adjacent to the Glenwood/Sherwood Stop did not constitute a “high activity area”, she would be in a position to compromise on the proposed taking of the Lands.

**e. Re-Direct Examination**

- [80] Ms. Miller clarified that the Glenwood/Sherwood Station was not currently a TOD area because the station has not yet been built. However, she stated that it will be one in the future. She stated that a better description of the site’s current status is that of a proposed neighbourhood station.
- [81] In terms of considerations of the impact of the proposed taking on the quality of life of the residents at the condominium complex, Ms. Miller confirmed that the size of the side yard would decrease in the two most northerly properties, and some existing trees would be lost. However, she stated that trees would be planted along 156 Street in an effort to enhance the



neighbourhood as well as to provide an element of screening for residents; each of which, in her opinion, would be considerations relevant to one's quality of life.

**B. EVIDENCE OF THE OBJECTOR**

**1. Documents of the Objector**

[82] The documents produced by the Objector during the course of the Inquiry Hearing were entered as Exhibit 3 by consent and are described at Appendix B to this Report.

**2. Testimony of Ms. Meg McCready**

**a. Preliminary Matter: Objection to the Testimony of the Objector's Witness**

[83] At the commencement of the second day of the Inquiry Hearing, that being Thursday, December 19, 2019, the City objected to the Objector's witness for the following reasons:

- Counsel for the Objector failed to identify its proposed witness and will-say statement until after the conclusion of the City's evidence (on December 17, 2019) which, it asserts, constitutes a violation of procedural fairness and therefore such evidence should not be admitted.
- In the alternative, to the extent of this witness's anticipated evidence relates, in whole or in part, to the impact of the loss of the green space upon the Condominium Corporation as a result of the intended expropriation; such evidence is solely matter to be adjudicated by the Land Compensation Board and is irrelevant to the matters before the Inquiry Officer.
- The witness had not been recused during the City's evidence, which it submitted was also procedurally unfair.

[84] Counsel for the Objector submitted that I should allow this witness to testify because:

- Procedural rulings at an Inquiry Hearing are within the jurisdiction of the Inquiry Officer.
- The Report of the Inquiry Officer is non-binding upon City Council in any event.
- There is value in hearing the evidence of the Objector's witness, regardless of what weight I might attach to that evidence.
- The proposed witness is a party to the proceedings and was entitled to be present throughout the Inquiry Hearing.

b. Ruling

[85] Having considered the submissions of counsel, the absence of prejudice to the City, and recognizing that an Inquiry Hearing is a means for the parties to be heard on a matter of importance; the Inquiry Officer concluded that procedural fairness favoured the admission of the witness's evidence, regardless of what weight, if any, may be allocated to that evidence, having regard to the Inquiry Officer's statutory mandate as set out in the Act.

c. Direct Examination

[86] Ms. McCready was sworn to give evidence in her capacity as a representative of the Board of the Condominium Corporation (the "Board") at the Inquiry Hearing.

[87] Ms. McCready advised that she has owned a condominium in the Dufferin Village complex (the "Property") since 2008 and has been a member of the Board since June 2009.

[88] Ms. McCready stated that the Board considers the City's intended expropriation of the Lands a significant loss of valuable green space on the west side of the Property, reflected in its decision to plant 12 new trees on the property over the last four or five years; six of which are located along the western property line along 156 Street. She advised the Inquiry Officer that these trees were intended to serve multiple functions: as a screening and noise reduction device vis-à-vis traffic along 156 Street, to provide summer shade, as a means to enhance the look and value of the Property, and, a response to security concerns.

[89] She advised of an incident in the past in which a vehicle plowed through the fence at the Intersection and hit first a mature tree and then the northern most building on the west side of the Property. The Board felt that this tree served as an effective safety barrier and minimized damage to the building as a result; prompting the planting of three conifers at the most northwesterly corner of the Property.

[90] Ms. McCready also advised that the Property's green space is largely used for recreational purposes, by at least some of the residents. Nonetheless, she described the loss of the "green barrier" to 156 Street traffic as an emotional issue for many residents. She stated that reducing the width of the sidewalk and, thereby, the intended taking, would serve to generate a "green oasis" and a sense of separation between the Property and the roadway in the circumstances.

[91] She described the potential impact of the taking upon the existing private driveways of some of the end unit owners as a result of the relocation of the new fence line so much closer to the buildings.

[92] Ms. McCready also described a general concern of unintended access by vehicle traffic off of 156 Street onto the private entrance roadway to the Property. She noted that currently there is no barrier to a northbound vehicle's ability to make a right-hand turn and a southbound vehicle's ability to make a left-hand turn into the Property. However, she confirmed that the Objector had already initiated discussions with the City about the potential closure of that entrance road to the Property.

[93] Ms. McCready expressed concerns about the increased traffic as a result of roadworks at the Intersection and its potential impact upon pedestrian safety.

[94] Ms. McCready testified that in her experience, she encountered few users of the sidewalk in the vicinity of the Property over the years. In her view, there is no need for a wide sidewalk along that stretch adjacent to the Property and felt that the proposed taking was therefore excessive.

**d. Cross Examination**

[95] In response to questions from counsel for the City, Ms. McCready confirmed that from the perspective of the Board, a safety buffer or separation and a green screen of trees between the Property and vehicle traffic along 156 Street was of importance.

[96] Ms. McCready confirmed that the Board did not obtain an alternative design for this area from an engineer.

**III. SUMMARY OF ARGUMENT**

**A. CITY OF EDMONTON**

**1. Argument**

[97] Mr. Buck submitted that the City of Edmonton has the authority, under the *Municipal Government Act*, to resort of expropriation to acquire land for municipal purposes which, in this case, is for the municipal purpose described at paragraph 3 of the NOITE Exhibit 1, Tab 18(a), as follows:

*Without limitation, for the construction, operation and maintenance of the Valley Line West Light Rail Transit (LRT) project, which may include road widening, utility relocations, facilities required to support the LRT and other street improvements incidental to the LRT project.*

[98] Mr. Buck asserted that all registrations, service, notices, filings, and appointments with respect to the intended expropriation, the Notice of Objection and this Inquiry have been performed in accordance with the *Expropriation Act*.

- [99] In accordance with Section 15(8) of the Expropriation Act, he pointed that in my capacity as the Inquiry Officer, I am obliged to determine whether the City's intended expropriation of the Lands is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority."
- [100] Mr. Buck argued that I should conclude that the intended taking of the Lands, located along the southeast quadrant of the intersection of 156 Street and 95 Avenue, viewed through the statutory framework set out in the Expropriation Act as well as the applicable law, is fair, sound and reasonably necessary in the achievement of the City's objectives in connection with the WLRT project.
- [101] Mr. Buck argued that the burden of proof under subsections 6(2) and 15(8) of the Act is something less than on a balance of probabilities; that being whether or not the intended expropriation is "reasonably defensible" as set out in *Walters*, supra and in *Parkins*, supra.
- [102] Mr. Buck stated that City's objectives are clear; the construction, operation and maintenance of the WLRT and that those objectives cannot be challenged at an Inquiry Hearing.
- [103] Referencing the City's expert report, Mr. Buck stated that the proposed taking is necessary because the combined width of tracks, traffic lanes, sidewalk and platforms are wider than the existing road right of way along 156 Street. Furthermore, as the track will run along the center of the roadway, additional width (land) needs to come from both sides of 156 Street.
- [104] Mr. Buck advised that the intended expropriation meets the City's Complete Street Design and Construction Standards as well as the TAC guidelines for the design of the 156 Street and 95 Avenue intersection. In respect of the sidewalk along 156 Street adjacent to the northbound lane, Mr. Buck referenced the expert report which addressed the need to widen the sidewalk to accommodate pedestrians accessing the LRT platform, as well as to provide for a furnishing zone buffer between the pedestrian throughway on the sidewalk and the vehicle traffic on 156 Street.
- [105] In respect of the roadway itself, Mr. Buck noted that the City adopted the TAC recommended horizontal alignments across intersections with no offset; a design standard that stresses the importance of traffic lane continuity to ensure the safety of the travelling public. In this case it meant that the northbound lane south of the Intersection should line up with the northbound receiving lane north of the Intersection. To achieve this design safety principle, the traffic lanes and sidewalk infrastructure south of 95 Avenue were moved further east, impacting the Lands.
- [106] Mr. Buck stated that various design alternatives in the vicinity of the Intersection were considered in determining the City's land requirements before selecting the Lands for the taking. The alternatives considered were ultimately rejected by the City's expert in transportation engineering.



- [107] Mr. Buck advised that having carefully considered reasonable alternatives to the proposed taking, the City has met its burden and argued that the intended taking is fair, sound and reasonably necessary and that the intended expropriation is reasonably defensible in the circumstances.
- [108] Mr. Buck argued that if the Objector feels that the City has not considered reasonable alternatives, it is open to the Objector to put forward reasonable alternatives that would show that the intended expropriation is not fair, sound and reasonably necessary in the achievement of the objectives of the City of Edmonton. This the Objector did not do. The Objector submitted no evidence whatsoever from anyone with experience in roadway design to contradict the opinions of the duly qualified expert in transportation engineering, Ms. Miller, and offered nothing by way of an alternative design.
- [109] The City argued that the proposed taking is supported by sufficient and sound design analysis and as the WLRT project is now entering the procurement phase, the City is seeking to acquire the required Lands to ensure they are available to the design-build contractor for the start of construction.
- [110] Mr. Buck urged me to adopt the analysis employed by Inquiry Officer Timothy Meagher in the municipal airport matter in which he concluded that the scope of an inquiry is limited to whether a particular site or interest is reasonably necessary to achieve the expropriating authority's objectives. I was urged to ignore updated designs to the properties to the south of the Lands (raised by the Objector) because only the intended expropriation of the Lands is relevant in this Inquiry.
- [111] Mr. Buck argued that the City made reasonable efforts to minimize the amount of land required by reducing traffic lane width as well as the width of the furnishing zone as part of the refinements to the preliminary design.
- [112] Mr. Buck noted that to the extent the Objector alleges that it will suffer harm as a result of the proposed expropriation; that is a matter to be considered in assessing compensation under the Act, which is outside of the mandate of this Inquiry Officer.
- [113] In summary, Mr. Buck argued that the evidence has shown that the proposed taking selected by the City is sound, fair and reasonably necessary for the achievement of the City's stated objectives.
- [114] In Reply, the City pointed out that an Alberta Inquiry Officer in the *Guaranty Properties* 2004 decision implicitly considered the *Parkins* and *Walters* decisions, which adopted a burden of proof under identical wording to subsections 6(2) and 15(8) of the Act, as something less than on a balance of probabilities; that being whether or not the intended expropriation is "reasonably defensible".

## 2. Authorities

### Cases and Texts

- A. *Walters v Essex (County) Board of Education*, [1971] 20 DLR (3d) 386, 1971 CarswellOnt 760 (Ont HC) at para 8, *affd.* [1974] S.C.R. 481
- B. *Parkins v R*, [1978] 85 DLR (3d) 581, 1978 CarswellOnt 1755 (Ont CA)
- C. *McEwen's Aviation Services Inc. et al v City of Edmonton*, Report of Inquiry Officer T. Meagher dated June 10, 2013
- D. Frederick A. Laux, Q.C., *Planning Law and Practice in Alberta*, 3d. (Edmonton: Juriliber Limited, 2013)
- E. *Karn v Ontario Hydro*, [1977] 79 DLR (3d), 1977 CarswellOnt 1090, (Ont CA)
- F. *Guaranty Properties v The City of Edmonton*, Report of Inquiry Officer G. McLennan dated April 3, 2000
- G. *Yellowhead Motor Inn v The City of Edmonton*, Report of Inquiry Officer G. McLennan dated November 5, 2004

### Statutes

- H. *Expropriation Act*, RSA 2000, c E-13, ss. 3, 6, 15(8), 29(1).
- I. *Municipal Government Act*, RSA 2000, c M-26, s. 14(2).

## B. CONDOMINIUM CORPORATION (THE "CORPORATION" OR THE "OBJECTOR")

### 1. Argument

- [115] Mr. Noce, counsel for the Corporation, argued that the proposed taking in this matter is not fair, sound, or reasonably necessary in the achievement of the objectives of the expropriating authority.
- [116] Mr. Noce argued that in fulfilling my mandate as an Inquiry Officer under subsections 6(2) and 15(8) of the *Expropriation Act* to "...inquire into whether the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority", I should adopt the analysis of an Inquiry Officer that relates to some lands in downtown Edmonton and whose Inquiry Report is dated December 12, 2018, at page 30, which states:

*I expressly decline to adopt the "reasonably defensible" legal test proposed by the City in reliance on the 1971 decision of the Ontario Supreme Court in Walters v. Essex (County) Board of Education. Moreover, I disagree that there is anything enigmatic about the legal test arising from sections 6(2) and 15(8) of the Expropriation Act. I view the "reasonably defensible" interpretation adopted in Walters as reading down what amounts to the sole statutory protection that may be afforded to parties whose property rights are subject*

*to an intended removal or material prejudice. In my view, this is consistent with basic principles of statutory interpretation. Further, it strikes me as inappropriate in the context of legislation permitting the otherwise impermissible.*

- [117] Mr. Noce noted that the portion of the Lands that the City intends to expropriate are three contiguous strips of land approximately 5.3 metres wide which run along the entirety of the west side of the condominium lands on 156 Street and the north side of the condominium property on 95 Avenue east of the 156 Street intersection. The purpose of the proposed taking is to build the Glenwood/Sherwood LRT stop as part of the WLRT project.
- [118] Mr. Noce described the use of the lands at the various quadrants of the Intersection as follows:
- NW Quadrant: a gas station
  - NE Quadrant: a professional building
  - SW Quadrant: a bare grassy field owned by the City of Edmonton
  - SE Quadrant: the condominium property.
- [119] Mr. Noce argued that the applicable provisions of the *Expropriation Act* should be interpreted and read liberally. He further argued that the City has failed to meet its burden to demonstrate that the proposed taking is fair, sound, and reasonably necessary in the achievement of the objectives of the expropriating authority.
- [120] Mr. Noce argued that the proposed taking is much too broad and goes beyond what is or should be necessary to achieve the stated objectives for the purpose of the construction of the WLRT project.
- [121] Mr. Noce advised that reducing the size of the proposed sidewalk will not delay the procurement process or any other process that the City intends to follow in 2020 to move forward with the ultimate construction of the WLRT. He submits that the Condominium Corporation does not need an expert to request that the City follow its own guidelines set out at Exhibit 1, Tab 21, 3.3.4.2 concerning Pedestrian Through Zone Width, which provides:

*Pedestrian Through Zone width is a function related to the horizontal operating envelope of people walking and wheeling and the volumes of these activities. The preferred Pedestrian Through Zone for a high activity area is 3.0 m to accommodate the higher walking and wheeling volumes and to allow people to walk in groups. In areas with lower volumes, the minimum through zone width is 1.8 m. This width will allow a person holding a child's hand to pass another person, as well as a person using a wheelchair to pass a person walking or complete maneuvering movements, or two passing wheelchair users.*

- [122] Mr. Noce argued that there is no evidence that this section of 156 Street constitutes either a "main street" or a "high-activity area"; noting that neither term is defined in the City's materials. He stated that the City's expert reported a "feeling" and not an "opinion" that this is a main street high-activity area because the City failed to produce data of pedestrian counts to support their position.
- [123] Mr. Noce referred to the Objector's submissions at Exhibit 3, Tab 9, "Main Streets Guidelines March 2016" which include a map from the City of Edmonton identifying the main streets in Edmonton, which notably does not include 156 Street and 95 Avenue.
- [124] Mr. Noce argued that the Objector does not oppose the expropriation; only the extent of the intended taking at this point in time.
- [125] Mr. Noce also argued that the City has failed to adequately justify that it needs the amount of land that it proposes to expropriate. He further submitted that the City did not reasonably consider options to acquire land, if needed, from the other quadrants at the Intersection.
- [126] Mr. Noce submitted that there is no actual need for the extent of the proposed taking now; and there may never be such a need in the future.
- [127] Mr. Noce argued that the City has shown that it requires less land for sidewalks in the northeast quadrant, in the northwest quadrant and in the southwest quadrant. He submits that the southeast quadrant is neither a main street nor a high activity area and that as a result, there is no basis for a 3.0 m sidewalk requirement. Rather, Mr. Noce argued that sidewalk width between 1.8 m to 2.5 m is realistic; moreso given that the City conceded that the Glenwood/Sherwood stop is expected to be the least used stop along the entire Valley Line.
- [128] Mr. Noce argued that the proposed taking is not fair because it failed to balance the Objector's interests with the public interest. He submitted that the City's land selection in this matter was arbitrary and inconsistent, evidenced by the City's failure to uniformly require a 5.0 m taking from each of the four quadrants.
- [129] Mr. Noce argued that the proposed taking is not sound because taking less land will still allow the City to achieve its objective for 156 Street. He submitted that the City failed to produce any plausible evidence that this area is a high activity area requiring a 3.0 m wide sidewalk.
- [130] Mr. Noce submitted that the intended expropriation is not reasonably necessary because the amount of land required to construct a sidewalk and boulevard is much less than the amount of the proposed taking either on the basis that this area constitutes a "street-oriented arterial street" or a "non-street-oriented arterial street", thereby requiring a 1.8 m or a 2.5 m sidewalk. Mr. Noce noted that the City was content with narrower sidewalks south of the



Lands until December 16, 2019, when it generated a newly designed sidewalk south of the Lands.

- [131] Mr. Noce argued that the TAC guidelines do not apply in any event as they were not adopted by City Council. Accordingly, he submitted that only the Complete Streets standards are applicable in this matter.
- [132] Mr. Noce urged the Inquiry Officer to consider the many intangibles, including the quality of life of the condominium owners and the impact of the proposed taking upon those owners. He asserted that the Land Compensation Board does not address these intangibles; particularly the cost the Objector is being asked to pay "for the future-proofing" approach to the proposed taking.
- [133] Mr. Noce argued that the Objector is not required to submit an alternative design; rather, the Objector is requesting that the City build a sidewalk within the Complete Streets standards (at 1.8 m up to 2.5 m) and adjust the proposed taking accordingly.
- [134] Mr. Noce urged the Inquiry Officer to find that the area of the proposed taking is not a high activity area; to find that the City has failed to satisfy its burden that the proposed taking is fair, sound and reasonably necessary; and, to direct that the City rework its plans for compliance with its design standards accordingly.

**2. Objector's Authorities**

Cases

*672884 Alberta Ltd. v. The City of Edmonton*, Report of Inquiry Officer S. Roberts dated December 12, 2018

**IV. INQUIRY OFFICER'S FINDINGS OF FACT**

[135] I find that:

- a) The City of Edmonton (the "City") has satisfied all the statutory requirements under the *Expropriation Act* and has taken all necessary steps to properly constitute this Inquiry Hearing.
- b) The Lands that the City intends to expropriate are those portions of:

**CONDOMINIUM PLAN 9420510  
COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS**

-and-

CONDOMINIUM PLAN 9423752  
UNIT 10  
AND 5 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

-and-

CONDOMINIUM PLAN 9520727  
UNIT 16  
AND 4 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

-and-

CONDOMINIUM PLAN 9421041  
UNIT 4  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively referred to as the "Lands").

- c) The objective of the City is to construct, operate and maintain the Valley Line West Light Rail Transit (LRT) project (the "WLRT").
- d) The WLRT Concept Plan: Lewis Estates to Downtown was approved by the Expropriating Authority on January 19, 2011 (the "Concept Plan"), and includes the alignment and the location of the LRT stop at the intersection of 156 Street NW and 95 Avenue (the "Glenwood/Sherwood Stop"), in accordance with its Municipal Development Plan ("MDP").
- e) A long process of planning and public engagement has taken place over the past several years in connection with the WLRT project.
- f) The Glenwood/Sherwood Stop was centered across 95 Avenue in the Concept Plan. The station's design including the combined width of tracks, traffic lanes, sidewalks and platforms, exceeds the existing road right of way; additional land is required. The LRT tracks are essentially centered on the centerline of the existing road requiring additional land from both sides of 156 Street.
- g) The City has demonstrated its *bona fide* need to acquire additional land to achieve its stated objectives.
- h) The City has also established that the northbound LRT platform will be located north of 95 Avenue on the east side of the tracks, with the northbound traffic lane running next to the rear side of the platform. Roadway intersection design

identifies traffic lane continuity through an intersection as an important safety component to direct a vehicle to the receiving lane for drivers on the road; meaning the northbound lane south of 156 Street/95 Avenue intersection should line up with the northbound lane north of the intersection; pushing the northbound traffic lanes and the east sidewalk south of 95 Avenue further eastwards onto the Lands.

- i) The Lands sought by the City consist of three contiguous strips of land approximately 5.3 metres in width, located within a condominium complex known as Dufferin Village, running parallel to 156 Street NW, with a small additional "corner-cut" along the northeast quadrant of 156 Street NW and 95 Avenue, in the Sherwood neighbourhood of Edmonton. The Lands are currently being used as a green space adjacent to the side of the three condominium buildings.
- j) Different design and allotment considerations apply to the different uses of the lands at the four quadrants of the Intersection. For example, different considerations apply for single-family homes fronting onto 156 Street south of the Lands, in contrast to the "flanking" orientation of the side windows at the Dufferin Village complex; meaning its doors face north and south, rather than facing onto 156 Street.
- k) The City's Transit Oriented Development policies anticipate the redevelopment of single-family homes into a higher density level development in the future; a density level already established at Dufferin Village.
- l) When designing infrastructure for the WLRT in this area, the intent is to build the permanent infrastructure now, instead of impacting upon the neighbourhood multiple times down the road; to avoid the prospect of a "continuous expansion" while meeting the future needs of the LRT.
- m) The lands in the quadrants of the 156 Street and 95 Avenue intersection reflect a mix-use of commercial and residential buildings; that being a gas station at the northwest corner; a professional building at the northeast corner; a bare grassy field, partially owned by the City, at the southwest corner; and the condominium property at the southeast corner.
- n) The Condominium Corporation expressed its concern with the extent of the proposed taking, believing that it is too broad and well beyond what is or should be needed to achieve the City's stated objectives. It is concerned with the negative impact of the proposed taking on the quality of life of its residents and is also concerned with the maneuverability of some of the larger vehicles whose

parking space(s) are adjacent to the fence to be relocated upon the land of the Condominium Corporation.

- o) The City considered the assessment of alternate design options based upon the expertise of its transportation engineers, which included its expert as qualified by the Inquiry Officer during the course of the Inquiry Hearing, in response to the Objector's concerns.
- p) The City considered whether northbound traffic could be shifted west adjacent to the Lands to reduce the proposed taking. This option was rejected because it would result in an offset of the northbound traffic lanes through the Intersection leading to safety concerns.
- q) The City considered whether the vehicle lanes along 156 Street could be further narrowed. This option was rejected because the lanes had already been narrowed in accordance with the "Complete Streets" design standards; any further narrowing would not comply with design standards and, in the expert's opinion, would be unsafe.
- r) The City considered whether the furnishing zone could be narrowed or removed to reduce the proposed taking of the Lands. This option was rejected because its removal would also remove the safety buffer between pedestrians and traffic on 156 Street and would not allow for the planting of trees to serve as a screen and to enhance the area.
- s) The City considered whether the sidewalk could be narrowed to reduce the proposed taking of the Lands. This option was rejected by the City's expert in transportation engineering because the City declined to compromise on the 3.0 m pedestrian throughway which is specified as a minimum standard in a high-pedestrian-activity area, such as that which is expected at an LRT stop within the context of a "pedestrian first" design standard.
- t) The City's actual bus ridership at the two bus stops in closest proximity to the Intersection for the period September – November 2019 totaled 1,405 weekly boardings and 1,657 weekly alightings during this period. The anticipated ridership forecasted at the Glenwood/Sherwood Stop for 2027 (boardings and alightings) is 620; rising to 900 by 2047; an increase of 67%. Together this data is reasonably consistent with a high-activity pedestrian area associated with an LRT stop.

[136] It is reasonable to expect continued growth in ridership at the Glenwood/Sherwood Stop, having regard to existing local bus ridership and anticipated LRT ridership in the foreseeable future.



- [137] The City's preliminary design standards as reflected in the Complete Streets Design and Construction Standards and as reflected in the applicable TAC guidelines reflect the shift to "pedestrian first" design philosophy adopted by the Expropriating Authority.
- [138] The City was unable to accommodate the Objector's expressed concerns with the extent of the proposed taking while continuing to meet the Complete Streets design standards as well as the TAC guidelines relating to pedestrian integrated design guidelines.
- [139] The extent of the City's proposed taking of the Lands is based upon established design standards expressly or implicitly approved by the Expropriating Authority.

**V. OPINION AND REASONS**

- [140] The scope of this Inquiry is set out at section 15(8) of the Act, which provides:

*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.*

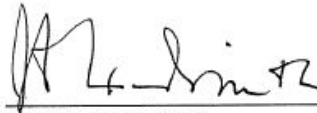
- [141] The parties have urged me to apply various standards of proof in determining whether or not the City has met the statutory test set out above, and I have considered the various authorities present by counsel. However, I am persuaded that the "Ontario decisions from the 1970s" continue to ring true given the corresponding Ontario *Expropriation Act* imposed the same statutory test of "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority" as set out in the Alberta Act, above. And, given the interpretative approach adopted in *Walters v. Essex (Country) Board* was affirmed by the Supreme Court of Canada; this authority, in my view, is relevant to the matter before me.
- [142] The Objector asserted that the proposed taking was unfair and even arbitrary; having noted that the land at the various quadrants of the Intersection was not treated similarly. The evidence before me, particularly Ms. Miller's expert evidence persuasively responds to this assertion. In her testimony, Ms. Miller conceded that the sidewalks within the quadrants of the Intersection were not consistent. In her opinion, the varying size of sidewalks was not remarkable having regard to the various land usages and orientations of the various properties. She identified the business considerations applicable to the gas station at the northwest quadrant and the site orientation considerations applied to the single-family dwellings fronting on 156 Street respond to the specific circumstances of these properties; thereby avoiding a sidewalk extending to a front porch of a single-family residence.
- [143] I am persuaded that the City's responsiveness to the individual usages and requirements of the properties adjacent to the Intersection established the fairness and soundness of its application of the approved design approach; contradicting the Objector's assertion to the contrary.

- [144] In respect of the Condominium Corporation's objection to the width of the sidewalk along the southeast quadrant (and the resulting extent of the proposed taking), I am also persuaded by Ms. Miller's explanation of the need for an unobstructed pedestrian through zone of a minimum of 3.0 m along the southeast quadrant of 156 Street responded to safety considerations mandated in the Complete Streets Design Construction Standards to accommodate higher wheeling and walking volumes and to allow people to walk in groups, in anticipation of the increased traffic generated at a LRT stop.
- [145] While I appreciated and accept Ms. McCready's thoughtful descriptions of her personal experiences of few pedestrian encounters while walking through her neighbourhood over the course of these many years; I am unable to find that evidence responsive to engineering design criterion adopted both in the preliminary design process and in accordance with the design standards approved by City Council in furtherance of its "pedestrian first" protocols and its stated objectives of completion of the WLRT project. I accept that the LRT station is currently only contemplated but am persuaded that the current bus ridership in this area as well as the forecasted ridership to 2047 is more compelling. In my view, past anecdotal experiences cannot serve to plausibly contradict the application of well-established engineering design criteria in response to forecasted need.
- [146] The City's expert in transportation engineering concluded that the City could not accommodate the alternative options suggested by the Objector in order to reduce the proposed taking of the Lands while continuing to meet the urban design and construction standards adopted by the City of Edmonton in connection with the WLRT undertaking. The evidence before me was clear and unequivocal that the "pedestrian first" design standards could not accommodate a narrower sidewalk, a shift in the 156 Street roadway west or a taking of land from other quadrants in the circumstances. I accept that evidence.
- [147] I am persuaded that the City of Edmonton reasonably and fairly considered the concerns expressed by the Objector; reasonably and fairly considered other design alternatives in the vicinity of the intersection of 156 Street and 95 Avenue, having regard to the City of Edmonton's Complete Streets Design and Construction Standards, its Transportation Master Plan, its Municipal Development Plan, and its "pedestrian first" urban transportation design protocols.
- [148] Having considered all of the documentary evidence presented, along with the testimony of the witnesses and the competing arguments of the parties, I have concluded that the intended taking by the City of Edmonton of the Lands to accommodate development of the WLRT project is fair, sound and reasonably necessary in the achievement of the objectives of the City of Edmonton.

VI. COSTS

- [149] Pursuant to Section 15(1) of the *Expropriation Act*, the reasonable costs of the Condominium Corporation and the Inquiry Officer shall be paid by the Expropriating Authority.
- [150] It is my opinion that an Inquiry Officer does not have jurisdiction over the taxation of costs in the event of a dispute over same. Taxation of such costs are under the jurisdiction of the Taxation Officer of the Court of Queen's Bench pursuant to the Alberta Rules of Court.

DATED at the City of Edmonton, in the province of Alberta, this 22<sup>nd</sup> day of January 2020.



Janet Alexander-Smith  
Inquiry Officer

Emery Jamieson LLP  
1700, 10235 – 101 Street  
Edmonton, AB T5J 3G1

APPENDIX A**Documents of the Expropriating Authority**

<b>Exhibit 1</b>	<b>Description</b>
Tab 1	January 19, 2011 – Agenda Item 6.7 – Approval of West LRT Concept Plan – Lewis Estates to Downtown with City Council Minutes – December 8, 2010 – Transportation Department report 2010TD9339
Tab 2	March 21, 2018 – Agenda Item 4.1 Valley Line West LRT – Crossing Assessments and Concept Plan Amendments with City Council Minutes – IIS Report CR_5165
Tab 3	October 23, 2018 – Agenda Item 6.8 – Approval to Commence Expropriation of Interests in Property – Valley Line West – IIS Report CR_6154 with City Council Minutes
Tab 4	February 5, 2019 – Agenda Item 6.2 – Approval to Commence Expropriation of Interests in Property – Valley Line West – IIS Report CR_6631 with City Council Minutes
Tab 5	The Way We Move, Transportation Master Plan, September 2009
Tab 6	The Way We Grow, Municipal Development Plan, Bylaw 15100 (May 2010)
Tab 7	Long-Term LRT Expansion – LRT Network Plan March 2012
Tab 8	The Way We Move, Implementation Plan, June 2012
Tab 9	City of Edmonton Bylaw 15101 (As Amended), Being a Bylaw to Establish the Transportation System for The City of Edmonton with attached Map, February 4, 2013
Tab 10	The Way We Move, Shifting Edmonton’s Transportation Mode, Context Report, March 11, 2014
Tab 11	Design and Construction Standards Volume 5 – Landscaping (June 2018)
Tab 12	Complete Streets Design and Construction Standards (June 2018)
Tab 13	Complete Streets Design and Construction Standards Public Primer (December 2018)
Tab 14	Valley Line West – Downtown to Lewis Farms (Spring 2019)
Tab 15	Valley Line West Procurement (Fall 2019)
Tab 16	Valley Line West, Lewis Farms – Downtown, Public Information Session 2019
Tab 17	The Way We Move, Transportation Master Plan Fact Sheet
Tab 18	W39-W41 – Condominium Plan No. 942 0510 <ul style="list-style-type: none"> <li>a. Notice of Intention to Expropriate</li> <li>b. W39 – Aerial photo</li> <li>c. W39 – Site plan</li> <li>d. W40 – Aerial photo</li> <li>e. W40 – Site plan</li> <li>f. W41 – Aerial photo</li> <li>g. W41 – Site plan</li> <li>h. W39 – W41 Roll Plan Extract</li> <li>i. AutoCAD Model containing: <ul style="list-style-type: none"> <li>▪ city cadastral information</li> <li>▪ survey information</li> <li>▪ track alignment</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>▪ roadways alignment</li> <li>▪ track profile</li> </ul>
	j. PDF of AutoCAD Model
	k. PDF Preliminary design horizontal track alignment and vertical alignment
	l. PDF Preliminary design horizontal roadways alignment
	m. PDF Preliminary landscaping design
	n. PDF Preliminary cross sections
	o. Photos of stakeout
Tab 19	Excerpt from pages 57-59 – Transportation Association of Canada, Geometric Design Guide for Canadian Roads – Chapter 9 – Intersections – Table 9.7.2
Tab 20	CTP Ridership Forecasts 2027 and 2047
Tab 21	Excerpt from page 96 – City of Edmonton Complete Streets Design and Construction Standards – Table 3.10
Tab 22	Excerpt from page 90 – City of Edmonton Complete Streets Design and Construction Standards – Table 3.18
Tab 23	Excerpt from page 24 – City of Edmonton Design and Construction Standards Volume 5 Landscaping – Section 7.6.1
Tab 24	Excerpt from page 52 – City of Edmonton Complete Streets Design and Construction Standards – Table 3.6A
Tab 25	CV and Summary of Testimonial Evidence of Eva Cheung, M.Eng., P.Eng.
Tab 26	CV and Summary of Testimonial Evidence of Jacqueline Miller, P.Eng., C.Eng., M.I.C.E.
Tab 27	Technical Report of Jacqueline Miller, P.Eng., C.Eng., M.I.C.E

**Exhibit 2 Description**

Tab 28	April 16, 2019 – Agenda Item 6.18 – Approval to Commence Expropriation of Interests in Properties Valley Line West – Report CR_6870 with City Council Minutes
Tab 29	Email from ETS re: VLW – Existing ETS ridership figures
Tab 30	SLIM Maps – Bus Stop Numbers
Tab 31	Excerpt from Edmonton Zoning Bylaw 12800 – section 819
Tab 32	Excerpt from page 45, Edmonton Zoning Bylaw 12800 – map, August 26, 2019
Tab 33	AutoCAD drawing – 156 Street
Tab 34	PDF of AutoCAD drawing – 156 Street
Tab 35	Overall Plan Showing Existing and Proposed Cross Sections Through W39, W40 & W41
Tab 36	City Policy – Transit Oriented Development Policy, February 8, 2012
Tab 37	Transit Oriented Development – Bringing People Together – Neighbourhood Station (May 2011)
Tab 38	Transportation Association of Canada – Excerpt Section 6.1 Pedestrian Design Focus – June 2017
Tab 39	Transportation Association of Canada – Excerpt Section 6.3.1 Zones of an Urban Roadside – June 2017
Tab 40	Transportation Association of Canada – Excerpt Section 6.3.3 Context Considerations and Tradeoffs – June 2017

APPENDIX B

Documents of the Objector

Exhibit 3	Description
Tab 1	The Objection
Tab 2	The Plan and Redivision Plan Nos. 942 1041, 942 3752 and 952 0727
Tab 3	Title Certificates for Units 4, 10 and 16 and Condominium Additional Plan Sheet
Tab 4	Site Plans of Proposed Expropriation
Tab 5	MGA ss. 180 and 181
Tab 6	MGA s. 14
Tab 7	Edmonton Main Streets Guideline
Tab 8	Edmonton Main Streets Fact Sheet
Tab 9	City of Edmonton Main Streets Map