1. RECOMMENDATIONS

It is recommended that:

1. Regional Council, as approving authority, receive and consider the report of Gillian M. Burton, Inquiry Officer, attached as Attachment 1, with respect to the inquiry held on April 30, 2009 under section 7 of the Expropriations Act with respect to the proposed expropriation of lands for road and intersection improvements on Highway 7 in the Town of Markham and the Town of Richmond Hill.

2. Regional Council, as approving authority, approve the expropriation of the lands and interests in lands in the Town of Markham and the Town of Richmond Hill, more particularly described in Schedule “A” attached, for the reasons set out in Schedule “B” attached.

3. Regional Council authorize the Region to enter into Section 30 agreements or Permission to Enter and Construct agreements as described herein, as an alternative or supportive means of achieving the land requirements prior to filing the Plans of Expropriation, and not to proceed with filing such Plan if no longer required, such agreements to be completed in accordance with the delegation granted to Regional staff during the summer recess.

4. Regional staff be authorized to execute and serve any notices required by the Expropriations Act.
5. The lands being expropriated and otherwise acquired for road purposes be dedicated as public highway.

6. The necessary bills be introduced in Council to give the effect to these recommendations.

2. PURPOSE

The purpose of this report is to obtain Council’s approval to expropriate the required lands from owners along Highway 7 (H3) in the Town of Markham and the Town of Richmond Hill in order to implement certain road and intersection improvements and to provide designated lanes for the Viva transit system along the corridor.

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

BACKGROUND

Regional Council approved an application to expropriate lands along Highway 7 for the purpose of improvements to road infrastructure and construction of dedicated lands for Viva buses

On January 22, 2009, Regional Council authorized an application for approval to expropriate lands along Highway 7 in the Town of Richmond Hill and the Town of Markham. The lands are required for improvements to road infrastructure and the construction of dedicated lanes for Viva buses along Highway 7 between Yonge Street and through Markham Centre to Kennedy Road in the Town of Markham and the Town of Richmond Hill. Construction is scheduled to commence in the fall of 2009. Negotiations for property acquisition are currently being conducted, however, in order to ensure timely acquisition, it is necessary for the expropriation process to proceed concurrently.

Requests for an inquiry were received from 17 property owners and a hearing was scheduled for April 30, 2009

Following the approval of the application, the required notices were served on the owners of the affected lands and a copy of the notice was published in The Markham Economist & Sun on January 31, 2009, February 7 and 14, 2009 and in The Liberal on February 1, 8 and 15, 2009. In response to these notices, 17 requests for a hearing before the Inquiry Officer were received and forwarded to the Chief Inquiry Officer. A hearing was scheduled before the Inquiry Officer on April 30, 2009. The purpose of the hearing was
to determine whether the proposed expropriation is fair, sound and reasonably necessary to achieve the Region’s objectives as expropriating authority. Mr. Stephen Waqué of Borden Ladner Gervais LLP represented the Region at the hearing.

4. ANALYSIS AND OPTIONS

All requests for a hearing were withdrawn prior to the commencement of the hearing

All requests for the hearing of necessity were withdrawn either prior to the commencement of the hearing or on the day of the hearing. In some cases the owners agreed to the proposed taking and withdrew their requests. In other cases, the requests were withdrawn because, in the interim, alternative satisfactory arrangements were made between the owners and the Region with respect to the lands required.

In many cases, it was determined that the Region’s requirements could be adequately satisfied by negotiating a permission to enter on the subject property to carry out the required construction rather than expropriating a temporary easement. Where agreements for temporary access have been formalized, expropriation will not proceed for the easements on those properties. In cases where negotiations have not concluded, it is recommended that the expropriation process continue in order to ensure the lands are secured in a timely fashion.

In other cases, expropriation may proceed but the extent of the taking has been reduced and the approval to expropriate will be modified accordingly.

The following summarizes those properties where revised takings are recommended or where expropriation will not now proceed because alternative satisfactory arrangements have been made.

Properties where revised takings are recommended based on further site investigation

(a) The owners of Reference Nos. 9 and 10 listed in Schedule “A” have agreed to grant permission to enter the property for the purposes of grading rather than have a temporary easement expropriated for this purpose. In addition, the requirement for a permanent easement in relation to maintaining retaining walls has been removed. The Region’s engineers agree the revisions to the proposed requirements are acceptable and still meet construction requirements. The fee taking will still proceed.

(b) The owners of Reference No. 12 listed on Schedule “A” and the Region have reduced the area of the temporary easement for grading purposes to avoid the
location of gas pumps on this property. The Region’s engineers are agreeable to this reduction. The fee taking will still proceed.

(c) The owners of Reference Nos. 35A, 35B and 36 listed on Schedule “A” and the Region have agreed to reduce the requirement by eliminating the need for a fee simple interest and only take a temporary easement over a slightly larger area. The Region’s engineers are agreeable to this reduction.

(d) The owners of Reference Nos. 49, 50 and 52 listed on Schedule “A” and the Region have agreed to increase the fee simple interest and temporary easement due to the realignment of the road to avoid the underground garage on Reference No. 51 on the opposite side of the road.

(e) The owners of Reference No. E13 listed on Schedule “A” and the Region have agreed to reduce the area of the temporary easement to avoid interfering with the cemetery. The Region’s engineers agree this reduction is acceptable.

(f) The owners of Reference No. 55 listed on Schedule “A” and the Region have agreed to proceed with a fee simple taking and replace the temporary easement requirement with a permission to enter only, subject to the execution of a Permission to Enter agreement.

Section 30 agreements and Permissions to Enter and Construct, or other agreements

A Section 30 agreement is a form of consent to expropriation which can secure the land requirements of the Region by agreement. A Permission to Enter and Construct gives the Region the rights it would have under a temporary easement by consent. As discussed above, negotiations to achieve these agreements are still underway and will in a number of cases result in modifications to the expropriation process which is mutually beneficial to the Region and the owner. Rather than terminate these discussions at the time this report is being submitted, Recommendation 3 will allow those discussions to continue to attempt to reach a satisfactory resolution right up to the time a Plan of Expropriation must be filed.

(a) The owners of Reference No. E16/E17 listed on Schedule “A” and the Region have agreed to allow the owner to grade to the proposed limits of construction without an easement being required. The owner intends to complete the grading prior to the Region’s commencement of the road construction, therefore the grading work on this property will have been completed by the owner.

(b) The owners of Reference No. 51 listed on Schedule “A” and the Region have agreed to reduce the requirement by eliminating the need for a temporary easement by replacing it with a Permission to Enter. This was done to avoid an
underground garage. The Region’s engineers are agreeable to this reduction. The fee taking will still proceed.

(c) The owners of Reference No. E15 listed on Schedule “A” and the Region have agreed to eliminate the need for a temporary easement and replace it with a permission to enter, subject to a Permission to Enter agreement being executed.

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

All requests for a hearing were withdrawn either prior to or on the day of the hearing. The Inquiry Officer did, however, render an opinion on the proposed expropriation and has provided a report under the *Expropriations Act* (the “Act”). The Act requires Regional Council as approving authority to consider the report and to approve or not approve the proposed expropriation or approve with such modifications as it considers proper.

The Inquiry Officer concluded that all of the proposed takings meet the test in the Act and recommended that the Region proceed with the expropriations. The report does not formally comment on the agreements that have been negotiated since these matters were not part of the hearing. Staff recommend, however, that in those cases where satisfactory agreements have been concluded with land owners, that the Region not proceed to expropriate.

5. **FINANCIAL IMPLICATIONS**

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

6. **LOCAL MUNICIPAL IMPACT**

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

7. **CONCLUSION**

It is recommended that Regional Council grant the necessary authority to proceed with expropriation of the lands required for road intersection improvements along Highway 7 and to provide designated lanes for the Viva Rapid Transit system in accordance with the report previously authorized, subject to the modifications noted in this report. The description of the lands and interests in lands to be expropriated is attached as Schedule “A”.
For more information on this report, please contact Elizabeth Wilson, Senior Counsel at Ext. 1402.

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

Respectfully submitted,

June 22, 2009          Joy Hulton
Newmarket, Ontario     Regional Solicitor

(Report No. 1 of the Regional Solicitor was adopted without amendment, by the Council of The Regional Municipality of York at its meeting on June 25, 2009.)
IN THE MATTER OF the proposed expropriation by the Regional Municipality of York of the following lands for the purpose of implementing road and intersection improvements along Highway 7, including associated local roads, and to provide designated lanes for the VIVA transit system, and works ancillary thereto.

(Reference No. 3, Schedule A, Notice of Application for Approval to Expropriate Land) Part of PINs 29380-0001 (LT) to 29380-0101 (LT), known municipally as 360 Highway 7 East, Richmond Hill, Ontario:

A fee simple interest in part of Common Elements of YRCP No. 850, designated as Parts 3 & 4 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009. *(Ref. No. 5)* Part of PIN 03119-0018 (LT), known municipally as 3 Rockwell Road, Richmond Hill, and 372 Highway 7 East, Richmond Hill:

A fee simple interest in part Lot 31, Plan 2607 designated as Part 6 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009 and

A three-year temporary easement in part Lot 31, Plan 2607 designated as Part 21 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009;

And Part of PIN 03119-0017 (LT):

A fee simple interest in part of Lot 31, Plan 2607 designated as Part 7 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009 and

A three-year temporary easement in part of Lot 31, Plan 2607 designated as Part 22 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009. *(Ref. No. 6)* Part of PIN 03119-0016 (LT), known municipally as 376 Highway 7 East, Richmond Hill:

A fee simple interest in part Lot 32, Plan 2607 designated as Part 8 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A three-year temporary easement in part Lot 32, Plan 2607 designated as Part 23 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009. *(Ref. No. 7)* Part of PIN 03119-0015 (LT), known municipally as 380 Highway 7 East, Richmond Hill:

A fee simple interest in part of Pin 32, Plan 2607 designated as Part 9 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009, and

A three-year temporary easement in part of Pin 32, Plan 2607 designated as Part 24 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009. *(Ref. No. 8)* Part of PIN 03119-0014 (LT), known municipally as 382 Highway 7 East, Richmond Hill:

A fee simple interest in part Lot 11, Conc. 2, RH (MKM) designated as Part 10 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A three-year temporary easement in part Lot 11, Conc. 2, RH (MKM) designated as Part 25 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009. *(Ref. No. 9)* Part of PIN 03119-0013 (LT), known municipally as 386 Highway 7 East, Richmond Hill:

A fee simple interest in Part Lot 11, Conc. 2, RH (MKM) designated as Part 11 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A three-year temporary easement in Part Lot 11, Conc. 2, RH (MKM) designated as Part 26 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

(Ref. No. 10) Part of PIN 03119-0012 (LT), known municipally as 396 Highway 7 East, Richmond Hill:

A fee simple interest in Part Lot 11, Conc. 2 RH (MKM) designated as Part 12 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009;

A three-year temporary easement in Part Lot 11, Conc. 2 RH (MKM) designated as Part 27 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A permanent easement in Part Lot 11, Conc. 2 RH (MKM) designated as Part 29 on draft Plan L12-010679 prepared by Lloyd & Purcell Ltd. dated January 20, 2009.

(Ref. No. 12) Part of PIN 03119-0010 (LT), known municipally as 404-408 Highway 7 East, Richmond Hill:

A fee simple interest in Part Lot 11, Conc. 2 RH (MKM) designated as Parts 16, 17 & 18 on draft Plan L12-010681 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A three-year temporary easement in Part Lot 11, Conc. 2 RH (MKM) designated as Part 28 on draft Plan L12-010681 prepared by Lloyd & Purcell Ltd. dated January 20, 2009.

(Ref. No. 16) Part of PIN 03029-1122 (LT), known municipally as 95 -115 Times Avenue, Markham:

A fee simple interest in Part Block 10, Plan 65M-3226 designated as Parts 2 & 3 on draft Plan L12-010681 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A three-year temporary easement in Part Block 10, Plan 65M-3226 designated as Part 4 on draft Plan L12-010681 prepared by Lloyd & Purcell Ltd. dated January 20, 2009.

(Ref. No. 18) Part of PINs 29374-0001 (LT) to 29374-0125 (LT), located N. S. Highway 7 East:

A fee simple interest in Part of Common Elements, YRCP No. 844 designated as Parts 10 & 11 on draft Plan L12-010681 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

A three-year temporary easement in Part of Common Elements, YRCP No. 844 designated as Parts 22, 23 & 24 on draft Plan L12-010681 prepared by Lloyd & Purcell Ltd. dated Jan. 20, 2009

(Ref. No. 28) Part of PIN 03045-0402 (LT), known municipally as 8555 Woodbine Ave., Markham:

A fee simple interest in Part Block A, Plan 4556 designated as Part 1 on draft Plan L12-010684 prepared by Lloyd & Purcell Ltd. dated January 20, 2009;

A three-year temporary easement in Part Block A, Plan 4556 designated as Parts 6 & 7 on draft Plan L12-010684 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and


(Ref. No. 51) Part of PIN 03034-0100 (LT), located N. Highway 7, Markham:

A fee simple interest in Part Block 3, Plan 65M-2503 designated as Parts 13 & 14 on draft Plan L12-010685 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and


(Ref. No. 54) Part of PINs 29653-0001 (LT) to 29653-1021 (LT), known municipally as 3601 Highway 7 East:

A fee simple strata interest in Part of Common Elements, YRCP No. 1122 designated as Part 10 on draft Plan L12-010687 prepared by Lloyd & Purcell Ltd. dated January 20, 2009 and PIN 29653-0070, all of Unit 70, Level 1 YRCP No. 1122 designated as Part 16 on draft Plan L12-010687 prepared by Lloyd & Purcell Ltd. dated January 20, 2009.

(Ref. No. 55) Part of PIN 03033-0100 (LT), known municipally as E. S. South Town Centre Blvd., Markham:
A fee simple interest in Part Block 2 Plan 65M-3998 designated as Parts 5 & 6 on draft Plan L12-010687 prepared by Lloyd & Purcell Ltd. dated January 20, 2009; and

(Ref. No. 56) Part of PIN 03033-0011 (LT), known municipally as 120 South Town Centre Boulevard:

A fee simple interest in Part Block 4, Plan 65M-2668 designated as Part 1 on draft Plan L12-010687 prepared by Lloyd & Purcell Ltd. dated January 20, 2009

(Ref. No. E15) Part of PIN 03034-0101 (LT), known municipally as N.S. Highway 7:

(Ref. No. E16, E17) Part of PIN 03034-0113 (LT), known municipally as N.S. Highway 7:

A three-year temporary easement in Part Lot 11, Concession 4 MKM (MKM) and Part Block 5, Plan 65M-2503 designated as Part 9 on draft Plan L12-010686 prepared by Lloyd & Purcell Ltd. dated January 20, 2009.

Date of Hearing April 30, 2009

Appearances:

The Region of York Stephen Waqué

York Region Condominium Corp. Nos. 844, 850, and York Region Standard Condominium Corp. Nos. 1122, 1128 and 1138; 1612072 Ontario Ltd. Natalie Taccone, Student-at-Law, for Barry Horosko

Aufisch Corporation, Regina Franziska Fischer Donald C. Hindson, Q.C.

Dorsay Development Corp., Circa Inc. Michael Melling

H & W Development Corporation Al Burton

Graycourt Investment Corporation Victor M. Saccucci

REPORT

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

PARTIES

Mr. Waqué confirmed that all of the parties who had originally requested a hearing of inquiry in this matter had withdrawn their requests before or at the hearing, having reached satisfactory resolutions with the Region respecting the proposed takings. I have retained the references to these properties in the style of cause to permit a clearer tracking of the resolutions, and any
recommendations to the Region, although these do not appear to be technically required at this stage.

The parties who appeared at the hearing by counsel, for notification purposes only, are as set out above.

THE PROPERTIES

The lands involved in the proposed expropriations have frontage along present Highway 7 between Bayview Avenue in the west and Warden Avenue in the east. The Region proposed to take either portions of the properties on a fee simple basis, or temporary easements, or both of these, from each of them.

THE OBJECTIVE OF THE EXPROPRIATING AUTHORITY

The Region of York intends to expand a 7 km portion of Highway 7 from Yonge Street to Kennedy Road in order to incorporate additional transit and other options within the roadway. The major design feature is a transitway within a new median. This will accommodate Bus Rapid Transit initially, and permit possible conversion to Light Rail technology in the future. There would be stations within the boulevard, and bicycle lanes beside the traffic lanes. The project is considered to be necessary to meet regional, interregional and provincial policies of encouraging public transit, bicycle and pedestrian uses, rather than building new roads merely for automobile use. Its implementation is urgent to accommodate burgeoning population growth and development demands, and to provide connectivity with such projects elsewhere.

In light of the settlements achieved prior to and at the hearing, no more detailed description of the Region’s objective is required at this point.

SUMMARY OF THE EVIDENCE

Regional Municipality of York

Mr. Steve Mota, Program Manager, Infrastructure Planning for the Region, provided testimony about developments since the Environmental Assessment (EA) report entitled “Highway 7 Corridor & Vaughan North-South Link Public Transit Improvements”, dated August 2005, was approved. A rapid transit option had been proposed in detail in the Region’s 2002 Transportation Master Plan (ESR, p 1-1). The EA process was conducted as a harmonized one under the federal assessment legislation as well, as federal infrastructure funding is required for its implementation.

There is a succinct description of the transitway in Tab 4 of Mr. Mota’s brief (Exhibit 10). The individual Environmental Assessment was approved, with some standard conditions, by the Minister of the Environment in November, 2006 (Exhibit 10, Tab 2). The Region is proceeding with dispatch to implement the project. In 2008 the Region established a Compliance Monitoring Program to meet one of the Minister’s conditions (Ex. 10, Tab 5.), and the Ministry acknowledged this in December 2008 (Tab 6).

Additional stimulus for this rapid transitway comes from the provincial level. Much of this section of Highway 7 is within an Urban Growth Centre (Ex. 11, Tab 2, Final Report (Revision), Dec. 2008). In its Regional Transportation Plan of November 2008 (Tab 7), the provincial agency Metrolinx emphasized the importance of rapid transit facilities throughout the GTA and Hamilton areas. This Plan states that one of the top fifteen transit priorities for early implementation is the “VIVA Highway 7 and Yonge Street through York Region” (p. 60). “In York Region, existing VIVA services will be upgraded to rapid transit to create an east-west spine on Highway 7, connecting with AcceleRide on Queen Street to Downtown Brampton” (Ex. 10, Tab 7, p. 62, and Appendix D, Quick Wins, p. 108).

Meanwhile the Region has been developing detailed designs for its Six-Lane Regional Streets [Ex. 11, Tab 2, Final Report (Revision), Dec. 2008]. The proposed expansion of Highway 7 is
supported by Official Plan policies as stated on P. 10 of this Report “These corridors are to be used by all forms of transportation …. and may also be considered for the implementation of rapid transit facilities.”; and local Plan policies (Tab 2, section 3.2, p. 17). The proposed design for a median is set out in section 5.4, p. 53; and its width is designed so as to accommodate the proposed station structures at 1 km distances. Justification for inclusion of bicycle lanes in the proposed design is found in the Pedestrian and Cycling Master Plan Study, March 2008 (Tab 4). They would be located on each side of the revised roadway. The preferred width of bicycle lanes is found in section 5.8 on page 57. There are many advanced features in the design for facilitating public transit. In Mr. Mota’s opinion, the highway redesign complies with the EA, the Minister’s conditions, and the Regional policies for cycling.

Mr. Waqué explained that this project and the proposed takings have been advanced considerably because of time-limited federal infrastructure funding. In order to take advantage of this there was very little time to negotiate with each landowner. Many of the properties are either subject to development applications or are now under development. Satisfactory and rapid solutions were therefore critical to all parties. Following the January 29, 2009 notice of application for approval to expropriate, many site visits were conducted by counsel and engineers, and appropriate resolutions were sought.

In many cases the proposed takings were found not to be necessary, as other solutions were found. What resulted from these meetings (and is still resulting for many of the proposed takings) are agreements that are in effect private access agreements, in lieu of easements. These would give the Region permission to enter the properties temporarily to carry out the required construction. These private agreements would obviate the need for a temporary easement on many of the properties, thus removing any requirement for a formal expropriation process. Such agreements would also not encumber the titles to the lands. Mr. Waqué explained that once an easement is registered on title, its release cannot be registered without the consent of the owner. Thus the Region has agreed to enter into private access agreements, or permission to enter contracts, for which a notice of release may be filed on the title to each property following the three-year construction period (or earlier, if completed.) It is extending this possibility of private agreements to other owners as well.

The landowners

There was no evidence tendered on behalf of the landowners who had requested the hearing, because their requests were either withdrawn before the hearing (as set out above), or a settlement was reached on the day of the hearing. The private contracts either have been or are expected to be formalized shortly.

Here is the status of each discussion as of the date of the hearing, in the order noted in the style of cause:

Reference Nos. 3, 5, 6, 7, 8, 18 and 54

Ms. Taccone attended to confirm that the owners of these lands, represented by Mr. Horosko of her firm, have withdrawn their requests for this hearing, as they have reached private agreements extending the Region permission to enter to complete the required construction. Therefore Mr. Waqué confirmed that the Region would not proceed with the easement acquisitions.

Reference Nos. 9 and 10

Mr. Donald Hindson was present to confirm that his clients The Aufisch Corporation and Regina Franziska Fischer had withdrawn their request for a hearing (Ex. 7), conditional upon the completion of a permission to enter agreement, apparently already finalized. Mr. Waqué said that in this event, there would be no temporary easement taken for this property.

Reference No. 12
Exhibit 4, a letter dated April 23 from Mr. Scargall, unconditionally withdrew on behalf of his clients the Farrs their request for this hearing. Mr. Waqué had asked for clarification as to the extent of the land to be taken that would be satisfactory to his clients. The result was a reduced proposed temporary taking on the western part of the site. Exhibit 6a, a draft reference plan dated January 20, 2009, represents the former proposal: a fee simple interest in Parts 16, 17 & 18; and a three-year temporary easement in Part 28 on the draft Plan. Ex. 6b, a revised draft plan dated March 31, 2009 illustrates the revision: while a fee simple interest in Parts 16, 17 and 18 would still be required, there is a much reduced temporary easement proposed for Part 28 on the March 31 plan.

Should this proposed taking be still before me, I would therefore recommend to the Region, for the record, the acquisition of the revised portions of this parcel (although it seems from the withdrawal of the request for the hearing that this recommendation is not necessary.)

Reference No. 16

Mr. Rayman withdrew his client Arya Investments Corp’s request for a hearing by email dated April 28 (Ex. 3.)

Reference No. 28

Mr. Williams, by letter dated April 28 (Ex. 2) also withdrew for his clients, Angelico Investments Inc. and Michael-Angelo’s Market Place Inc., their request for a hearing of inquiry.

Reference Nos. 51, E15, E16 and E17

Mr. Waqué outlined the unusual circumstances underlying the proposed takings from these parcels. When the title search for the takings (fee simple and temporary easements) was conducted, a plan of condominium had not yet been registered. Therefore the Region did not realize that the buildings were already under construction. Meetings with Mr. Melling on behalf of the owners have resulted in revisions to the proposed expropriations, so that a fee simple taking is no longer necessary. The proposed three-year temporary easement from Ref. No. 51, Dorsay Development Corporation, has been reduced, and is now shown as Part 13 on the revised draft reference plan dated March 31, 2009 (Ex. 6b.) Similarly, for Ref. Nos. E15, E17 and E17, owned by Dorsay and CIRCA Inc., the revised proposed temporary easements are shown as Parts 6 and 7 on the March 31 plan.

The status of this matter as of the date of the hearing was that Mr. Melling was withdrawing his clients’ request for the hearing respecting revised Parts 13, 6 and 7 on the March 31 draft plan. However, his clients were still engaged in discussions with the Region respecting any regrading that may be required. While a permission to enter agreement is the desired goal here as well (rather than a formal easement) such an agreement had not yet been reached. Therefore a temporary easement may still be required to protect the Region’s right to perform the required reconstruction.

As with No. 12 above, I would therefore recommend to the Region for the record, the acquisition of the revised portions of this parcel (although this may not be technically necessary.)

Reference No. 55

Mr. Al Burton attended to confirm that his client, H & W Development Corporation, approved of the proposed takings, a fee simple interest in Part Block 2 Plan 65M-3998, designated as Parts 5 & 6 on the draft Plan dated January 20, 2009; and a three-year temporary easement in Part Block 2, Plan 65M-3998 designated as Part 15 on draft Plan L12-010687 dated January 20, 2009.

Reference No. 56

Mr. Victor Saccucci was present for his client Graycourt Investment Corporation, and confirmed that discussions with the Region were ongoing. His client and the Region had signed an
agreement that led him to advise that the request for hearing be withdrawn, but the formalities appeared to be still in flux. He anticipated that there would be a permission to enter agreement signed to resolve the matter.

Mr. Waqué summed up the situation by reiterating that it appeared that all of the original requesters have now withdrawn their requests for a hearing of inquiry. The Region intends to proceed for approval of the revised takings where there has been no private contract reached for access during the construction period. This Report does not deal with these contracts, which would provide for other remedies. While the requests for a hearing have been withdrawn, the expropriations should in his submission proceed as proposed, should they be found to be still required.

**FINDINGS AND OPINION**

I am satisfied from the evidence of the Region’s witness that there is an urgent need for the expansion of Highway 7 in this area, to meet regional and interregional transportation needs as well as local ones. The design chosen, which from the evidence has been carefully considered, illustrates that the proposed expropriations are reasonably necessary to meet the Region’s objective. Acquisition of access rights over the adjacent parcels have been proposed as alternative to expropriation, but this proposal and the resulting agreements are not part of this hearing. Although matters for which this hearing of inquiry was requested appear to be proceeding to an amicable settlement, should any of the proposed formal expropriations be still before me, I recommend to the Region that they proceed.

**CONCLUSION**

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

For the reasons given above, I find that the proposed taking by the Regional Municipality of York of the portions of the properties described above is reasonably defensible in the achievement of the Region’s objective of implementing road and intersection improvements along Highway 7, including associated local roads, and to provide designated lanes for the VIVA transit system, and works ancillary thereto.

-Original signed by-

_________________________

Gillian. M. Burton  
Inquiry Officer

Date: May 9, 2009
APPENDIX A

LIST OF EXHIBITS

1. Affidavit of Andrew Brown
2. Letter of withdrawal – Angelico Investments
3. E-mail message of withdrawal – Arya Investments Corp.
4. Letter of withdrawal – Farr
5. Site plan of revised proposed taking - Farr
7. Letter of withdrawal – The Aufisch Corporation and Regina Franziska Fischer
10. Brief – Steve Mota
11. Brief - Michael Larkin
12. Rapid Transit Plan: Highway 7 Corridor & Vaughan North-South Link - Public Transit Improvements
In the Town of Richmond Hill and Town of Markham, in the Regional Municipality of York, described as follows:

<table>
<thead>
<tr>
<th>Ref No.</th>
<th>Address</th>
<th>Legal Description</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>S.S. Highway 7E</td>
<td>Part of PIN: 03029-0907 (LT)                                                                                                          A fee simple interest in Part Block 46, Plan 65M-3226 designated as Parts 18 &amp; 19 on Plan 65R-31704</td>
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<tr>
<td>2</td>
<td>330 Highway 7E</td>
<td>Part of PINs 29302-0001 (LT) to 29302-0363 (LT) both inclusive                                                                                       A fee-simple interest in part of Common Elements of YRCP No. 771 designated as Parts 1 &amp; 2 on Plan 65R-31704</td>
</tr>
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<td>A three year temporary easement in part of Common Elements of YRCP No. 771 designated as Part 20 on Plan 65R-31704</td>
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<tr>
<td>3</td>
<td>360 Highway 7E</td>
<td>Part of PINs 29380-0001 (LT) to 29380-0101 (LT)                                                                                                  A fee-simple interest in part of Common Elements of YRCP No. 850 designated as Parts 3 &amp; 4 on Plan 65R-31704</td>
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<td>S.S. Highway 7E</td>
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<td>5 Rockwell Road and 372 Highway 7E</td>
<td>Part of PIN 03119-0018 (LT)                                                                                                             A fee-simple interest in part Lot 31, Plan 2607 designated as Part 6 on Plan 65R-31704</td>
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<td>A three year temporary easement in Part Lot 11, Conc. 2 RH (MKM) designated as Part 28 on Plan 65R-31704</td>
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| 18     | NS Highway 7E             | A three year temporary easement in Part Block 10, Plan 65M-3226 designated as Part 4 on Plan 65R-31706  
Part of PINs 29374-0001 (LT) to 29374-0125 (LT)  
A fee simple interest in Part of Common Elements, YRCP No. 844 designated as Parts 10 & 11 on Plan 65R-31706  
A three year temporary easement in Part of Common Elements, YRCP No. 844 designated as Parts 22, 23 & 24 on Plan 65R-31706 |
| 19     | 300 West Beaver Creek     | Part of PIN 03124-0549 (LT)  
A fee simple interest in Part Block 1, Plan 65M-2203 designated as Parts 7 & 8 on Plan 65R-31706  
A three year temporary easement in Part Block 1, Plan 65M-2203 designated as Part 6 on Plan 65R-31706 |
| 20     | E.S. Commerce Valley Drive| Part of PIN 03029-0806 (LT)  
A fee simple interest in Part of Lot 10, Conc. 2 MKM (MKM) designated as Parts 2 & 3 on Plan 65R-31714  
A three year temporary easement in Part of Lot 10, Conc. 2 MKM (MKM) designated as Part 4 on Plan 65R-31714 |
| 21     | 11-27 Allstate Parkway    | Part of PIN 03046-0069 (LT)  
A fee simple interest in Part Block 8, Plan 65M-2029 designated as Parts 2 & 3 on Plan 65R-31707  
A three year temporary easement in Part Block 8, Plan 65M-2029 designated as Part 25 on Plan 65R-31707 |
| 22     | S.S. Highway 7E           | Part of PIN 03031-0010 (LT)  
A fee simple interest in Part Lot 7, Plan 65M-2326 designated as Parts 20 & 21 on Plan 65R-31707  
A three year temporary easement in Part Lot 7, Plan 65M-2326 designated as Part 26 on Plan 65R-31707 |
| 23     | S.S. Highway 7E           | Part of PIN 03031-0011 (LT)  
A fee simple interest in Part Lot 8, Plan 65M-2326 designated as Parts 18 & 19 on Plan 65R-31707  
A three year temporary easement in Part Lot 8, Plan 65M-2326 designated as Part 27 on Plan 65R-31707 |
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<td>25-71 Cochrane Drive</td>
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<td>A fee simple interest in Part Lot 9, Plan 65M-2326 designated as Parts 11, 12, 13, 14, 15, 16 &amp; 17 on Plan 65R-31707</td>
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<td>S.S. Highway 7</td>
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<td>A three year temporary easement in Part Lot 9, Plan 65M-2326 designated as Part 30 on Plan 65R-31707</td>
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<td>A three year temporary easement in Part Block A, Plan 4556 designated as Parts 6 &amp; 7 on Plan 65R-31709</td>
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<td>A permanent easement interest in Part Block A, Plan 4556 designated as Part 18 on Plan 65R-31709</td>
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<td>3088 Highway 7</td>
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<td>A permanent easement interest in Part of Blocks A and D, Plan 4556 designated as Part 17 on Plan 65R-31709</td>
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<td>3085 Highway 7</td>
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<td>A fee simple interest in Part West Half Lot 10, Conc. 4 MKM (MKM) designated as Part 5 on Plan 65R-31709</td>
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<td>A three year temporary easement in Part West Half Lot 10, Conc. 4 MKM (MKM) designated as Part 14 on Plan 65R-31709</td>
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| 31     | 3130-3150 Highway 7 | Part of PIN 03045-0007 (LT)  
A fee simple interest in Part Block E, Plan 4556 designated as Part 3 on Plan 65R-31709  
A three year temporary interest in Part Block E, Plan 4556 designated as Part 9 on Plan 65R-31709  
A permanent easement interest in Part Block E, Plan 4556 designated as Parts 15 and 16 on Plan 65R-31709 |
| 32 & 33| 3265-3275 Highway 7 | Part of PIN 03032-0302 (LT)  
A fee simple interest in Part Lot 10, Conc. 4 MKM (MKM) designated as Part 4 on Plan 65R-31709  
A three year temporary easement in Part Lot 10, Conc. 4 MKM (MKM) designated as Parts 10 & 11 on Plan 65R-31709 |
| 35A, 35B, 36 | N.S. Highway 7 | Part of PIN 03045-0052 (LT)  
A three year temporary easement in Part Block 1, Plan 65M-2445 designated as Parts 2, 3, 4 & 5 on Plan 65R-31711 |
| 49, 50, 52 | S.S. Highway 7 | Part of PIN 03033-0074 (LT)  
A fee simple interest in Part Block 1, Plan 65M-2668 designated as Parts 2 & 3 on Plan 65R-31720  
A three year temporary easement in Part Block 1, Plan 65M-2668 designated as Parts 4 & 5 on Plan 65R-31720 |
| 51     | N.S. Highway 7 | Part of PIN 03034-0100 (LT)  
A three year temporary easement in Part Block 3, Plan 65M-2503 designated as Part 13 on Plan 65R-31711 |
| 54A    | E.S. South Town Centre Boulevard | Part of PINs 29653-0001 (LT) to 29653-1021 (LT)  
A fee simple strata interest in Part of Common Elements, YRSCP No. 1122 designated as Part 10 on Plan L12-010687 |
| 54C    |         | PIN 29653-0070  
A fee simple interest in all of Unit 70, Level 1 YRSCP No. 1122 designated as Part 16 on Plan L12-010687 |
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| 55     | E.S. South Town Centre Boulevard | Part of PIN 03033-0100 (LT)  
A fee simple interest in Part Block 2 Plan 65M-3998 designated as Parts 5 & 6 on Plan L12-010687  
A three year temporary easement in Part Block 2, Plan 65M-3998 designated as Part 15 on Plan L12-010687 |
| 56     | 120 South Town Centre Boulevard  | Part of PIN 03033-0011 (LT)  
A fee simple interest in Part Block 4, Plan 65M-2668 designated as Part 1 on Plan L12-010687  
A three year temporary easement in Part Block 4, Plan 65M-2668 designated as Parts 11 & 12 on Plan L12-010687 |
| 57     | 130 South Town Centre Boulevard  | Part of PIN 03033-0113 (LT)  
A fee simple interest in Part Block 4, Plan 65M-3998 designated as Part 2 on Plan L12-010687  
A three year temporary easement in Part Block 4, Plan 65M-3998 designated as Part 13 on Plan L12-010687 |
| E1     | 312 Highway 7E                   | Part of PIN 03118-0240 (LT)  
A three year temporary easement in Part Lot 12, Plan 2607 designated as Part 2 on Plan 65R-31710 |
| E2     | 324 Highway 7E                   | Part of PIN 03118-0225 (LT)  
A three year temporary easement in Part Lot 17, Plan 2607 designated as Part 3 on Plan 65R-31710 |
| E3     | N.S. Highway 7E                  | Part of PINs 29356-0001 (LT) to 29356-0427 (LT)  
A three year temporary easement in Part Common Elements, YRCP No. 826 designated as Part 4 on Plan 65R-31710 |
| E4     | 130 Pond Drive                   | Part of PINs 29489-0001 (LT) to 29489-0366 (LT)  
A three year temporary easement in Part of Common Elements YRCP No. 958 designated as Part 5 on Plan 65R-31706 |
| E7     | 500 Highway 7E                   | Part of PIN 03124-0558 (LT)  
A three year temporary easement in Part Block 1, Plan 65M-2106 designated as Part 5 on Plan 65R-31714 |
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| E8     | N.S. Highway 7E | Part of PINs 29250-0001 (LT) to 29250-0333 (LT)  
A three year temporary easement in Part Common Elements, YRCP No. 719 designated as Part 6 on Plan 65R-31714 |
| E9     | N.S. Highway 7E | Part of PINs 29393-0001 (LT) to 29393-0657 (LT)  
A three year temporary easement in Part Common Elements, YRCP No. 863 designated as Part 7 on Plan 65R-31714 |
| E10    | 600 Highway 7E and 9009 Leslie Street | Part of PIN 03125-0129 (LT)  
A three year temporary easement in Part Lot 11, Concession 3, RH (MKM) designated as Parts 1, 2, 3 & 4 on Plan L12-010690 |
| E11    | 650 Highway 7E | Part of PIN 03125-0186 (LT)  
A three year temporary easement in Part Blocks 1 and 7, Plan 65M-2287 and Part Lot 11, Concession 3 RH (MKM) designated as Parts 5, 6, 7, 8, 9, 10, 11, 12 & 13 on Plan L12-010690 |
| E12    | 255 East Beaver Creek Road | Part of PIN 03125-0185 (LT)  
A three year temporary easement in Part Block 1, Plan 65M-2287 designated as Parts 14 & 15 on Plan L12-010690 |
| E13    | 2830 Highway 7 | Part of PIN 03046-0070 (LT)  
A three year temporary easement in Part Lot 11, Concession 3, MKM (MKM) designated as Part 24 on Plan 65R-31707 |
| E15    | N.S. Highway 7 | Part of PIN 03034-0101 (LT)  
A three year temporary easement in Part Lot 11, Concession 4 MKM (MKM) designated as Part 7 on Plan 65R-31720 |
| E16, E17 | N.S. Highway 7 | Part of PIN 03034-0113 (LT)  
A three year temporary easement in Part Block 5, Plan 65M-2503 and Part Lot 11, Concession 4 MKM (MKM) designated as Part 6 on Plan 65R-31720 |
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<td>Concession 4 MKM (MKM) designated as Parts 12 &amp; 13 on Plan 65R-31709</td>
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Schedule “B”

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

Reasons for the Decision to Approve the Expropriation

After considering the decision of Inquiry Officer Gillian Burton dated May 9, 2009 from the inquiry relating to the proposed taking, the Council of The Regional Municipality of York agrees that the expropriation of the lands set out in Schedule “A” is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority for the following reasons:

(a) implements the approved Environmental Assessment Report prepared in August 2005 in respect of the project (the “EAR”);

(b) improves accessibility to current and planned development by providing a high public transit alternative to reduce automobile dependence;

(c) provides for a sustainable natural environment, economic vitality and healthy communities;

(d) makes the Region’s urban centres more liveable, pedestrian oriented and economically viable;

(e) provides for appropriately located, sized and sheltered transit station sites;

(f) implements transit improvements, which include, but are not limited to dedicated transit ways, bus only queue jump lanes, and stations;

(g) provides a safe public road;

(h) achieves a significant increase in transit’s share of peak period travel;

(i) improves the level of transit service including speed and reliability;

(j) ensures a safe, consistent and proper alignment of all north south roads through intersections along Highway 7 through the Towns of Richmond Hill and Markham;

(k) provides safe passage for pedestrians and cyclists;

(l) provides safe ingress and egress to and from Highway 7;

(m) reduces the potential for unsafe traffic conditions;

(n) responds to increased traffic demands;

(o) improves traffic capacity at intersections along Highway 7;
(p) increases the number of traffic lanes to minimize hazard and inconvenience, while improving operational efficiency;

(q) provides for improved and more attractive streetscape with medians and landscaped boulevards that are sized to allow for soft landscaping that is sustainable;

(r) implements the Region’s Official Plan, the Official Plans for the Towns of Markham and Richmond Hill and to comply with the 2005 Provincial Policy Statement and the Provincial Growth Plan;

(s) addresses infrastructure requirements of the Region in a planned and organized manner;

(t) implements the Region’s Transportation Master Plan;

(u) complies with other governmental controls regarding intersections with major arterial roads and provincial highway; and

(v) implements a permanent rapid transit facility along Highway 7 connecting York Region North South rapid transit facilities and to rapid transit lines in Peel Region and Durham Region.